



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report covering the period from September 26, 2025, to November 14, 2025

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Director of the Office of Personnel Management
Respondents: Ronald L. Moulton & U.S. Merit Systems Protection Board
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2024-1774](#)
MSPB Docket No. DE-0841-18-0053-I-1
Issuance Date: October 10, 2025

RETIREMENT COURT/DOMESTIC RELATIONS ORDERS FORMER SPOUSE ANNUITY

Mr. Moulton, a Federal employee, and his wife divorced in 2004. A Colorado state court issued a divorce decree stating, in relevant part, that Ms. Moulton was entitled to a pro rata share of Mr. Moulton's "gross monthly annuity" and any benefit he earned based on his Federal service, but did not explicitly mention allocation of his annuity supplement. In 2010, Mr. Moulton retired under the Federal Employees' Retirement System (FERS) at 47 years of age. The Office of Personnel Management (OPM) commenced paying Mr. Moulton his

full FERS annuity supplement because he was under the age of 62 and therefore did not yet qualify for Social Security benefits.

Before 2016 and for almost 30 years, OPM did not include the annuity supplement in its calculation of annuity benefits to be paid to a former spouse except when a state court order expressly addressed the annuity supplement. However, in 2016, OPM reversed course, determining that annuity supplements would be divided in the same way as the basic annuity, even if the court order did not expressly provide that the supplement should be divided. As a result of its reinterpretation, OPM advised Mr. Moulton that he owed his ex-wife nearly \$25,000 in FERS annuity supplement benefits.

On appeal by Mr. Moulton, the Board's administrative judge rejected OPM's new interpretation and concluded that 5 U.S.C. § 8421(c) required OPM to divide an annuity supplement only if expressly provided for in a court order. After OPM petitioned for review, the Board issued an Opinion and Order that denied OPM's petition and affirmed the administrative judge's decision. The Director of OPM petitioned for review of the Board's final order.

Holding: The court affirmed the Board's decision and held that OPM cannot divide a retiree's annuity supplement unless the division of the supplement is expressly provided for in a court order.

1. The court noted that the case presented a purely legal question of statutory interpretation, i.e., whether, under 5 U.S.C. §§ 8421(c) and 8467(a), OPM must apportion the FERS annuity supplement only when the terms of a court order (e.g., a divorce decree) expressly provide for division of the supplement. The court answered in the affirmative.
2. Beginning its analysis with the statutory text and dictionary definitions of the relevant statutory terms from the time when FERS was enacted, the court found that section 8421(c), which provided that an annuity supplement "shall . . . be treated in the same way" as the basic annuity amount under 5 U.S.C. § 8467(a), meant that, consistent with the language of § 8467(a), the supplement may be apportioned only if "expressly provided for" in a court order.
3. The court noted that the broader statutory scheme supported this interpretation because annuity supplements were created for early retirees who were not yet eligible for Social Security benefits, which were presumptively not allocable between former spouses. In addition, Congress knew how to specify when annuity supplements would be

included in an annuity division but did not do so for purposes of the statutes at issue in this case. In particular, Congress separately addressed the treatment of annuities for Central Intelligence Agency employees by providing that the apportionment of the supplemental annuity to a former spouse was determined by the apportionment of the gross annuity. The court further held that adopting OPM's interpretation would result in OPM effectively rewriting divorce decrees and departing from the express will of the parties when OPM's task is purely ministerial.

4. Finally, the court disagreed with OPM's contention that adopting the Board's interpretation of the statutes would render § 8421(c) superfluous. The court noted that this argument had its own superfluity problem because it would render the "expressly provided for" language in § 8467(a) superfluous. In addition, the court held that statutory redundancies can serve a clarifying purpose, as they appeared to do here.

NONPRECEDENTIAL:

Young v. Department of Defense, No. [2025-1575](#) (Fed. Cir. Oct. 7, 2025) (MSPB Docket No. DC-1221-21-0296-W-4). The court affirmed the Board's final order denying the petitioner's request for corrective action in her individual right of action (IRA) appeal. The court found that the Board's findings were supported by substantial evidence, including the finding that personnel actions that occurred after the petitioner's termination were not protected under the plain language of the whistleblower protection statute.

Blackmon v. Merit Systems Protection Board, No. [2025-1154](#) (Fed. Cir. Oct. 8, 2025) (MSPB Docket No. CH-0845-20-0028-I-3). The court affirmed the Board's final order dismissing the petitioner's appeal challenging her annuity calculation for lack of jurisdiction. The court found that the Board correctly concluded that it lacked jurisdiction, as the Office of Personnel Management (OPM) had not issued a final decision, and the petitioner did not argued factors sufficient to conclude that OPM refused or otherwise improperly failed to issue a final decision.

Blevins v. Merit Systems Protection Board, No. [2025-1061](#) (Fed. Cir. Oct. 9, 2025) (MSPB Docket No. NY-0353-20-0047-I-1). The court affirmed the Board's final order dismissing the petitioner's restoration

appeal for lack of jurisdiction because he failed to nonfrivolously allege that his absence from duty was due to a compensable injury. The court agreed with the Board's finding that the petitioner's absence could not have been due to a compensable injury, because the Office of Workers' Compensation Programs already found that he failed to accept a suitable job offer before he attempted to accept the U.S. Postal Service's job offer.

Frericks v. Department of the Navy, No. [24-9531](#) (10th Cir. Oct. 9, 2025) (MSPB Docket No. PH-0752-20-0355-I-1). The court affirmed the Board's final order sustaining the petitioner's removal, finding that substantial evidence supported the Board's analysis of his whistleblower reprisal claims, including that the agency proved by clear and convincing evidence that it would have removed the petitioner in the absence of his whistleblowing.

Benton v. Merit Systems Protection Board, No. [2025-1507](#) (Fed. Cir. Oct. 14, 2025) (MSPB Docket Nos. DA-0432-17-0073-I-1, DA-0752-17-0073-I-1). The court affirmed the Board's final order dismissing the petitioner's petition for review as untimely filed without good cause shown. The court agreed with the Board that the petitioner failed to sufficiently justify the 4-year filing delay.

Mouton-Miller v. Department of Homeland Security, No. [2025-1173](#) (Fed. Cir. Oct. 15, 2025) (MSPB Docket Nos. AT-1221-19-0742-W-4, AT-1221-21-0039-W-4). The court affirmed the Board's final order denying the petitioner's request for corrective action in her individual right of action (IRA) appeals. Regarding MSPB Docket No. AT-1221-19-0742-W-4, the court found that the Board's analysis of the first two *Carr* factors were supported by substantial evidence, but that the Board improperly weighed the third *Carr* factor in the agency's favor even though the agency did not put forth any comparator evidence. Nevertheless, the court agreed with the Board that the agency proved by clear and convincing evidence that it would have removed the appellant in the absence of her protected disclosures. Regarding MSPB Docket No. AT-1221-21-0039-W-4, the court found that the Board's *Carr* factor analysis, and its conclusion that the petitioner's protected disclosures were not contributing factors in several nonselections, were supported by substantial evidence.

Gallegos v. United States Department of Commerce, No. [24-6323](#) (9th Cir. Oct. 16, 2025) (MSPB Docket No. DE-1221-22-0304-W-1). The court denied the petitioner's petition for review of the Board's decision denying corrective action in the individual right of action appeal. The court concluded that substantial evidence supported the Board's finding that the agency would have terminated the petitioner regardless of her protected disclosures.

Steigert v. Merit Systems Protection Board, No. [2025-1906](#) (Fed. Cir. Oct. 20, 2025) (MSPB Docket No. PH-3443-25-1394-I-1). The court dismissed the petitioner's petition for judicial review of the Board's decision dismissing the appeal subject to automatic refiling in January 2026.

Startz v. Department of the Army, No. [2025-1375](#) (Fed. Cir. Oct. 20, 2025) (MSPB Docket No. SF-1221-23-0258-W-1). The court affirmed the Board's final order denying the petitioner's request for corrective action in his individual right of action appeal. The court found that the Board did not err in determining that the appellant did not make a protected disclosure under 5 U.S.C. § 2302(b)(8) as his disclosures did not involve Government wrongdoing.

Butler v. Merit Systems Protection Board, No. [2025-1204](#) (Fed. Cir. Oct. 20, 2025) (MSPB Docket No. DC-0752-23-0453-I-1). The court affirmed the Board's decision dismissing for lack of jurisdiction the petitioner's claims that her employing agency failed to reinstate her to a position she held prior to her resignation.

Courtney v. Merit Systems Protection Board, No. [2025-1348](#) (Fed. Cir. Oct. 31, 2025) (MSPB Docket No. SF-1221-23-0417-W-1). The court affirmed the Board's final order, which affirmed the administrative judge's initial decision dismissing the individual right of action appeal for lack of jurisdiction. The court agreed with the Board that the petition had not exhausted the subject of her Board appeal with the Office of Special Counsel as required.

Demery v. Merit Systems Protection Board, No. [2024-2215](#) (Fed. Cir. Nov. 4, 2025) (MSPB Docket No. PH-3330-19-0292-I-1). The court affirmed the Board's decision, denying the petitioner's request for corrective action under the Veterans Employment Opportunity Act because she did not file a timely complaint with the Department of

Labor (DOL) within 60 days of her nonselection for a vacancy with the Department of the Army's (Army) National Guard Bureau. Even assuming that the petitioner's untimeliness was due to the Army's "fraudulent concealment" of information, she still did not file DOL complaint until more than 11 months after she alleged that she discovered the information at issue.

Demery v. Merit Systems Protection Board, No. [2025-1157](#) (Fed. Cir. Nov. 4, 2025) (MSPB Docket No. DC-3443-24-0105-I-1). The court affirmed the Board's decision dismissing for lack of jurisdiction this appeal from the same nonselection at issue in the case discussed above. Despite the petitioner's claims to the contrary, the Army's decision not to offer her a position is a nonselection, which is not an otherwise appealable action. The Board did not have jurisdiction over her age discrimination claim in the absence of otherwise appealable action. As to her employment practices claims, the Army's alleged failure to properly apply regulations in passing over the petitioner's application is not an employment practice. Further, the petitioner did not show that OPM was significantly involved in her nonselection as necessary to establish jurisdiction over her claim as an employment practices appeal.

Barrette v. Department of Veterans Affairs, No. [2024-1708](#) (Fed. Cir. Nov. 4, 2025) (MSPB Docket No. AT-1221-16-0840-W-1). The court affirmed the Board's final order, which denied corrective action in the petitioner's IRA appeal. The administrative judge's determination that agency officials did not have a strong motive to retaliate was supported by substantial evidence, and the administrative judge did not err in determining that the comparators identified by the petitioner were not similarly situated.

Howard v. Department of Defense, No. [2025-1506](#) (Fed. Cir. Nov. 5, 2025) (DC-1221-23-0349-W-1). The court affirmed the Board's decision, which denied corrective action in the petitioner's IRA appeal because the agency proved by clear and convincing evidence that it would have terminated the petitioner during her probationary period even absent her protected disclosures that she was not allowed meal breaks. In weighing the *Carr* factors, the Board did not err in giving the greatest weight to the first factor, i.e., the agency's strong evidence that the petitioner was terminated due to insubordination, poor performance, and conduct that risked patient safety. The administrative judge did not abuse her discretion in denying as unjustified the petitioner's request for discovery-related sanctions.

Boyd v. Department of the Treasury, No. [2025-1128](#) (Fed. Cir. Nov. 6, 2025) (SF-0752-15-0128-I-1). The court dismissed as untimely filed the petitioner's appeal of the Board's final decision, which dismissed her removal appeal for lack of jurisdiction based on a finding that she had violated the terms of a last chance agreement. The petitioner filed with the court 9 years after the Board's decision, exceeding the 60-day deadline. Assuming equitable tolling was available to the petitioner, she provided no evidence to support her claim that she did not receive the Board's decision until after the court filing period had passed.

Woodroof v. Department of Commerce, No. [2024-2139](#) (Fed. Cir. Nov. 6, 2025) (DC-0432-15-0585-C-1). The court affirmed the Board's decision, which denied a petition for enforcement of the settlement agreement resolving the petitioner's removal appeal. In particular, the court agreed with the Board that the agency did not breach a provision of the agreement requiring the parties to keep the terms of the agreement confidential. That provision had an exception for disclosures to the Board and any disclosures of the agreement fell within this exception because they were in the course of a Board hearing in an appeal filed by a former coworker of the petitioner. The agency did not violate the Privacy Act because the disclosures were subject to a "routine use" exception permitting the agency to defend itself against the appellant's testimony in her former coworker's hearing regarding the agency's alleged misconduct. The court found that the petitioner did not show harm in the administrative judge's alleged denial of her requests for discovery or failure to hold a status conference.

Raiszadeh v. Department of Homeland Security, No. [2023-2409](#) (Fed. Cir. Nov. 7, 2025) (DC-1221-12-0452-B-1). The court affirmed the Board's decision, which denied corrective action in this IRA appeal. Because hearsay is admissible in Board proceedings, the court discerned no abuse of discretion by the administrative judge in admitting a document authored by a union official titled "draft notes," which summarized complaints by the petitioner's subordinates. The court also discerned no basis to disturb the Board's determination, based in part on the petitioner's conduct summarized in the "draft notes," that the agency proved by clear and convincing evidence that it would have terminated the petitioner's probationary employment absent her protected disclosure.

Rivers v. Merit Systems Protection Board, No. [2025-1573](#) (Fed. Cir. Nov. 7, 2025) (AT-844E-23-0604-I-1). The court affirmed the Board's decision, which dismissed the petitioner's appeal of an OPM

reconsideration decision as untimely filed without good cause shown. The court agreed with the Board that the petitioner did not show good cause for his filing delay based on his excuses that he was gathering additional evidence, he experienced difficulty in electronically filing his appeal, and he did not receive the administrative judge's timeliness order.

Warne v. Merit Systems Protection Board, No. [2025-1258](#) (Fed. Cir. Nov. 10, 2025) (SF-1221-23-0305-W-1). The court affirmed the Board's decision, which dismissed the petitioner's IRA appeal as untimely filed more than 65 days after the Office of Special Counsel (OSC) notified him via email that it was terminating its investigation into his complaint. Although the petitioner was "locked out" of his email account, the 65-day time period began when the email was delivered, not when the petitioner read it. The court agreed with the Board that the petitioner's pursuit of an equal employment opportunity complaint did not equitably toll the deadline for filing his IRA appeal.

Rough v. Department of Veterans Affairs, No. [2025-1479](#) (Fed. Cir. Nov. 12, 2025) (DE-1221-21-0078-W-1). The court affirmed the Board's decision, which denied corrective action in the petitioner's IRA appeal because she did not show that she made a protected disclosure. The Board did not err in finding that the petitioner's uncorroborated testimony that she made a disclosure to a union representative was not credible.

Jackson v. Department of Homeland Security, No. [2025-1614](#) (Fed. Cir. Nov. 13, 2025) (CH-3330-23-0216-I-1). The court affirmed the Board's decision, which denied the petitioner's request for corrective action under the Veterans Employment Opportunities Act because his complaint with the DOL was untimely. The court agreed with the Board that the petitioner was not entitled to equitably toll the deadline DOL complaint filing deadline. Specifically, the petitioner failed to show due diligence because he withdrew a prior, timely DOL complaint, and took no additional action until he filed the second, untimely DOL complaint that served as the basis for his Board appeal.