



## U.S. MERIT SYSTEMS PROTECTION BOARD

### **Case Report for October 9, 2020**

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#### **NONPRECEDENTIAL COURT DECISIONS**

*Messam v. National Archives & Records Administration*, No. [2019-2417](#) (Fed. Cir. October 7, 2020) (MSPB Docket No. DC-0752-19-0084-I-1): The agency removed the appellant under the charge of negligence. In an initial decision, which later became the Board's final decision, the administrative judge affirmed the removal action and found that the appellant did not prove her affirmative defenses. The Federal Circuit affirmed the Board's decision, finding: (1) the Board applied the correct standard in analyzing the negligence charge; (2) substantial evidence supports the Board's conclusion that the appellant engaged in the charged misconduct; (3) there was no error in the Board finding the removal penalty reasonable; (4) the refusal of the agency to consider the appellant's untimely supplemental reply to the proposed removal and considering the revocation of her telework privileges, an issue raised by the appellant in her reply, were not due process violations; and (5) none of the appellant's remaining arguments were persuasive enough to disturb the Board's decision.

*Pybas v. Office of Personnel Management*, No. [2020-1177](#) (Fed. Cir. October 8, 2020) (MSPB Docket No. AT-844E-19-0405-I-1): The Federal Circuit affirmed the Board's final decision finding that the appellant was not entitled to a

supplemental annuity under the Federal Employees' Retirement System because he was a disability retiree and did not meet any of the statutory requirements for a supplemental annuity under 5 U.S.C. § 8421.

*Spence v. Department of Veterans Affairs*, No. [2020-1787](#) (Fed. Cir. October 8, 2020) (MSPB Docket No. DC-1221-20-0069-W-1): The appellant filed an individual right of action appeal with the Board, alleging reprisal for purportedly making whistleblowing disclosures and engaging in protected activity. In an initial decision, which later became the Board's final decision, the administrative judge found that all but one of the appellant's claims was barred by the doctrine of collateral estoppel, i.e., issue preclusion. Concerning the remaining claim, the administrative judge found that the appellant failed to nonfrivolously allege that she made a whistleblowing disclosure. On appeal, the Federal Circuit affirmed all but one portion of the Board's decision. The court vacated the extension of issue preclusion to the matter of whether personnel actions that predated the appellant's removal and were taken by an individual not involved in the removal action were taken in reprisal for the appellant engaging in particular protected activity, remanding for further adjudication in this limited scope.

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