



## U.S. MERIT SYSTEMS PROTECTION BOARD

### **Case Report for March 29, 2019**

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#### **NONPRECEDENTIAL COURT DECISIONS**

*Patacca v. Department of the Navy*, [No. 2018-1882](#) (Fed. Cir. Mar. 27, 2019) (MSPB Docket No. SF-0752-17-0574-I-1): In an initial decision that became the final decision of the Board after neither party filed a petition for review, the administrative judge affirmed the agency's action removing the appellant for delay in carrying out her work assignments, failure to follow supervisory instructions, and inappropriate conduct. After the appellant waived her discrimination claims, the court accepted jurisdiction over her appeal. The court affirmed the initial decision, finding that the appellant did not establish reversible error in the initial decision or show that the administrative judge abused his discretion in denying her requests to reschedule the hearing or to call additional witnesses.

*Hickey v. Department of Homeland Security*, [Nos. 2018-1585, 2018-1650](#) (Fed. Cir. Mar. 22, 2019) (MSPB Docket Nos. 1221-15-0013-A-1, PH-1221-15-0013-P-1): After the appellant prevailed in his individual right of action appeal, he requested damages and attorney fees. In initial decisions that became the final decisions of the Board after neither party petitioned for review, the administrative judge awarded the appellant \$122,132.47 in attorney fees and costs and \$10,000 in compensatory damages but found that he was not entitled to consequential damages. On appeal, the court affirmed the administrative judge's compensatory and consequential damages

determinations. However, the court found that the administrative judge abused his discretion by capping the hourly rate for the appellant's attorneys at a rate established in an unrelated case from a different jurisdiction, without providing *any* explanation for such a determination, rather than applying the hourly rate agreed to in the retainer agreement. Thus, the court vacated the attorney fees determination and remanded the matter for further adjudication.

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