



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for April 12, 2019

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NONPRECEDENTIAL COURT DECISION

Bough v. Department of the Interior, Nos. [2018-1477](#), [2018-1478](#) (Fed. Cir. Apr. 5, 2019) (MSPB Docket Nos. DE-1221-14-0237-W-2, DE-1221-14-0394-W-2): The court affirmed, per Rule 36, the administrative judge's initial decisions denying on the merits the appellant's requests for corrective action under the Whistleblower Protection Act because the appellant failed to show that one of his claimed personnel actions fit the statutory definition of a "personnel action" and failed to show that his protected activity was a contributing factor in the remaining personnel actions.

U.S. SUPREME COURT DENIAL OF CERTIORARI

Petitioner: Derek T. Williams

Respondent: Merit Systems Protection Board, et al.

Case Number: [18-694](#)

Decision Below: [892 F.3d 1156](#) (Fed. Cir. June 11, 2018)

MSPB Docket Number: DA-0752-15-0530-M-1

Issuance Date: April 1, 2019

The Supreme Court denied the appellant's petition for writ of certiorari of the Federal Circuit's decision, which affirmed the Board's dismissal of his termination appeal for lack of jurisdiction. The denial of

certiorari made final the Federal Circuit's decision, which found that the Board correctly determined that the "continuing employment contract" theory set forth in *Roden v. Tennessee Valley Authority*, 25 M.S.P.R. 363 (1984), was contrary to Office of Personnel Management's regulations, and that the appellant could not meet the requirement of "current continuous service" by serving in a series of temporary appointments. The court specifically disapproved of *Exum v. Department of Veterans Affairs*, 62 M.S.P.R. 344 (1991), which held that an employee could retain appeal rights in a prior position if the agency failed to inform him that the change in position might result in a loss of appeal rights, and affirmed its previous holding in *Carrow v. Merit Systems Protection Board*, 626 F.3d 1348, 1353 (Fed. Cir. 2010), which held that an agency's failure to advise an employee of the terms of his appointment does not create appeal rights for positions that were not given appeal rights by Congress. Finally, the Federal Circuit rejected the appellant's argument that the Board violated his due process rights by overruling *Roden* during the pendency of his appeal.

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