

**U.S. Merit Systems Protection Board:
Frequently Asked Questions about the Lack of Board Quorum
UPDATED: June 21, 2018**

1. How are the 3 Board members appointed?

Board members are nominated by the President and confirmed by the Senate. The Chairman is separately nominated by the President and confirmed by the Senate. The Vice Chairman is designated by the President. The Board members serve 7-year staggered terms. See [5 U.S.C. §§ 1201 and 1202](#); [5 C.F.R. § 1200.2](#).

The Board currently consists of Mark A. Robbins whom President Trump designated as Vice Chairman on January 23, 2017. The Board has operated without a Chairman since January 7, 2017. The third Board member position has been vacant since March 2015.

2. What is the impact of a lack of quorum on MSPB operations?

As to the executive leadership of the Board, Vice Chairman Robbins has assumed the responsibilities for the functions vested in the Chairman. See [5 U.S.C. § 1203\(c\)](#).

As to the adjudicatory authorities of the Board, because there is only one Board member, the Board is unable to issue decisions that require a majority vote. See generally [5 U.S.C. § 1204\(a\)](#); [5 C.F.R. § 1200.3](#).

3. Can administrative judges (AJs) issue initial decisions when there is a lack of Board quorum?

Yes, AJs may and have continued to issue initial decisions since the lack of quorum began. If neither party files a petition for review to the MSPB, the AJ's decision will become the final decision of the Board and may be appealed to an appropriate court or tribunal. If either party files a petition for review to the MSPB, a Board decision cannot be issued until a quorum is restored.

4. Can the Board issue decisions on petitions for review without a quorum?

Petitions for review received before January 7, 2017, and for which the voting process was not completed before the Board lost a quorum, cannot be issued until a quorum is restored. Petitions for review received after January 7, 2017, have been acknowledged by the Office of the Clerk of the Board and processed according to current Board procedures. However, the Board cannot issue decisions on these petitions until a quorum is restored.

5. Can the Board issue decisions on requests to withdraw petitions for review?

Yes. Pursuant to the May 11, 2018 [Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review](#), and the Board's 2011 Manual on [Organization Functions and Delegations of Authority](#), the Clerk of the Board may exercise its delegated adjudicatory authority to "grant a withdrawal of a petition for review when requested by a petitioner."

6. How does a lack of quorum affect stay requests filed by the Office of Special Counsel (OSC)?

Pursuant to [5 U.S.C. § 1214\(b\)\(1\)\(A\)](#), "*any member of the Board*" (emphasis added) may grant or deny a 45-calendar-day stay of a personnel action requested by the Special Counsel. Thus, Vice Chairman Robbins can and has continued to issue initial stay requests of 45 calendar days.

As to extension of stay requests, although [5 U.S.C. § 1214\(b\)\(1\)\(B\)](#) provides that "[t]he *Board* may extend the period of any stay granted under [1214(b)(1)(A)]" (emphasis added), the President signed legislation on June 27, 2017, that allows an individual Board member to extend a stay granted under section 1214(b)(1)(A) during periods when the Board lacks a quorum. [5 U.S.C. § 1214\(b\)\(1\)\(B\)\(ii\)](#); *see* S. 1083, 115th Cong. (as passed by the House of Representatives on May 25, 2017, and by the Senate on June 14, 2017). Thus, while the Board is without a quorum, Vice Chairman Robbins is authorized to issue decisions on a request for an extension of a stay. *See, e.g., Special Counsel ex rel. Dale Klein v. Department of Veterans Affairs*, MSPB Docket No. CB-1208-16-0023-U-7, Order on Stay Extension Request (June 29, 2017).

7. How are appellants advised of their administrative appellate review or judicial options during the period in which there is only one sitting Board member?

A party's administrative and/or judicial appeal rights will continue to be listed at the end of every initial decision. If the appellant, the agency, or both file a petition for review, it will be acknowledged and processed by the Board, as explained above. The petition for review filing deadlines will *not* be tolled (i.e., stopped) during any lack of quorum. This means that parties to a case who wish to file a petition for review must do so within 35 days of issuance of the initial decision, as required by the Board's adjudicatory regulations at [5 C.F.R. § 1201.114](#). However, the Board cannot issue a decision until a quorum is restored by the nomination and confirmation of at least one additional Board member.

If neither party to a case files a petition for review, the AJ's initial decision will become the final decision of the Board. An appellant may choose to exercise his or her review rights, which may include an appeal to the U.S. Court of Appeals for the Federal Circuit, U.S. District Court, or the Equal Employment Opportunity Commission, depending on the type of appeal and claims raised.

The parties are informed of the current Board lack of quorum in initial decisions, and in acknowledgment notices issued by the Office of the Clerk of the Board, if either or both parties file a petition for review with the Board.

8. When does the Board anticipate having a quorum restored?

While it is not possible to determine exactly when the quorum will be restored, the President has nominated individuals to serve as [Chairman](#), [Vice Chairman](#), and [Member](#) of the Board. As explained in #1 above, after the President nominates Board members, they must be confirmed by the Senate.

9. Has the Board previously experienced a lack of quorum?

Yes. The Board was briefly without a quorum in 2003.

10. How will the parties know when a quorum is present?

We will post information on the [MSPB website](#), issue a [press release](#), and place an announcement on [Twitter](#). We may communicate this information in other ways, as appropriate.

11. Is there a point of contact for other questions?

For further information, please contact the Office of the Clerk of the Board via email to mspb@mspb.gov or via phone at 202-653-7200. Additional information about the Board's organizational structure can be found on the website at www.mspb.gov, in its [agency plans and annual reports](#), and in its current [Organization Functions and Delegations of Authority](#).