



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for August 14, 2015

#### BOARD DECISIONS

**Appellant:** Timothy Allen Rainey  
**Agency:** Department of State  
**Decision Number:** [2015 MSPB 49](#)  
**MSPB Docket No.:** DC-1221-14-0898-W-1  
**Issuance Date:** August 6, 2015  
**Appeal Type:** Individual Right of Action  
**Action Type:** Retaliation

#### Whistleblower Protection Act Jurisdiction

The appellant filed an Individual Right of Action appeal alleging that the agency stripped him of certain job duties and gave him a poor performance rating after he refused to follow an order that would have required him to violate federal acquisition regulations and training certification procedures. The administrative judge dismissed the appeal for lack of jurisdiction, finding that the appellant's claim of retaliation based on refusal to violate acquisition regulations and training procedures did not amount to a nonfrivolous allegation that he refused to obey an order that would require him to violate a law.

**Holding:** The Board affirmed the initial decision.

1. While employees are protected from whistleblower retaliation for refusing to obey an order that would require a violation of the law under 5 U.S.C. § 2302(b)(9)(D), the Supreme Court made clear in *Department of Homeland Security v. MacLean*, 135 S. Ct. 913 (2015) that this protection does not extend to violations of an agency regulation or policy.

**The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decisions this week:**

**Petitioner:** Harroll Ingram

**Respondent:** Department of the Army

**Tribunal:** U.S. Court of Appeals for the Federal Circuit

**Case Number:** [2015-3110](#)

**MSPB Docket No.** AT-1221-14-0725-W-1

**Issuance Date:** August 10, 2015

**Holding:** The court affirmed the Board's final order denying the appellant's petition for review based on the appellant's failure to show that he suffered a personnel action within the meaning of the Whistleblower Protection Act.

**Petitioner:** Kenneth M. Pedeleose

**Respondent:** Department of Defense

**Tribunal:** U.S. Court of Appeals for the Federal Circuit

**Case Number:** [2015-3090](#)

**MSPB Docket No.** AT-1221-14-0260-W-1

**Issuance Date:** August 10, 2015

**Holding:** The court affirmed the Board's final decision holding that, although the appellant established that some of his disclosures were a contributing factor in his 14 day suspension under the "knowledge timing test," the agency would nonetheless have taken the same action absent the protected disclosures.

**Petitioner:** Horace Lee Wilson

**Respondent:** Department of the Army

**Tribunal:** U.S. Court of Appeals for the Federal Circuit

**Case Number:** [2015-3077](#)

**MSPB Docket No.** AT-0752-13-0551-I-1

**Issuance Date:** August 11, 2015

**Holding:** The court affirmed the Board's final order sustaining the appellant's removal from the position of Administrative Assistant based on numerous charges of misconduct.

**Petitioner: Jaime Gumbs**  
**Respondent: Department of Health and Human Services**  
**Tribunal: U.S. Court of Appeals for the Federal Circuit**  
**Case Number: [2015-3194](#)**  
**MSPB Docket No. DA-0752-13-0648-I-1**  
**Issuance Date: August 12, 2015**

**Holding:** The court affirmed the Board's final order sustaining the appellant's removal from the position of Medical Officer based on charges of failure to maintain a valid medical license and practicing medicine without a valid license as a condition of employment. In a dissenting opinion, Judge Dyk stated that he would have remanded the case for additional proceedings on the issue of what was required to complete a medical license renewal application, and for determination of a more appropriate penalty.

**Petitioner: Ty K. Sanders**  
**Respondent: Department of Homeland Security**  
**Tribunal: U.S. Court of Appeals for the Federal Circuit**  
**Case Number: [2015-3080](#)**  
**MSPB Docket No. DA-0752-13-0313-I-1**  
**Issuance Date: August 13, 2015**

**Holding:** The court affirmed the Board's final order sustaining the appellant's removal based on a charge that he was not fit for duty in the position because the action was supported by the conclusions of the first set of medical examiners, even though they had reached a result opposite to another set of medical examiners.

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