



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for April 14, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Amanda E. Becker

Respondent: Office of Personnel Management

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2016-1365](#)

MSPB Docket No. CH-0831-15-0280-I-1

Issuance Date: April 7, 2017

The appellant filed an application with the Office of Personnel Management (OPM) seeking survivor benefits under the Federal Employees' Retirement System (FERS) based on the Federal service of her late husband. OPM denied her application on the basis of its finding that she did not meet the statutory definition of a "widow" who may receive such benefits, which is defined at 5 U.S.C. § 8441(1) as the surviving wife of an employee who was married to the employee for at least 9 months immediately before his death, or who is the mother of children by that marriage. The appellant appealed OPM's decision, and the administrative judge affirmed. During the proceedings, the administrative judge denied the appellant's request for discovery regarding instances in which OPM may have waived the 9-month requirement and regarding whether OPM provided her late husband

notice regarding the 9-month requirement. The appellant appealed the decision to the court, arguing that 5 U.S.C. § 8441(1) was unconstitutional and that the administrative judge improperly denied her discovery requests.

Holdings:

(1) The court found that 5 U.S.C. § 8441(1) does not violate the Constitution because there is a rational basis for Congress to use an imprecise set of criteria as a proxy to ensure that the marriage was entered into for reasons other than the desire to shortly acquire benefits.

(2) The court found that the administrative judge did not abuse her discretion in denying the appellant's discovery requests because: (a) she had no reasonable belief that OPM has previously waived the 9-month requirement and, even if OPM had previously done so, it would still be required to follow the statutory requirements when reviewing the appellant's application; and (b) there was no dispute that the appellant's late husband submitted all of the election forms to ensure that she received survivor benefits and, even if he was unfamiliar with the statutory requirements contained in the election forms he signed, such fact would not provide a basis for waiving the requirements.

NONPRECEDENTIAL:

Levy v. Department of Homeland Security, [No. 17-1034](#) (Apr. 12, 2017) (MSPB Docket No. DE-1221-13-0216-W-3) (affirming the Board's final order denying the appellant's request for corrective action in his Individual Right of Action appeal).

Thomas v. Department of Labor, [No. 17-1191](#) (Apr. 12, 2017) (MSPB Docket No. AT-3330-12-0270-B-2) (affirming the Board's final decision denying the appellant's request for corrective action under VEOA).

Brown v Office of Personnel Management, [No. 17-1160](#) (Apr. 11, 2017) (MSPB Docket No. DA-844E-15-0398-C-1) (affirming the Board's final decision dismissing the appellant's petition for enforcement of a prior Board decision and order in his favor where the appellant sought additional damages for a delay that may have occurred in his receipt of

interim payments and the Board correctly determined that it lacks any statutory authority to award monetary damages for such a delay).

Darosa v. Merit Systems Protection Board, [No. 17-1152](#) (Apr. 10, 2017) (MSPB Docket No. AT-315H-16-0116-I-1) (affirming the Board's dismissal of the appellant's termination appeal for lack of jurisdiction).

Staples v. Merit Systems Protection Board, [No. 17-1113](#) (Apr. 10, 2017) (MSPB Docket No. DE-0842-16-0117-I-1) (affirming the Board's final decision dismissing the appellant's appeal of OPM's rescinded reconsideration decision for lack of jurisdiction).

Grayton v. Social Security Administration, [No. 17-1349](#) (Apr. 7, 2017) (MSPB Docket No. SF-4324-16-0551-I-1) (affirming the Board's denial of corrective action in the appellant's USERRA appeal).

Montalvo v. Merit Systems Protection Board, [No. 17-1081](#) (Apr. 7, 2017) (MSPB Docket No. AT-831M-16-0268-I-1) (affirming the Board's final decision dismissing the appellant's appeal of OPM's rescinded overpayment determination for lack of jurisdiction).