



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for December 16, 2016

Note: These summaries are descriptions prepared by individual MSPB employees. They do not represent official summaries approved by the Board itself, and are not intended to provide legal counsel or to be cited as legal authority. Instead, they are provided only to inform and help the public locate Board precedents.

COURT DECISIONS

NONPRECEDENTIAL:

Howard v. Department of the Air Force, No. 2015-3233 (Dec. 16, 2016) (DA-0752-09-01742-A-3) (vacating the Board's attorney fees decision and remanding for further proceedings; the methodology that the Board used arrive at an attorney fee award was not in accordance with recent Supreme Court precedent because it reduced the lodestar figure without explaining how this is a "rare and exceptional case."

Mocny v. Office of Personnel Management, No. [2016-2534](#) (Dec. 14, 2016) (MSPB No. CH-831E-15-0295-I-1) (dismissing for lack of jurisdiction the petitioner's appeal of the Board's final decision to uphold OPM's denial of her disability retirement application; the petitioner challenged only the factual underpinnings of the Board's decision, and the court is precluded by statute from entertaining such issues in a disability retirement appeal).

Harvin v. Merit Systems Protection Board, No. [2016-2016](#) (Dec. 13, 2016) (MSPB No. DC-0432-14-0154-B-1) (affirming the Board's decision that dismissed the appellant's constructive removal appeal for lack of jurisdiction; substantial evidence supported the Board's finding that the petitioner did not attempt to

rescind her resignation before its effective date).

Midyett v. Department of Veterans Affairs, No. [2016-2225](#) (Dec. 9, 2016) (MSPB No. DA-1221-12-0554-W-2) (affirming the Board's decision that denied corrective action in this IRA appeal; the Board did not err in refusing to address the appellant's harmful error and due process claims, which are beyond the scope of review in an IRA appeal).

Jones v. Merit Systems Protection Board, No. [2016-2381](#) (Dec. 9, 2016) (MSPB No. DE-3443-16-0099-I-1) (affirming the Board's decision that dismissed for lack of jurisdiction an appeal concerning the denial of VA disability compensation benefits; the proper avenue of appeal was to Board of Veterans' Appeals - not to the MSPB).

Isaiah v. Merit Systems Protection Board, No. [2016-2357](#) (Dec. 9, 2016) (affirming the Board's decision that dismissed the appellant's petition for review as untimely by 6 days without good cause shown for the delay).

[MSPB](#) | [Case Reports](#) | [Recent Decisions](#) | [Follow us on Twitter](#) | [MSPB Listserv](#)