



## U.S. MERIT SYSTEMS PROTECTION BOARD

### **Case Report for April 17, 2020**

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#### **NONPRECEDENTIAL COURT DECISIONS**

*McKeown v. Merit Systems Protection Board*, No. [2020-1062](#) (Fed. Cir. Apr. 16, 2020) (MSPB Docket No. SF-0752-19-0429-I-1): The court affirmed the administrative judge's initial decision dismissing the petitioner's constructive removal appeal for lack of jurisdiction without holding a hearing. The petitioner claimed that he retired involuntarily based on coercion. The court found that, although the petitioner's working environment was stressful, this was insufficient to show that he lacked reasonable alternatives to retirement. The petitioner's argument that his work assignments exposed him to personal liability was both implausible and untimely raised. The administrative judge adequately considered the record as a whole, and her failure to mention each and every allegation that the petitioner raised, including his whistleblower allegation, did not mean that she did not consider them in reaching her decision.

*Trinkl v. Department of Commerce*, No. [2019-2356](#) (Fed. Cir. Apr. 16, 2020) (MSPB Docket No. DC-0752-16-0387-M-2): The court affirmed the administrative judge's initial decision dismissing the petitioner's constructive removal appeal for lack of jurisdiction after holding a hearing. The petitioner claimed that his retirement was involuntary based on coercion and

misinformation. The Board dismissed the appeal for lack of jurisdiction without holding a hearing, but the court vacated and remanded, finding that the petitioner made a nonfrivolous allegation of jurisdiction and was entitled to a hearing. After holding a hearing on remand, the administrative judge again dismissed the appeal for lack of jurisdiction. The court found that the administrative judge assessed the petitioner's claim under the totality of the circumstances in light of his findings of fact and credibility determinations, which were supported by substantial evidence. The court found no basis to disturb the administrative judge's weighing of the evidence. The petitioner claimed that he was denied access to certain evidence, but the court found that the petitioner failed to show that his substantive rights were thereby prejudiced, and that he did not preserve the issue for review.

*Mikaia v. Department of Commerce*, No. [2019-1533](#) (Fed. Cir. April 10, 2020) (MSPB Docket No. DC-1221-17-0794-W-2): The court affirmed the administrative judge's initial decision denying the petitioner's request for corrective action under the Whistleblower Protection Act. The petitioner claimed that the agency subjected him to significant changes in duties, responsibilities, and working conditions in retaliation for several protected activities. The administrative judge found, and the court agreed, that the petitioner made one protected disclosure concerning an alleged violation of the Antideficiency Act; he failed to show that his two grievances and his disclosure concerning an alleged violation of the Federal Acquisition Regulation were protected. The court also affirmed the administrative judge's finding that the agency proved by clear and convincing evidence that it would have taken the same personnel actions notwithstanding the petitioner's protected disclosure. The petitioner's challenges to the administrative judge's findings of fact and credibility determinations were insufficient under the court's substantial evidence standard of review.

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