



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for February 5, 2021

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NONPRECEDENTIAL COURT DECISIONS

Durr v. Merit Systems Protection Board, [No. 2020-2131](#) (Fed. Cir. Feb. 2, 2021) (MSPB Docket No. CH-4324-17-0324-I-1): The court reversed the Board's decision dismissing the petitioner's appeal under the Uniformed Services Employment and Reemployment Rights Act of 1994. The Board dismissed the appeal for lack of jurisdiction, finding that the petitioner did not make a nonfrivolous allegation that his uniformed service was a substantial or motivating factor in the agency's decision to deny him leave under the Family and Medical Leave Act of 1993. Before the Federal Circuit, the Board agreed with the petitioner that his allegations had been sufficient to establish jurisdiction. The court agreed with the parties and therefore remanded the appeal for adjudication on the merits.

Henderson v. Office of Personnel Management, [No. 19-1953](#) (3rd Cir. Feb. 2, 2020) (MSPB Docket No. PH-844E-19-0049-I-1): The petitioner sought review of a Board decision dismissing her appeal against the Office of Personnel Management (OPM) for lack of jurisdiction. The Board dismissed the appeal because OPM had not issued a final decision regarding the petitioner's retirement annuity calculation. Both OPM and the Board argued that the Third Circuit lacked jurisdiction over the appeal. OPM asked the court to dismiss the appeal, whereas the Board

argued that the court should transfer the appeal to the Federal Circuit. The court agreed with both agencies that it lacked jurisdiction over the appeal and it chose to transfer the appeal to the Federal Circuit.

Goodson v. Department of Veterans Affairs, [No. 2019-2434](#) (Fed. Cir. Feb. 3, 2021) (MSPB Docket No. PH-0714-19-0171-I-1): The Board affirmed the petitioner's removal under 38 U.S.C. § 714 but in doing so it failed to review the agency's penalty determination. The court vacated the Board's decision and remanded the appeal for consideration of the penalty consistent with [Sayers v. Department of Veterans Affairs](#), [954 F.3d 1370 \(Fed. Cir. 2020\)](#).

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