



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for June 23, 2017

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BOARD DECISIONS

Appellant: Special Counsel ex rel. Dale Klein

Agency: Department of Veterans Affairs

Decision Number: [2017 MSPB 6](#)

Docket Number: CB-1208-17-0019-U-1

Issuance Date: June 19, 2017

Appeal Type: Request for Stay (OSC Filed)

Special Counsel Actions

Whistleblower Protection Act

- Stays

On May 26, 2016, OSC filed a request for a 45-day stay of a decision of the Department of Veterans Affairs (DVA) to terminate Dr. Klein during his probationary period, effective April 28, 2016. The Board granted OSC's stay request, and subsequently granted several extensions of the stay, which was in place from June 1, 2016, through May 12, 2017. In this current stay request, OSC asserts that, following the expiration of the stay on May 12, 2017, DVA proposed Dr. Klein's removal on May 31, 2017.

Holding: Vice Chairman Robbins denied OSC's stay request without prejudice.

1. The stay expired on May 12, 2017, at which point the Board lacked a quorum, and thus the Board did not have the authority to grant an extension of the previous stay had OSC requested one.
2. Under the unusual circumstances of this case, Vice Chairman Robbins viewed OSC's request as a request for an extension of the stay previously granted through May 12, 2017.
3. Congress recently passed legislation amending 5 U.S.C. § 1214 to allow an individual Board member to extend a stay granted under section 1214(b)(1)(A) during periods when the Board lacks a quorum.
4. Following the enactment of this legislation, OSC again can petition the Board for an extension of the previously granted stay.
5. Should OSC request an extension of the stay following enactment of the pending legislation, OSC also may include a request that the stay be granted retroactive to May 13, 2017.

COURT DECISIONS

NONPRECEDENTIAL:

Pope v. Department of the Navy, [No. 2016-2106](#), (June 19, 2017) (MSPB Docket No. AT-0752-15-0206-I-1) (affirming, pursuant to Rule 36, the Board's decision sustaining the petitioner's removal).

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