U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for November 20, 2026

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Ronald L. Green
Respondent: Merit Systems Protection Board
Tribunal: U.S Court of Appeals for the Federal Circuit
Case Number: 2026-1012
Petition for Review of MSPB No. SF-0752-23-0397-I-1
Issuance Date: November 13, 2026

Jurisdiction – Involuntary Retirement

Mr. Green was employed as revenue agent with the Internal Revenue Service. In August 2006, the agency indefinitely suspended him based on suspicion that he had filed fraudulent personal tax returns. Just before his suspension was to go into effect, Mr. Green filed for an immediate disability retirement, and just after his suspension went into effect, he invoked arbitration under the collective bargaining agreement to challenge the suspension. His retirement application was approved in January 2007, and in March 2007, an arbitrator reversed the indefinite suspension. The agency backdated Mr. Green's disability retirement to his last date of pay.

In May 2023, Mr. Green filed a Board appeal alleging that his retirement was involuntary. The administrative judge dismissed the appeal for lack of

jurisdiction, finding that Mr. Green had failed to nonfrivolously allege involuntariness. Mr. Green appealed to the Federal Circuit.

Holding: The court found that Mr. Green failed to make a nonfrivolous allegation that his retirement was involuntary.

1. The court first found that, although the case before the Board was a mixed case, Mr. Green had since waived his discrimination claims, leaving the court with jurisdiction to hear the non-discrimination elements of his case.
2. The court next considered Mr. Green's argument that the Board failed to consider whether the agency backdating his retirement, rather than dissolving it and reemploying him as revenue agent, violated the March 2007 Arbitration Decision. The court found that Mr. Green forfeited this argument, which was not clearly presented to the Board.
3. The court then considered Mr. Green's challenge to the Board's finding that he failed to nonfrivolously allege that his retirement was involuntary. The court noted that, given Mr. Green's waiver of his discrimination claims, it would limit its discussion to the Board's general involuntariness framework rather than the framework for assessing involuntary disability retirement claims.
4. The court proceeded to find that Mr. Green had failed to nonfrivolously allege that his retirement was the product of coercion. Mr. Green explained before the court that he only applied for disability retirement to avoid the indefinite suspension, but the court found that this alone was insufficient to support a nonfrivolous allegation of coercion. The court agreed with the Board that Mr. Green's other workplace grievances were relatively minor and did not show that he had no realistic alternatives to retirement.
5. The court further found that Mr. Green failed to nonfrivolously allege that his retirement was the result of misinformation. Mr. Green's pleadings before the court alleged only that agency statements *after* the March 2007 Arbitration Decision misled him into thinking that his retirement was undone and his employment reinstated.
6. In sum, the court concluded that Mr. Green's allegations failed to make a prima facie showing of involuntariness, and that the Board did not err in ruling that he did not present allegations that could overcome the presumption that his retirement was involuntary.

Petitioner: Kathryn Walker
Respondent: Merit Systems Protection Board
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: 2026-1456
Petition for Review of MSPB No. AT-1221-23-0642-W-1
Issuance Date: November 13, 2026

Whistleblower Protection Act – Timeliness
Statutory Construction

Ms. Walker worked for the Department of the Army as a Transportation Specialist. On January 23, 2023, the agency proposed suspending her for 10 days on a charge of conduct unbecoming. That same day, Ms. Walker filed a whistleblower complaint with the Office of Special Counsel. On May 31, 2023, the Special Counsel notified Ms. Walker that it was terminating its investigation, and on August 24, 2023, she filed an individual right of action (IRA) appeal with the Board. In response to the administrative judge's timeliness order, Ms. Walker argued that her appeal was timely under 5 U.S.C. § 1214(a)(3)(B). The administrative judge dismissed the appeal as untimely, finding that it was filed 24 days after the 60-day statutory deadline triggered by the Special Counsel's notice. Ms. Walker petitioned the Board for review, but because the Board lacked a quorum, the initial decision became final. Ms. Walker then appealed to the Federal Circuit.

Holding: The court rejected Ms. Walker's interpretation of 5 U.S.C. § 1214(a)(3)(B), finding that the 60-day deadline for filing an IRA appeal after the Special Counsel issues its termination notice applies even in cases where the Special Counsel takes more than 120 days to issue the termination notice.

1. The court began by quoting the statutory provision at issue, 5 U.S.C. § 1214(a)(3), which provides that an employee, former employee, or applicant may seek corrective action from the Board under 5 U.S.C. § 1221 if the individual seeks corrective action from the Special Counsel for a prohibited personnel practice under 5 U.S.C. § 2302(b)(8) or (b)(9)(A)(i), (B), (C), or (D), and

    (A)
    (i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and
    (ii) no more than 60 days have elapsed since notification

was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or

(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

2. Here, Ms. Walker filed her whistleblower complaint with the Special Counsel on January 23, 2023. Under subparagraph (B), 120 days later, on May 23, 2023, she could have filed her IRA appeal to the Board without notification from the Special Counsel. She did not, however, and the Special Counsel issued its notification about a week later, on May 31, 2023. Under subparagraph (A), an employee has 60 days after the Special Counsel's notification to appeal to the Board. For Ms. Walker, that deadline was July 31, 2023, and she filed her appeal on August 24, 2023—24 days late.
3. On appeal, Ms. Walker argued that her IRA appeal was not untimely because the Special Counsel did not provide its notification until after the 120-day time period under § 1214(a)(3)(B). In her view, if the Special Counsel issues its decision after 120 days, the 60-day deadline of subparagraph (A) no longer applies. In other words, she argued that if the Special Counsel does not issue its decision within 120 days after the employee files with the Special Counsel, no statute of limitations applies to filing an IRA appeal with the Board.
4. The court found that the plain language of the statutory provision, the context of the language in the same section, and the fact that Ms. Walker's interpretation of 5 U.S.C. § 1213(a)(3) leads to an absurd result, all dictate that Ms. Walker's interpretation is incorrect.
5. First, § 1214(a)(3)(B) does not squarely apply to her case. Subparagraph (B) applies if "such employee . . . has not been notified by the Special Counsel." Here, Ms. Walker *was* notified by the Special Counsel that it would not take corrective action on her behalf.
6. The court further found that the context of the surrounding text also forecloses Ms. Walker's interpretation. Immediately following the language at issue, § 1214(a)(4) provides that "[i]f an employee . . . seeks a corrective action from the Board . . . pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee . . . only with the consent of such employee." That the Special Counsel may "*continue* to seek corrective action" after the 120-day time period of subparagraph (B) suggests that an employee's IRA appeal to the Board is governed by subparagraph (B) when the Special Counsel has not terminated its investigation.

7. In addition, the statute makes clear that the 120-day time period of subparagraph (B) is not a deadline the Special Counsel must meet. The deadline for the Special Counsel is set by § 1214(b)(2)(A)(i), which provides that the Special Counsel must make its determination within 240 days. If the Special Counsel chooses to use additional time beyond 120 days, subparagraph (B) permits the employee to separately appeal to the Board while the Special Counsel continues its investigation. Subparagraph (B) mitigates the employee's wait while the Special Counsel remains silent and at work; it does not indefinitely extend the employee's time after the Special Counsel has spoken.
8. Finally, the court found that Ms. Walker's interpretation of the statute leads to an absurd result. Interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available, and interpreting legislation to have no statute of limitations is particularly disfavored. The court concluded that it was not Congress's intent to provide an unlimited amount of time for employees to file IRA appeals to the Board simply because the Special Counsel takes more than 120 days to issue its notification. Rather, once the Special Counsel acts, the 60-day deadline starts to run. Because Ms. Walker did not file her IRA appeal within the 60-day deadline, her appeal was untimely.

NONPRECEDENTIAL:

Valdez v. Office of Personnel Management, No. 2026-1580 (Fed. Cir. Nov. 13, 2026) (MSPB No. DE-0831-24-0374-I-1). The Divorce Decree between Ms. Valdez and her former husband, Mr. Abeita, approved a Marital Settlement Agreement (MSA) which granted Ms. Valdez "[o]ne half interest in all pension and retirement benefits earned by [Mr. Abeita] during coverture through his employment with the Bureau of Indian Affairs, including the annuity and Civil Service Retirement Plan, on a pay as it comes in basis." At his retirement, Mr. Abeita elected to provide Ms. Valdez with an annuity payable only during his lifetime. Following Mr. Abeita's passing, Ms. Valdez applied for survivor benefits as his former spouse. The Office of Personnel Management (OPM) denied her application and the Board affirmed OPM's reconsideration decision. Ms. Valdez then appealed to the Federal Circuit. The court affirmed, finding that the Divorce Decree and the MSA did not expressly provide for an award of survivor annuity benefits to Ms. Valdez.

Butlak v. Department of Homeland Security, No. 2025-1501 (Fed. Cir. Nov. 18, 2026) (MSPB No. AT-0752-23-0120-I-1). Mr. Butlak, a Customs and Border

Protection Officer, was removed for lack of candor based on an incident in which he asked another officer, Mr. Ferguson, to tell the worksite director that he had mistakenly reported to the wrong worksite, when in fact he was running late. The Board sustained the removal. On appeal to the Federal Circuit, Mr. Butlak argued that the administrative judge abused his discretion in excluding Mr. Ferguson as a witness and in finding the removal penalty reasonable. Given Mr. Butlak's stipulation that he asked Mr. Ferguson to inform the worksite director that he had reported to the wrong worksite, the court found that the administrative judge did not abuse his discretion in denying Mr. Ferguson as a witness. Regarding the penalty, the court found that the administrative judge appropriately considered Mr. Butlak's potential *Giglio* impairment as an aggravating factor. The court further found that the comparators Mr. Butlak identified were not analogous, as each case involved a lack of candor charge that was not sustained.