



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for January 8, 2021

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#### NONPRECEDENTIAL COURT DECISION:

*Beckstead v. Office of Personnel Management*, [2020-1884](#) (Fed. Cir. Jan. 7, 2021) (MSPB Docket No. DE-0831-20-0119-I-1): The court affirmed the administrative judge's affirmance of OPM's final decision denying the petitioner former spouse survivor annuity benefits. The court found that the survivor annuity election made during the petitioner's marriage with the decedent terminated upon their post-retirement divorce and, despite the decedent's receiving notice as required by statute of the election rights and obligations, no valid election was made or valid court order was issued granting the petitioner a former spouse survivor annuity.

*Bell v. Department of Defense*, [2020-1325](#) (Fed. Cir. Jan. 5, 2021) (MSPB Docket No. DC-0752-15-0474-I-4): The court affirmed the petitioner's removal for unauthorized absences. Contrary to the petitioner's argument that the administrative judge erred in excluding one of her requested witnesses and limiting the testimony of others, the court found that the administrative judge did not abuse her discretion in making the evidentiary rulings because the excluded testimony was irrelevant and the appellant had ample opportunity to seek relevant information.

*Moore v. Department of the Navy*, [2020-1770](#) (Fed. Cir. Jan. 5, 2021) (MSPB Docket No. DC-4324-19-0863-I-1) (per curiam): The court affirmed the administrative judge's denial of corrective action in the appellant's Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) appeal.

The court found that the appellant's arguments failed to provide a basis for disturbing the administrative judge's supported finding that the appellant's termination during his probationary period was not motivated by his military service, but rather was based on his performance, as indicated by the agency.

*Newman v. Department of the Air Force*, [2019-2297](#), [2019-2298](#) (Fed. Cir. Jan. 6, 2021) (MSPB Docket Nos. Nos. AT-0752-18-0701-I-1, AT-0752-19-0232-I-1): The court affirmed the petitioner's removal from the agency. The agency removed the petitioner in 2018 for unauthorized absences and failure to comply with leave procedures, but cancelled the action after determining that the deciding official had engaged in improper ex parte communications. The agency then effected a second removal action in 2019 based on the same charges, but notifying the petitioner of that additional information. The court agreed with the administrative judge's findings that the agency did not violate the Master Labor Agreement in effecting either removal action, and that the agency afforded the petitioner all of the process he was due in cancelling the first removal action, reinstating him, and providing him additional notice and opportunity to respond to the charges and evidence before removing him in 2019.

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