



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for September 18, 2026

Note: These summaries are descriptions prepared by individual MSPB employees. They do not represent official summaries approved by the Board itself, and they are not intended to provide legal counsel or to be cited as legal authority. Instead, they are provided only to inform and help the public locate Board precedents.

COURT DECISIONS

NONPRECEDENTIAL:

Collier v. Merit Systems Protection Board, No. [2025-1339](#) (Fed. Cir. September 17, 2026) (MSPB Docket No. NY-1221-23-0093-W-1). The court affirmed the Board's dismissal of the petitioner's individual right of action appeal for lack of jurisdiction based on a determination that the petitioner failed to nonfrivolously allege that she made protected disclosures. The court concluded that the Board properly determined that the petitioner's alleged disclosures expressed professional disagreement over discretionary policy decisions that she could not reasonably conclude constituted the kinds of unlawful actions contemplated by the Whistleblower Protection Act (WPA). The court rejected the petitioner's arguments that the Board committed legal and procedural errors in its jurisdictional analysis.

Wilson v. Office of Personnel Management, No. [2025-1626](#) (Fed. Cir. September 17, 2026) (MSPB Docket No. DC-0752-21-0025-I-2). The court affirmed a Board decision sustaining the petitioner's removal based on numerous instances of accessing sensitive

personnel information without authorization. The court found that substantial evidence supported the Board's determination that the agency proved the misconduct charges, nexus, and the reasonableness of the penalty. The court also affirmed the Board's application of the factors in *Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999), to find that the agency proved by clear and convincing evidence that it would have removed the petitioner absent her WPA-protected disclosures and activity. The court also found no error in the Board's determination that the petitioner was not removed in retaliation for her union activity.

Duong v. Office of Personnel Management, No. [2026-1418](#) (Fed. Cir. September 15, 2026) (MSPB Docket No. AT-0831-24-0297-I-1). The court affirmed the Board's finding that the petitioner failed to prove his eligibility for an annuity under the Civil Service Retirement System (CSRS), because he provided no evidence that he had served in a CSRS-covered position as required by statute by, for example, proving that he made CSRS contributions. In response to the petitioner's arguments, the court specified that, given the lack of evidence of the petitioner's eligibility, the Board did not improperly consider the agency's method of paying the petitioner in cash as indicating that the petitioner likely had not served in a covered position.

Williams v. Federal Bureau of Prisons, No. [2025-2081](#) (Fed. Cir. September 14, 2026) (Arbitrator Decision No. FMCS 220302-03902). The court affirmed a grievance arbitrator's decision sustaining the petitioner's removal. The court concluded that the arbitrator did not err by relying on circumstantial evidence to find that the agency proved some of its charges, including its charge of possession of contraband on prison premises. The court declined to disturb the arbitrator's determination that the agency also proved the petitioner had prohibited sexual relationships by crediting the statements and testimony of inmates. The court rejected the petitioner's procedural challenges, concluding that the petitioner failed to prove he was prejudiced by the length of the agency's investigation and that the arbitrator did not rely on an uncharged "sexual assault" when using this term to describe the nonconsensual sexual misconduct at issue in the prohibited sexual relationships charge. Regarding the petitioner's challenge to the penalty, the court found that the arbitrator did not err in determining that the penalty was reasonable, even though the

agency did not prove all of its charges, based on the totality of evidence, including the deciding official's testimony that he would have imposed the same discipline in such a situation.

Tobias v. Merit Systems Protection Board, No. [2026-1572](#) (Fed. Cir. September 11, 2026) (MSPB Docket No. DA-844E-25-1041-I-1). The court affirmed a Board decision dismissing as untimely the petitioner's April 2025 appeal of an Office of Personnel Management (OPM) final decision letter denying him retirement benefits. The court rejected the petitioner's argument that the deadline to file his appeal did not begin to run until he received "actual notice" of the agency's final decision. Instead, the court found that the Board properly applied its regulation at 5 C.F.R. § 1201.22(b)(3) to deem the petitioner as having received OPM's final decision letter in March 2024 when the Postal Service left notice of the letter on his door. Under that regulation and Board case law applying it, the petitioner's unexplained failure to retrieve the letter from the post office or follow up with OPM for more than a year did not excuse his untimeliness. Similarly, the petitioner was not entitled to equitable tolling of the deadline because he did not prove that he diligently pursued his rights or that extraordinary circumstances prevented him from doing so. The court determined that OPM's mailing of the letter to the petitioner's address was reasonably calculated to apprise him of its decision and his appeal rights and therefore rejected the petitioner's constitutional due process challenge.

[MSPB](#) | [Case Reports](#) | [Recent Decisions](#) | [Follow us on X \(formerly Twitter\)](#) | [MSPB Listserv](#)