



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for June 21, 2019

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NONPRECEDENTIAL COURT DECISIONS

Sweeney v. Merit Systems Protection Board, No. [18-1458](#) (4th Cir. June 14, 2019) (DC-0752-15-0060-I-1) The court affirmed the district court's dismissal of the petitioner's appeal of the administrative judge's decision that dismissed his constructive demotion appeal for lack of jurisdiction. The district court granted the MSPB's motion to dismiss, finding that the Board lacked jurisdiction over the appeal because the petitioner voluntarily accepted the demotion. Even assuming that the district court should have converted the MSPB's motion to dismiss to a motion for summary judgment, the petitioner was not prejudiced by the error. The petitioner faced an unpleasant choice between facing termination and accepting a demotion, but his choice was nonetheless voluntary.

Ingram v. Department of the Army, No. [2019-1249](#) (Fed Cir. June 19, 2019) (AT-1221-18-0264-W-1) The court affirmed the administrative judge's initial decision denying on the merits the petitioner's request for corrective action in this individual right of action appeal. The administrative judge found that the petitioner made a prima facie case of whistleblower reprisal for a letter of reprimand, but that the agency proved by clear and convincing evidence that it would have issued the letter notwithstanding the petitioner's protected

activity. The court found that substantial evidence supported the administrative judge's findings that the agency's reasons for the reprimand were strong and that the responsible agency officials had little retaliatory motive. Although the administrative judge appeared to have misallocated the burden of proof with respect to similarly situated non-whistleblowers, this error did not affect the outcome of the decision. The court declined to disturb the administrative judge's credibility determinations.

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