



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for August 31, 2018

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Leonardo Villareal

Respondent: Bureau of Prisons

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

Case Number: [2017-2275](#)

Docket Number: 16-56932-3 (Arbitration)

Issuance Date: August 24, 2018

The petitioner sought review of an arbitration decision affirming his removal from the Bureau of Prisons. Before the Federal Circuit, he argued that his removal was not justified, that he was subjected to double punishment, and that the agency violated his due process rights.

Holding: The court affirmed the appellant's removal

1. The court determined that the agency's decision to remove the petitioner and the arbitrator's decision upholding it were supported by substantial evidence.
2. The court rejected the petitioner's argument that his removal constituted double punishment because the agency had already

reassigned him based on the same allegations. The court held that the petitioner's reassignment without a reduction in basic pay did not constitute punishment and therefore did not preclude his subsequent removal.

3. The court determined that the agency did not violate the petitioner's due process rights by changing the deciding official or by improperly considering an aggravating factor in its penalty determination without providing notice to the petitioner. As to the change in deciding official, the court found that substantial evidence supported the arbitrator's finding that the first deciding official never reached a final decision regarding the appropriate penalty. As to the penalty determination, the court found that substantial evidence supported the arbitrator's finding that the deciding official did not improperly consider any new and material evidence.
4. Finally, the court determined that the petitioner's due process claim based on the delay between his conduct and the agency's decision to remove him did not provide a basis for disturbing the arbitrator's decision. The court expressed concern about the passage of 1,265 days before the agency removed the appellant but it held that such a delay could justify reversing the action only if it was shown to be prejudicial. The court found that the appellant had not alleged prejudice before the arbitrator and that he could not do so for the first time on appeal.