



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for July 18, 2025

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### COURT DECISIONS

#### NONPRECEDENTIAL:

*McCloud v. Merit Systems Protection Board*, No. [2024-2376](#) (Fed. Cir. Jul. 11, 2025) (MSPB Docket No. AT-1221-22-0314-W-1). The court affirmed the Board's final order that dismissed the petitioner's individual right of action (IRA) appeal for lack of jurisdiction. It held that the Board correctly concluded that it did not have the authority to resolve the petitioner's IRA appeal because her Equal Employment Opportunity complaints forming the basis of her appeal did not concern remedying any violation of 5 U.S.C. § 2302(b)(8) and, therefore, were not within the purview of section 2302(b)(9)(A)(i).

*Agboke v. Merit Systems Protection Board*, No. [2024-1975](#) (Fed. Cir. Jul. 14, 2025) (MSPB Docket No. SF-1221-18-0106-W-1). The court affirmed the Board's final order that dismissed the petitioner's individual right of action (IRA) appeal for lack of jurisdiction, agreeing with the Board that the petitioner did not non-frivolously allege protected disclosures. Specifically, it found that his disagreements with his performance appraisal did not reasonably evince an abuse of authority, that he expressly waived any alleged disclosures contained in one of his Office of Special Counsel complaints, and that alleged disclosures of his

supervisor's racist remarks were not proper subjects for inclusion in an IRA appeal. It also found that the Board did not abuse its discretion by admitting a late filing by the agency.

*Agboke v. Department of Justice*, No. [2024-1976](#) (Fed. Cir. Jul. 14, 2025) (MSPB Docket No. SF-0752-19-0574-I-1). The court affirmed the Board's final order sustaining the petitioner's removal, and it dismissed for lack of jurisdiction the petitioner's due process challenge to the agency's delayed response to his Freedom of Information Act (FOIA) request. Concerning the removal decision, the court affirmed the Board's rejection of the petitioner's bare allegation of administrative judge bias. The court was unpersuaded by the petitioner's other arguments, finding that the agency's consideration of a reprimand letter in its removal decision was not improper, and that the agency's failure to conduct a yearly performance assessment did not prejudice the petitioner. Concerning the FOIA action, the court explained that the proper forum is the district court.

*Cunningham v. Office of Personnel Management*, No. [2025-1036](#) (Fed. Cir. Jul. 15, 2025) (MSPB Docket No. AT-844E-20-0572-I-1). The court affirmed the Board's decision that the petitioner did not meet the legal requirements for disability retirement under the Federal Employees' Retirement System. The court explained that it was precluded by 5 U.S.C. § 8461(d) from reviewing the factual underpinnings of physical disability determinations. Thus, although it was sympathetic to the petitioner's request for disability retirement in light of her awards of Social Security Disability Insurance and Department of Veterans Affairs Benefits, it lacked jurisdiction over the factual findings she challenged. Considering the petitioner's arguments concerning procedural matters relative to evidentiary issues, it found that the Board did not abuse its discretion.

*Muhleisen v. Merit Systems Protection Board*, No. [2024-2355](#) (Fed. Cir. Jul. 16, 2025) (MSPB Docket No. DE-3443-20-0189-I-1). The court affirmed the Board's final order that dismissed the petitioner's involuntary retirement appeal for lack of jurisdiction. It found that the petitioner, a registered nurse employed by the Veterans Health Administration, was appointed under title 38; therefore, she was not an employee with rights to appeal an adverse action to the Board.

*Oleinic v. Department of the Air Force*, No. [2024-2272](#) (Fed. Cir. Jul. 16, 2025) (MSPB Docket No. DC-0752-23-0393-I-2). The court affirmed the administrative judge's decision that became the Board's final

decision, which sustained the petitioner's removal based on charges of Absence without Leave and Conduct Unbecoming a Federal Employee. The court found that the petitioner made no cognizable challenge to the administrative judge's finding concerning the charges. It agreed with the administrative judge that the petitioner was afforded a reasonable opportunity to respond to the agency's proposed removal sufficient to satisfy his due process rights. It also found that the administrative judge did not abuse her discretion as to procedural and evidentiary matters.

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