UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2026 MSPB 10

Docket No. DC-752P-26-0928-R-1

Denyzio Laboy,

Appellant,

v.

Department of Homeland Security,

Agency.

October 22, 2026

Chloe Barrett, Esquire, and Kevin L. Owen, Esquire, Silver Spring, Maryland, for the appellant.

Tae L. Kim, Esquire, and Sally Heuker, Esquire, Arlington, Virginia, for the agency.

BEFORE

James J. Woodruff II, Chairman
Henry J. Kerner, Vice Chairman

OPINION AND ORDER

¶1 This matter comes before the Board based on then-Member Woodruff's Order to reopen the initial decision in this matter. *Laboy v. Department of Homeland Security*, MSPB Docket No. DC-752P-26-0928-R-1, Reopening File (RF), Tab 1. For the reasons set forth below, we REVERSE the initial decision, FIND that the Board lacks the authority to consider the appellant's assertion that the promulgation of Civil Service Rule XI violates the Administrative Procedure Act (APA), FURTHER FIND that the appellant's appointment expired on November 5, 2025, and DISMISS the appeal for lack of jurisdiction. We also DENY the appellant's motion for evidence regarding

interim relief and his motion requesting that the Board allow briefing regarding the basis for reopening.

BACKGROUND

¶2 The following facts are not in dispute. On November 6, 2023, the agency appointed the appellant to an excepted-service position as an Equal Employment Specialist. *Laboy v. Department of Homeland Security*, MSPB Docket No. DC-752P-26-0928-I-1, Initial Appeal File (IAF), Tab 4 at 24, Tab 6 at 14. The agency advised the appellant that he would serve a 2-year trial period, at the end of which the agency "may" convert him to a permanent position. IAF, Tab 4 at 24, Tab 6 at 14.

¶3 Before the end of the 2-year trial period, on April 24, 2025, the President issued Executive Order 14284, entitled "Strengthening Probationary Periods in the Federal Service." Exec. Order No. 14284, 90 Fed. Reg. 17729 (Apr. 24, 2025). In pertinent part, the Executive Order stated that the regulations at 5 C.F.R. part 315, subpart H, which "purport[ed] to limit agency action with respect to employees serving a probationary period, [were] not statutorily required, place[d] undue burdens on agencies in terminating probationary employees, and deter[red] managers from undertaking that effort." Exec. Order No. 14284, § 1, 90 Fed. Reg. at 17729. It directed the Office of Personnel Management (OPM) to "prepare and publish a rule rescinding subpart H and mak[e] conforming amendments."[1] Exec. Order No. 14284, § 4(b), 90 Fed. Reg. at 17732. Significantly, it also added a new Civil Service Rule XI,[2] which "supersede[d]" 5 C.F.R. part 315, subpart H, and required agencies to

[1] The Executive Order stated that 5 C.F.R. part 315 subpart H was "hereby rendered inoperative and without effect," and it directed that "[n]o agency shall give force or effect to its provisions." Exec. Order No. 14284, § 4(a), 90 Fed. Reg. at 17732.

[2] This rule was codified at 5 C.F.R. § 11.1 *et seq.* Exec. Order No. 14284, § 3, 90 Fed. Reg. at 17729-32. We refer to the relevant regulations as "Civil Service Rule XI" throughout this decision.

"affirmatively determine that the continued employment of individuals serving probationary or trial periods would benefit the Federal service before such appointments are finalized." Exec. Order No. 14284, §§ 1, 3, 90 Fed. Reg. at 17729-32. The Executive Order relied on the authority vested in the President by the Constitution and Federal law, including 5 U.S.C. §§ 3301 and 3302, which set forth Presidential authority over the Federal workforce. *Id.*, Preamble.

¶4 On June 24, 2025, OPM published the Final Rule called for by the Executive Order, which became effective that day. Strengthening Probationary Periods in the Federal Service, 90 Fed. Reg. 26727, 26727 (June 24, 2025). OPM stated that, because Executive Order 14284 "supersede[d] subpart H" and "rendered [it] inoperative and without effect," the Final Rule "remove[d] the probationary period regulations in subpart H of part 315 of title 5 from the [Code of Federal Regulations] and ma[d]e conforming edits to parts 301, 307, 315, 316, 351, and 720." *Id.* (quoting in part Exec. Order No. 14284). OPM also stated that the regulatory references were removed and "replaced with references to the Civil Service Rule [XI], as applicable." *Id.* In the Regulatory Compliance section of the Final Rule, OPM referenced the APA[3] and found, pursuant to 5 U.S.C. § 553(b)(B), that there was "good cause" to issue the Final Rule without prior notice and comment. *Id.* at 26728. In this regard, OPM stated that the Final Rule "merely effectuates the rules and policy established by the [Executive Order], which is based on specific Presidential direction under his statutory and constitutional authority for the civil service[,] OPM lacks any discretion in this rulemaking action[,] [and] [t]herefore, notice and public comment procedures are unnecessary." *Id.*

¶5 At 3:33 p.m. on November 6, 2025, the second anniversary of the date of his appointment, the agency notified the appellant by email that "[m]anagement has made the decision not to move forward retaining [him] past

[3] Pub. L. No. 79-404, 60 Stat. 237 (1946).

[his] probationary period," and it directed him to "see the attached termination notice[,] effective immediately."[4] IAF, Tab 4 at 28. The attached notice stated that the agency "has decided not to certify [his] continued employment" and the "effective termination date will be 11/6/25." *Id.* at 31.

¶6 The appellant filed a Board appeal in which he asserted that he met the definition of an employee under 5 U.S.C. § 7511(a)(1)(C)(i) and (ii),[5] and that the agency misclassified him as a "probationary employee." IAF, Tab 1 at 8. The administrative judge issued a jurisdictional order, advising that the Board may not have jurisdiction over the action being appealed. IAF, Tab 3. The order included an explanation of the various sources of Board jurisdiction and referenced the Executive Order and Civil Service Rule XI, discussed above. *Id.* at 1-7. The administrative judge ordered the appellant to file evidence or argument to establish why the appeal should not be dismissed for lack of jurisdiction and gave the agency an opportunity to file a response. *Id.* at 7. In his response to the jurisdictional order, the appellant argued that he was an employee under section 7511(a)(1)(C)(i) and (ii), and that the agency's reliance on Civil Service Rule XI was improper because OPM violated the APA by promulgating the rule

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[4] Both the agency and the appellant refer to the appellant as having been a "probationary employee" or having served a "probationary period" instead of as an employee who served a trial period. IAF, Tab 1 at 8, Tab 4 at 28. "Probationary employee" and "probationary period" are terms that are used to describe a competitive service employee during their first year of service. 5 C.F.R. § 315.801(a) (2024) (superseded); Exec. Order No. 14284, § 3, 90 Fed. Reg. 17730. In contrast, "trial period" refers to the first year of continuous service for a preference eligible, or first 2 years for a non-preference eligible, who is serving an appointment in the excepted service. Exec. Order No. 14284, § 3, 90 Fed. Reg. 17730. Because the appellant served in an excepted service appointment, we refer to him as having served in a trial period. IAF, Tab 4 at 24, Tab 6 at 14.

[5] The statute defines "employee," in relevant part, as "an individual in the excepted service (other than a preference eligible)—(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or (ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less." 5 U.S.C. § 7511(a)(1)(C)(i)-(ii). An individual meeting the definition of an "employee" may appeal a removal to the Board. 5 U.S.C. §§ 7513(d), 7701(a).

without following the notice and comment procedures set forth in 5 U.S.C. § 553(b). IAF, Tab 4 at 9-21. In its reply, the agency stated that there were "multiple exceptions" to notice and comment procedures and that Civil Service Rule XI was exempted from such procedures under 5 U.S.C. § 553(a)(2). IAF, Tab 7 at 6.

¶7 In the initial decision, the administrative judge reversed the agency's action. IAF, Tab 8, Initial Decision (ID) at 3-6. The administrative judge found that the appellant had completed 2 years of current continuous service at the time of his November 6, 2025 termination, and he was thus an "employee" pursuant to section 7511(a)(1)(C)(i) and (ii) entitled to written notice of his removal and an opportunity to respond. ID at 3-5. As he was not afforded these due process rights, the administrative judge reversed the agency action. ID at 5-6. Notably, the administrative judge stated that he need not reach the question of the validity of Civil Service Rule XI or OPM's compliance with the APA because, even if Civil Service Rule XI were valid, the appellant met the definition of "employee" under 5 U.S.C. § 7511(a)(1)(C)(i) and (ii) when the agency effected his removal on November 6, 2025. ID at 4. The administrative judge ordered interim relief in the event either party filed a petition for review. ID at 7.

¶8 On February 11, 2026, then-Member Woodruff[6] issued an order that reopened the initial decision. RF, Tab 1. Following the reopening order, on April 6, 2026, the appellant filed a motion for the agency to submit evidence regarding interim relief and a motion requesting that the Board set a briefing schedule regarding the basis for reopening. RF, Tabs 2-3.

[6] Member Woodruff became Chairman of the Merit Systems Protection Board effective August 21, 2026.

ANALYSIS

The appellant's motion requesting briefing regarding the basis for reopening is denied.

¶9 As previously stated, the appellant requested that the Board issue an order clarifying the legal and factual basis for reopening the appeal and setting a briefing schedule for the parties to address the basis for the reopening. RF, Tab 3. The agency has not responded to this motion. The appellant argues that the reopening was contrary to the Board's regulation at 5 C.F.R. § 1201.118, which provides that the Board can reopen a final decision, because the initial decision was not yet final in this case. *Id.* at 4, 6-10. However, the appellant misconstrues the basis for the reopening. The reopening order specifically relied on 5 U.S.C. § 7701(e)(1); it did not mention 5 C.F.R. § 1201.118. RF, Tab 1.

¶10 Under 5 U.S.C. § 7701(b)(1), the Board itself may hear any case appealed to it or refer the case to an employee designated by the Board.[7] Subsection (e)(1) of section 7701 provides that any decision under subsection (b) shall be final unless a party to the appeal or the Director of OPM files a petition for review or "the Board reopens and reconsiders a case on its own motion." 5 U.S.C. § 7701(e)(1)(A)-(B). Importantly for this matter, subsection (e)(1) also states that "[o]ne member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board." 5 U.S.C. § 7701(e)(1)(B). The reopening order is consistent with this statutory language because it reopens "the decision" to allow the full Board to review it. RF, Tab 1 at 1. Because the statutory authority is clear, it is unnecessary for the parties to brief the basis for

[7] The broad authority of the Board Members over matters pending before the Board, either before a regional or field office or at headquarters, is supported by 5 U.S.C. § 1204(a)(1), which provides that the Board shall "hear, adjudicate, or provide for the hearing or adjudication, of all matters within [its] jurisdiction" and "take final action on any such matter." Consistent with this, the Board's delegations manual has consistently provided that the Board's administrative judges act solely under authority delegated to them by the Board. *See, e.g.*, MSPB Organization, Functions & Delegations of Authority Manual §§ 2.3.2, 2.3.3 (Aug. 25, 2026).

the reopening, and we deny the appellant's request to establish a briefing schedule.

The Board lacks the authority to consider whether the issuance of Civil Service Rule XI violates the APA, and the appellant has not shown that Rule XI is invalid.

¶11 The appellant contends, among other things, that the agency's reliance on Civil Service Rule XI was improper. Specifically, he argues that: (1) OPM was required to follow the APA's notice and comment rulemaking procedures under 5 U.S.C. § 553(b) when "promulgating" Civil Service Rule XI and improperly invoked the "good cause" exception under section 553(b)(B) to "promulgate" the rule without following proper procedures; (2) OPM was required to follow APA procedures even when implementing a Presidential directive; and (3) contrary to OPM's assertions, notice and comment procedures were not "unnecessary," and were required because, among other things, Civil Service Rule XI alters "a decades-old regulatory regime" regarding probationary periods. IAF, Tab 4 at 12-19.

¶12 The appellant's argument confuses the relationship between Civil Service Rule XI and OPM's Final Rule.[8] As noted above, Civil Service Rule XI was created in Executive Order 14284 on April 24, 2025. Most of the provisions of Civil Service Rule XI became effective on that date, except the requirement that agencies meet with individuals serving an initial probationary or trial period, determine whether to finalize an individual's appointment, and certify that such individual's continued employment would advance the public interest.

[8] The appellant's conflation of these distinct issuances is somewhat understandable because both Civil Service Rule XI and OPM's Final Rule originated from Executive Order 14284 and OPM discussed Civil Service Rule XI in the Final Rule. For example, OPM stated in the Final Rule that the Executive Order established Civil Service Rule XI to "strengthen the use of probationary periods," "establish[] a trial period for employees in the excepted service," "require[] employees to demonstrate their continued employment is in the public interest," and "require[] agencies to certify continued employment meets the needs of the agency and advances the efficiency of Federal service," 90 Fed. Reg. at 26727.

Exec. Order No. 14284, § 6, 90 Fed. Reg. at 17732. Those provisions became effective 90 days after the Executive Order. *Id.* In contrast, while it discusses the Executive Order and Civil Service Rule XI, OPM's Final Rule only rescinded the regulations at 5 C.F.R. part 315, subpart H and made conforming amendments to other provisions. 90 Fed. Reg. at 26727, 26729-30. It was issued on June 24, 2025, and it became effective that same day. *Id.* at 26727.

¶13 The Board has held that it does not have jurisdiction under the APA to review OPM regulations for the purpose of determining whether they exceed the statutory grant of authority to that agency. *See Latham v. U.S. Postal Service*, 117 M.S.P.R. 400, ¶ 18 (2012), *overruled on other grounds by Cronin v. U.S. Postal Service*, 2022 MSPB 13; *see also Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985) (stating that the Board's jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule or regulation). Rather, challenges on APA grounds are committed to the jurisdiction of the Federal judiciary. *See* 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action,[[9]] or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."); *Latham*, 117 M.S.P.R. 400, ¶ 18. The appellant has not cited, and we are not aware of, any authority by which the Board could consider his APA assertions involving Civil Service Rule XI or otherwise invalidate Civil Service Rule XI as a violation of the APA.

¶14 We acknowledge that, in *Jonson v. Federal Deposit Insurance Corporation*, 122 M.S.P.R. 454, ¶ 10 (2015), the Board indicated that it was "not persuaded by" the agency's argument that the Board lacked the authority to invalidate regulations under the APA. However, in that appeal, the Board did not

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[9] Under the APA, the term "agency" "means each authority of the Government of the United States, whether or not it is within or subject to review by another agency." 5 U.S.C. § 551(1). The term "agency action" "includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

review the regulation at issue under the APA and did not invalidate it, but rather declined to follow it as it concerned the particular circumstances of the appeal. *Id.* Thus, we regard the Board's statement in *Jonson* as dictum. *See, e.g.*, *Co-Steel Raritan, Inc. v. International Trade Commission*, 357 F.3d 1294, 1307 (Fed. Cir. 2004) (stating that dicta are statements made by a court that are "unnecessary to the decision in the case, and therefore not precedential (though [they] may be considered persuasive)") (citing Black's Law Dictionary 1100 (7th ed. 1999)) (alteration in original).

¶15 In addition to his APA-related arguments, the appellant asserts that the Board should address the validity of Civil Service Rule XI. IAF, Tab 4 at 19-20. As discussed previously, the President issued Executive Order 14284—and created Civil Service Rule XI—pursuant to his authority under, among other things, 5 U.S.C. §§ 3301 and 3302. Exec. Order No. 14284, 90 Fed. Reg. at 17729. The statutes cited in the Executive Order grant the President significant authority over the civil service, including the authority to "prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service," and to prescribe rules governing the competitive service. 5 U.S.C. §§ 3301(a)(1), 3302. The appellant has not persuasively demonstrated that the President's exercise of such authority was improper;[10] to the contrary, the appellant concedes the scope of the President's authority. IAF, Tab 4 at 14 (quoting 5 U.S.C. § 3302).

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[10] We have considered the appellant's reliance on *Parrish v. Merit Systems Protection Board*, 485 F.3d 1359 (Fed. Cir. 2007), to support his contention that the Board has the authority to invalidate Civil Service Rule XI because it "purport[s] to automatically foreclose" Board review, "the Board's jurisdiction is always before it, and the Board has the authority to determine its own jurisdiction." IAF, Tab 4 at 19-20. *Parrish* is distinguishable because, among other things, it did not involve an APA argument or rules governing the civil service created pursuant to an Executive Order.

Pursuant to Civil Service Rule XI, the appellant's appointment ended on November 5, 2025, and the Board lacks jurisdiction over his termination.

¶16 Civil Service Rule XI provides that "an employee's service terminates before the end of the tour of duty on the last day of their probationary or trial period unless their agency certifies within the 30 days prior to that date that finalizing their appointment advances the public interest." Exec. Order No. 14284, § 3, 90 Fed. Reg. at 17731. An appointment pursuant to Civil Service Rule XI is similar to an appointment under the Federal Career Intern Program (FCIP) and FCIP's replacement, the Pathways Recent Graduates Program, because each of these appointments requires some affirmative agency action in order to extend or convert the initial appointment.[11] *See, e.g.*, *Rivera v. Department of Homeland Security*, 116 M.S.P.R. 429, ¶ 10 (2011) (finding that an FCIP appointment automatically terminates at the end of the intern's tour of duty on the last day of the internship unless the agency takes affirmative steps to extend the appointment or convert the individual to the competitive service); 5 C.F.R. § 362.107(f) ("An agency wishing to convert a Pathways Participant must therefore execute the required actions to do so.").

¶17 Here, there is no dispute that the agency did not make the requisite certification pursuant to Civil Service Rule XI. Therefore, we find as a matter of law that the appellant's appointment expired at the end of his tour of duty on November 5, 2025, and that he did not become an "employee" under 5 U.S.C. § 7511(a)(1)(C)(i) or (ii).[12] We note that, pursuant to Civil Service

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[11] Executive Order 13162 established the FCIP in 2000. Exec. Order No. 13162, 65 Fed. Reg. 43211 (July 6, 2000); *see Scull v. Department of Homeland Security*, 113 M.S.P.R. 287 (2010). In 2010, the Executive Order creating FCIP was revoked, and the Pathways Recent Graduates Program was created. Exec. Order No. 13562, 75 Fed. Reg. 82585, 82585-86, 82588 (Dec. 27, 2010).

[12] We interpret Civil Service Rule XI as having converted trial and probationary periods into the equivalent of term appointments that expire at the end of the tour of duty on the last day of the trial or probationary period. The Board has held that the expiration of a term appointment is not an adverse action appealable to the Board in a chapter 75 appeal, and whether an employee meets the definition of "employee" under

Rule XI, the agency "shall" notify an employee serving a probationary or trial period in writing as to the effective date of the action *before* it terminates such service. Exec. Order No. 14284, § 3, 90 Fed. Reg. at 17731. Here, the agency did not issue such notice until November 6, 2025, and it stated—erroneously—that the appellant's appointment expired on that date. IAF, Tab 1 at 13. However, nothing in Civil Service Rule XI indicates that an agency's failure to provide this prior notice would invalidate the automatic termination of a probationer or an employee serving a trial period at the end of the tour of duty on the last day of his probationary or trial period. To find otherwise would thwart the express purpose of Civil Service Rule XI to ensure that those serving probationary or trial periods do not automatically become statutory employees by requiring "agencies . . . to affirmatively determine that the continued employment of individuals serving probationary or trial periods would benefit the Federal service before such appointments are finalized." Exec. Order No. 14284, § 1, 90 Fed. Reg. at 17729.

¶18 It is significant that the period that the appellant reported to work following the expiration of his appointment was brief—a few hours to at most 1 day—and he was only allowed to work because of what appears to be an agency error. Under these circumstances, we conclude that the Board lacks jurisdiction over the appeal, and we reverse the administrative judge's contrary finding. *See, e.g.*, *Rivera*, 116 M.S.P.R. 429, ¶ 10 (noting that the agency did not take any steps to extend the appellant's FCIP appointment and concluding that his termination upon the expiration of his FCIP appointment was not an appealable adverse action). Accordingly, the appeal is dismissed for lack of jurisdiction.

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5 U.S.C. § 7511 is irrelevant to whether an employee can appeal the expiration of a term position. *Edwards v. Department of the Air Force*, 120 M.S.P.R. 307, ¶ 7 (2013) *overruled on other grounds by Requena v. Department of Homeland Security*, 2022 MSPB 39, ¶ 14.

The Board denies the appellant's motion for evidence regarding interim relief.

¶19 After the Board reopened this appeal, the appellant filed a "motion for evidence regarding interim relief." RF, Tab 2. This pleading asserted that he was entitled to but had not yet received any interim relief. *Id.* at 4-6. The appellant indicated that he had been unable to discuss this with the agency due to a partial government shutdown. *Id.* at 5. That referenced shutdown began just days after the Board's reopening, and it remained ongoing at the time of the appellant's interim relief pleading. RF, Tabs 1-2; *see* 5 C.F.R. § 1201.64 (authorizing the Board and its administrative judges to take official notice of matters of common knowledge or matters that can be verified).

¶20 In the time since, we have received no update from either party. Under the circumstances, we decline to consider the matter any further, at this time. To the extent that the appellant may still believe that he is entitled to interim relief that he has not received, we express no opinion about this or any potential avenues for seeking relief.

ORDER

¶21 For the reasons set forth above, we dismiss this appeal for lack of jurisdiction. This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113 (5 C.F.R. § 1201.113).

NOTICE OF APPEAL RIGHTS[13]

You may obtain review of this final decision. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit

[13] Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this final decision, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at

http://www.mspb.gov/probono for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (*not* the U.S. Court of Appeals for the Federal Circuit), within **30 calendar days** after you receive this decision. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the district court no later than **30 calendar days** after your representative receives this decision. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within **30 calendar days** after you receive this decision. 5 U.S.C. § 7702(b)(1). If you have a representative in this case,

and your representative receives this decision before you do, then you must file with the EEOC no later than **30 calendar days** after your representative receives this decision.

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, N.E.
Suite 5SW12G
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and your judicial petition for review "raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D)," then you may file a petition for judicial review either with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction.[14] The court of appeals must receive your

[14] The original statutory provision that provided for judicial review of certain whistleblower claims by any court of appeals of competent jurisdiction expired on December 27, 2017. The All Circuit Review Act, signed into law by the President on July 7, 2018, permanently allows appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any other circuit court of appeals of competent jurisdiction. The All Circuit Review Act is retroactive to November 26, 2017. Pub. L. No. 115-195,

petition for review within **60 days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at http://www.mspb.gov/probono for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

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132 Stat. 1510.

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http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Gina K. Grippando

Gina K. Grippando
Clerk of the Board
Washington, D.C.