



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for March 6, 2020

**Note:** These summaries are descriptions prepared by individual MSPB employees. They do not represent official summaries approved by the Board itself, and they are not intended to provide legal counsel or to be cited as legal authority. Instead, they are provided only to inform and help the public locate Board precedents.

#### NONPRECEDENTIAL COURT DECISIONS

*Lucena v. Department of Justice*, [No. 2019-1974](#) (Fed. Cir. Mar. 3, 2020) (MSPB Docket No. DC-0752-19-0097-I-1): The court affirmed the Board's decision in this indefinite suspension appeal. The agency suspended the petitioner based on the suspension of his security clearance. The Board affirmed the suspension, rejecting the petitioner's due process and harmful procedural error. The court affirmed the Board's decision, finding that the agency's proposal notice included a sufficient explanation of the reasons for the suspension of the petitioner's security clearance.

*Keys v. Merit Systems Protection Board*, [No. 2020-1063](#) (Fed. Cir. Mar. 3, 2020) (MSPB Docket No. DC-1221-19-0150-W-1): In a per curiam opinion, the court affirmed in part and reversed in part the Board's decision in this individual right of action appeal. The court agreed with the Board that the petitioner's constructive removal claim was barred by collateral estoppel. The Board conceded on appeal that it had erred in dismissing the petitioner's reassignment claim, and the court remanded that claim for further proceedings.

*Baldwin v. Merit Systems Protection Board*, [No. 2019-2218](#) (Fed. Cir. Mar. 5, 2020) (MSPB Docket No. DC-0752-19-0400-I-1): In a per curiam opinion, the court affirmed the Board's dismissal of the petitioner's removal appeal. The court agreed with the Board that the appellant made a binding election to

challenge his removal through the negotiated grievance procedure by participating in and failing to disavow the grievance filed by his union on his behalf. The court rejected the petitioner's argument that the grievance did not constitute a binding election because it was untimely or otherwise deficient.

[MSPB](#) | [Case Reports](#) | [Recent Decisions](#) | [Follow us on Twitter](#) | [MSPB Listserv](#)