



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for May 26, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Regina E. Lee

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

Case Number: [2017-1232](#)

MSPB Docket Number: DA-0752-15-0388-I-1

Issuance Date: May 25, 2017

Jurisdiction

The petitioner had almost 6 years of Federal service under a series of term appointments. She began an appointment under the Federal Career Intern Program (FCIP) on March 16, 2008. On March 5, 2010, the agency notified her that her term would expire on March 15, 2010, and that it would not convert her appointment into a competitive service appointment. Thus, the agency terminated the petitioner from Federal service. She appealed her termination to the Board. The administrative judge dismissed her appeal for lack of jurisdiction and the Board affirmed the initial decision.

Holding: The court affirmed the Board's dismissal of the appeal for lack of jurisdiction.

1. An agency's decision not to convert an FCIP intern to the competitive

service is generally not an adverse action that is appealable to the Board because 5 C.F.R. § 213.3202(o)(6) (2006), which implemented the FCIP, explains that an intern has no right to further Federal employment after the expiration of his or her term.

2. Executive Order No. 13,162, which created the FCIP, does not confer further rights upon the petitioner because it states that competitive civil service status *may* be granted to a successful intern and not that it *shall* be granted, and because the Order states that it “does not create any right or benefit, substantive or procedural, enforceable in law or equity, by a party against the United States, its agencies, its officers or employees, or any other person.”

NONPRECEDENTIAL:

Gordon v. Office of Personnel Management, [No. 2017-1165](#), (Fed. Cir. May 25, 2017) (MSPB Docket No. CH-0845-16-0204-I-1) (reversing the Board’s decision that found that the petitioner failed to prove that recovery of his overpaid benefits under the Federal Employees’ Retirement System would be against equity and good conscious because: (1) recovery would be unconscionable based upon OPM’s lengthy delays on two separate occasions; (2) the first delay hindered his ability to receive Department of Veterans Affairs and state benefits he likely would have received; and (3) the second delay fell only 40 days short of 4 years, and directing the Board to instruct the Office of Personnel Management to waive recovery of the claimed overpayment).