



## **U.S. MERIT SYSTEMS PROTECTION BOARD**

### **Case Report for April 24, 2026**

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### **COURT DECISIONS**

#### **PRECEDENTIAL:**

**Petitioner:** Tracey Garland  
**Respondent:** Office of Personnel Management  
**Tribunal:** U.S. Court of Appeals for the Federal Circuit  
**Case Number:** No. [2024-2291](#)  
**MSPB Docket No.** DC-831E-17-0792-I-1  
**Issuance Date:** April 22, 2026

#### **DISABILITY RETIREMENT, PHYSICAL INABILITY TO PERFORM**

The Office of Personnel Management (OPM) removed the petitioner for medical inability to perform the essential functions of her position based on medical letters from her psychiatrist. Relying on the same medical letters, the petitioner subsequently applied for disability retirement annuity benefits. OPM denied the petitioner's application on the basis that she did not provide supporting "objective" medical evidence that she suffered from a disabling medical condition.

The Board affirmed OPM's determination. The Board acknowledged that under *Bruner v. OPM*, 996 F.2d 290 (Fed. Cir. 1993), because OPM removed the appellant for medical inability to perform her duties, she was entitled to a presumption of disability. However, it concluded that the lack of supporting objective medical records of disability was sufficient to rebut the *Bruner* presumption. The court reversed the Board's decision and held that the petitioner was entitled to disability retirement benefits.

**Holding:** On its own, the lack of objective medical evidence may not overcome the *Bruner* presumption.

1. Objective medical evidence (for example clinical findings and laboratory tests) that is inconsistent with or contradicts subjective claims of disability could cause a reasonable fact finder to conclude that an applicant for disability retirement has not proven that a medical condition prevents her from working. However, objective evidence is not required to prove entitlement to a disability retirement annuity. Further, requiring such evidence is particularly problematic when the condition is psychological because psychological disorders are diagnosed and documented differently than physical disorders.
2. Further, it is unlawful to give medical evidence no probative weight on the basis that it is "subjective," in other words, primarily based on a health care provider's assessment of the claimant's own accounts of her symptoms and experiences. Therefore, on its own, the lack of objective medical evidence is insufficient to rebut the presumption under *Bruner* that a petitioner who was removed for medical inability to perform the duties of her position meets the requirements for disability retirement.
3. When, as here, OPM has not introduced evidence sufficient to support a finding in its favor, the Board cannot independently weigh the totality of the evidence to overcome the presumption.

**NONPRECEDENTIAL:**

*Perez v. Department of the Army*, No. [2024-1835](#) (Fed. Cir. April 22, 2026) (MSPB Docket No. DA-0752-22-0143-I-1). The court affirmed the Board's final decision sustaining the petitioner's removal. The court held that substantial evidence supported the Board's finding that the agency proved its charges of failure to follow instructions and conduct unbecoming a supervisor. The court also found that the petitioner failed to present any grounds for disturbing the Board's conclusion that

the deciding official properly weighed the relevant *Douglas* factors, including properly considering the consistency of removal with the agency's table of penalties. The court upheld the Board's determination that the penalty of removal was within the bounds of reasonableness.

*Oyer v. Merit Systems Protection Board*, No. [2026-1346](#) (Fed. Cir. April 21, 2026) (MSPB Docket No. DC-0752-25-2372-I-1). The court found that the administrative judge's order dismissing the petitioner's removal appeal without prejudice subject to automatic refiling was not a final order or final decision of the Board over which the court has jurisdiction. The court also found that, construing the petitioner's petition as a writ for mandamus, the stay was not so immoderate or indefinite as to be a clear abuse of discretion.

*Craddock v. Department of Veterans Affairs*, No. [2025-1867](#) (Fed. Cir. April 21, 2026) (MSPB Docket No. NY-1221-24-0221-W-1). The court affirmed the Board's decision denying corrective action in the petitioner's individual right of action appeal. The court was not persuaded that the Board erred in finding that it lacked jurisdiction over the petitioner's alleged disclosures and an agency investigation. As to the merits of the petitioner's claim that the agency took certain personnel actions against her in reprisal for her administrative complaints, the court affirmed the Board's determination that, although the appellant proved that she engaged in protected activities that were a contributing factor in several personnel actions, the agency established by clear and convincing evidence that it would have taken the same personnel actions in the absence of petitioner's protected activities. The Board's finding that the agency met its burden were based on the administrative judge's credibility determinations, and were therefore "virtually unreviewable."

*Jones v. Merit Systems Protection Board*, No. [2025-1197](#) (Fed. Cir. April 21, 2026) (MSPB Docket No. DC-315I-12-0847-R-1). The court found that it lacked jurisdiction to review the Board's final order denying the petitioner's request to reopen his 2012 appeal of his termination from an appointment with Federal Bureau of Investigations. The court explained that it lacked jurisdiction over cases in which a petitioner raised a claim of discrimination, also known as mixed cases. The court transferred the case to the U.S. District Court for the District of Columbia.

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