



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for December 14, 2018

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NONPRECEDENTIAL COURT DECISIONS

Ramirez v. Department of Homeland Security, [No. 2018-1098](#) (Fed. Cir. Dec. 7, 2018) (Arbitration No. FMCS 17-1168-1): Consistent with its recent [decision](#) in *Federal Education Association - Stateside Region v. Department of Defense*, the court dismissed as untimely a petition for review from an arbitrator's decision sustaining the petitioner's demotion. The court determined that the petition was untimely because the petitioner filed it more than 60 days after the arbitrator issued notice of the decision. The court held that the delay in filing was not subject to equitable tolling because the timeliness of the petition for review is a jurisdictional issue.

Ahuruonye v. Department of the Interior, [No. 2018-2163](#) (Fed. Cir. Dec. 7, 2018) (MSPB Docket No. DC-1221-15-0295-M-1): In a 2017 [decision](#), the court remanded this individual right of action appeal to the Board to make additional findings regarding whether the agency proved, by clear and convincing evidence, that it would have proposed the petitioner's suspension in the absence of his protected disclosures. On remand, the Board made additional findings and determined that the agency had met its burden. It therefore denied the petitioner's request for corrective action. The court affirmed. The court rejected the petitioner's arguments that the Board applied the wrong law and failed to give preclusive effect to a prior decision. The court also found that any error by the Board in failing to rule on a motion to strike did not cause the petitioner substantial harm. Finally, the court found that the

Board properly addressed the issue of the retaliatory motive of the official who recommended the petitioner's suspension.

Allen v. Merit Systems Protection Board, [No. 2018-1649](#) (Fed. Cir. Dec. 11, 2018) (Per Curiam) (MSPB Docket No. SF-0752-08-0343-I-1): The court dismissed the petition for review as untimely filed.

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