



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for December 15, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Chase M. Lentz
Respondent: Merit Systems Protection Board
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2017-1285](#)
Issuance Date: December 12, 2017
MSPB Docket No. SF-4324-15-0364-I-1

Defenses and Miscellaneous Claims
--Collateral estoppel

The appellant, a botanist, had no disciplinary history until he received a letter of reprimand on May 15, 2014, followed by a November 13, 2014 letter proposing a 14-day suspension. Soon after receiving this letter, the appellant went on medical leave, and the 14-day suspension was sustained and effected while he was on leave. The appellant resigned on February 13, 2015, citing harassment and a hostile work environment that aggravated his illness and his veterans' disability and made his work circumstances intolerable.

On February 25, 2015, the appellant filed a Board appeal in which he asserted that he was constructively discharged. The administrative judge bifurcated the appeal—*Lentz I* was designated as a claim of involuntary resignation pursuant to 5 U.S.C. chapter 75, and *Lentz II* was designated as a USERRA appeal. The administrative judge dismissed *Lentz I* for lack of jurisdiction, without holding the appellant’s requested hearing, because he failed to nonfrivolously allege that he was subjected to a discriminatory/retaliatory hostile work environment so coercive in nature that he had no choice but to resign. The Board affirmed the administrative judge’s decision, and the appellant did not appeal the Board’s decision to the court.

In *Lentz II*, the administrative judge noted that the matter was limited to claims that an employer discriminated in employment or took an adverse employment action because of protected USERRA activity. The administrative judge found that the appellant failed to make a nonfrivolous allegation that a reasonable person in his position would have felt compelled to resign due to USERRA-based discrimination or reprisal. The administrative judge further found that the appellant was collaterally estopped from raising in *Lentz II* issues relating to the “overall issue of whether his resignation was involuntary” and “the issue of whether the agency violated USERRA by denying his request for accommodation,” which were litigated in *Lentz I*. After the appellant filed a petition for review, the Board upheld the administrative judge’s application of collateral estoppel and affirmed the administrative judge’s decision to dismiss the appeal for lack of jurisdiction. The appellant appealed to the court.

Before the court, the Board recognized that the administrative judge’s decision to bifurcate the appeal was confusing and unclear, and it conceded that it erred in the application of collateral estoppel. However, the Board urged the court to affirm its decision dismissing the appeal for lack of jurisdiction because the appellant failed to make a nonfrivolous allegation of an involuntary resignation caused by USERRA violations.

Holding: The court found that the issue in *Lentz I*—that the appellant failed to make a nonfrivolous allegation of involuntary resignation based on alleged coercive action actions *other than USERRA violations*—was not the same issue that was in *Lentz II*, and therefore, the decision in *Lentz I* had no preclusive effect on *Lentz II*. The court further found that the Board erred by improperly bifurcating the proceeding and by failing to consider the totality of the evidence in determining the question of voluntariness in *Lentz II*. The court clarified that the cause of action in *Lentz II* was a constructive discharge, not the USERRA violation alone; therefore, all of

the evidence relevant to the constructive discharge—including evidence related to the allegations of USERRA-violating retaliation—must be considered. The court vacated the Board’s decision and remanded the appeal to address this issue. The court did not decide the question of whether the appellant’s allegations were nonfrivolous based on the totality of the evidence.

NONPRECEDENTIAL:

Greer v. Department of the Air Force, No. [2017-1939](#) (Dec. 12, 2017) (MSPB Docket No. DA-0752-17-0149-I-1) (affirming the administrative judge’s finding that the appellant’s appeal challenging his removal was barred by collateral estoppel (or issue preclusion) because, among other things, the same jurisdictional issue was litigated in an earlier appeal and the Board concluded therein that he had waived his right to appeal the removal pursuant to a last chance agreement).

Jones v. Department of Health & Human Services, No. [2017-2310](#) (Dec. 11, 2017) (MSPB Docket Nos. DE-3330-17-0119-I-1, DE-4324-17-0121-I-1) (affirming the administrative judge’s conclusion that the appellant did not prove that the agency violated his rights under VEOA or USERRA when it did not select him for the Public Health Advisor position).

Wells v. Merit Systems Protection Board, No. [2017-1298](#) (Dec. 8, 2017) (MSPB Docket No. AT-0752-16-0206-I-1) (Rule 36 affirmance).

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