



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for April 30, 2021

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NONPRECEDENTIAL COURT DECISIONS

Willis v. Office of Personnel Management, No. [2020-1953](#) (Fed. Cir. April 29, 2021) (MSPB Docket No. AT-0831-19-0476-A-1): After prevailing in a Board appeal on the merits concerning his right to elect a survivor annuity for his current spouse under the Civil Service Retirement System beyond the usual timeframe for making such an election, the appellant sought attorneys' fees and costs in the amount of \$82,932.18. The Board administrative judge denied this request, holding that the appellant failed to prove that an attorneys' fee award was in the interest of justice. Specifically, because the merits ruling in the underlying appeal rested on credibility determinations made at the hearing, there was no way that OPM knew or should have known that it would not prevail on the merits of its case nor was its case clearly without merit. Further, as the evidence in the appellant's favor was not presented until the hearing, OPM did not unnecessarily prolong litigation. The Federal Circuit affirmed the decision denying an attorneys' fee award, finding it supported by substantial evidence and otherwise in accordance with law. The court then summarily found as unpersuasive the remainder of the parties' arguments.

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