



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for June 5, 2020

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NONPRECEDENTIAL COURT DECISIONS

Giddings v. Social Security Administration, [No. 2020-1138](#) (Fed. Cir. Jun. 1, 2020) (per curiam) (MSPB Docket No. PH-1221-19-0122-W-1): The court affirmed the administrative judge's denial of corrective action in this individual right of action appeal because the agency showed by clear and convincing evidence that it would not have selected the petitioner for the position at issue even absent her protected activities. The court found that substantial evidence supported the administrative judge's *Carr* factor analysis and findings—that the agency sufficiently explained its interview process and its reason for rating the appellant ineligible after her interview, the involved officials lacked motive to retaliate, and the interviewers also rated similarly situated non-whistleblowers ineligible.

McGrath v. Office of Personnel Management, [No. 2019-2187](#) (Fed. Cir. May 29, 2020) (MSPB Docket No. DC-0841-18-0798-I-1): The court affirmed the administrative judge's decision affirming OPM's final decision not to credit the petitioner's 87 days of service as a member of the Army National Guard of Connecticut between 1977 and 1978, toward his Federal Employees' Retirement System retirement annuity. The court agreed that for his National Guard service to constitute creditable "military service" under 5 U.S.C. § 8411(c)(1), it must fall under at least one of the two exceptions set forth in 5 U.S.C. § 8401(31); and that the petitioner's service did not meet either exception.

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