



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for July 14, 2017

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NONPRECEDENTIAL BOARD DECISION OF NOTE

Appellant: Special Counsel ex rel. Dale Klein

Agency: Department of Veterans Affairs

Docket Number: CB-1208-16-0023-U-7

Issuance Date: [July 13, 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. On June 14, 2017, OSC filed another stay request, seeking a 90-day stay of the removal action that DVA had initiated on May 31, 2017 – after the previous stay's expiration. Vice Chairman Robbins denied the stay request without prejudice on the basis that the Board lacked a quorum and thus had no authority to grant the stay extension under current law. He noted, however, that Congress had 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. Once the legislation was enacted, OSC would be allowed to file a new request for a retroactive extension of the stay. On June 29, 2017, following the enactment of the legislation, Vice Chairman Robbins granted OSC's stay request in part through July 14, 2017, retroactive to May 13, 2017. Vice Chairman Robbins indicated that he would rule on the remaining balance of OSC's 90-day stay request once DVA had an opportunity to comment. DVA timely filed an opposition to OSC's request.

Holding: In a nonprecedential decision, Vice Chairman Robbins granted OSC's request to extend the stay through August 11, 2017.

1. The extension of a stay may be granted for any period that is considered "appropriate." 5 U.S.C. § 1214(b)(1)(B). However, the Board has recognized congressional intent that stays not extend for "prolonged periods of time" and that the Board thus has an obligation to press OSC to present corrective action cases in a timely manner.

2. Vice Chairman Robbins determined that a brief extension through August 11, 2017, was appropriate to allow OSC to complete its investigation into the proposed removal. However, he indicated that OSC was expected to complete its investigation and determine whether to pursue corrective action within that timeframe. Vice Chairman Robbins also stated that nothing in the Board's orders in this matter should be interpreted as authorizing Dr. Klein to refuse to comply with a lawful instruction to return to work.

COURT DECISIONS

NONPRECEDENTIAL:

Solis v. Merit Systems Protection Board, [No. 2016-1726](#) (July 12, 2017) (MSPB Docket No. DA-3443-14-0065-B-1) (affirming the Board's decision dismissing the petitioner's appeal of an alleged suitability action).

Keen v. Merit Systems Protection Board, [No. 2017-1541](#) (July 13, 2017) (MSPB Docket No. AT-0752-15-0473-I-1) (affirming the Board's decision dismissing the petitioner's involuntary resignation appeal).

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