UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

98 M.S.P.R. 363

THELTON W. MC CORCLE,
Appellant,

v.

DEPARTMENT OF AGRICULTURE,
Agency.

DOCKET NUMBER
AT-1221-03-0918-W-1

DATE: March 29, 2005

Joseph C. Guillot, Esquire, Montgomery, Alabama, for the appellant.

Maria Schmit, Esquire, Riverdale, Maryland, for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Susanne T. Marshall, Member
Barbara J. Sapin, Member

OPINION AND ORDER

¶1 The appellant has filed a petition for review of the initial decision that dismissed his alleged adverse action and individual right of action (IRA) appeal for lack of jurisdiction. For the reasons discussed below, we find that the petition meets the criteria for review set forth at 5 C.F.R. § 1201.115, and we therefore GRANT it. However, we AFFIRM the initial decision as MODIFIED by this Opinion and Order, STILL DISMISSING the appeal for lack of jurisdiction.

BACKGROUND

¶2 The appellant was a GS-12 Veterinary Medical Officer (VMO) with the agency's Animal and Plant Health Inspection Service in Alabama until his retirement on December 31, 2001. Initial Appeal File (IAF), Tab 9, subtab 4j. Prior to his retirement, the appellant had been on extended sick leave from June 25, 2001, through December 31, 2001. *Id.*, subtab 4l. On September 18, 2000, the appellant wrote a letter to Senator Richard Lugar complaining about, inter alia, his frustration with his work duties at Tuskegee University and with the agency's treatment of his grievances. IAF, Tab 8, subtab 3 at 1. He also alleged that the Alabama State Veterinarian and the agency's Area Veterinarian in Charge were involved in a conspiracy to terminate him and had engaged in various incidents of wrongdoing. *Id.* at 2-3. The appellant made similar claims in letters dated October 2, 2000, to then Alabama Governor Donald Siegelman and then Alabama Attorney General Bill Pryor. IAF, Tab 8, subtabs 5-6.[1]

¶3 In each letter, the appellant noted that "[f]rom [his] experiences [he] can well see how 'Violence in the Workplace' might occur." IAF, Tab 8, subtabs 3, 5-6. As a result of this statement, the agency, believing that the appellant may pose a safety risk, ordered him to remain at home during his duty hours, effective January 8, 2001, until further notice. IAF, Tab 9, subtab 4o. On January 29, 2001, the agency notified the appellant that it was "offer[ing]" him a paid "psychiatric evaluation" to determine his fitness for duty. IAF, Tab 8, subtab 11. It further related that, if he did not accept the offer, the agency would "consider initiation of appropriate disciplinary action…." *Id.* at 2. The appellant submitted to a psychiatric evaluation and on August 2, 2001, Dr. David D. Harwood

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[1] The appellant wrote a second letter to Senator Lugar on December 22, 2000, and "follow-up" letters to Governor Siegelman on December 30, 2000, and January 11, 2001. IAF, Tab 8, subtabs 4, 7-8.

reported that the appellant had "no occupational restrictions, from a psychiatric point of view, on any aspect of his life." IAF, Tab 8, subtab 12.

¶4 By letter dated July 5, 2001, the agency notified the appellant of his directed reassignment to a VMO position in Memphis, Tennessee, effective August 12, 2001. IAF, Tab 9, subtab 4n. The agency's letter further informed the appellant that he could accept the reassignment, resign, retire, or it would issue a proposal to remove him. *Id.* The appellant accepted the reassignment with an effective date of August 12, 2001. *Id.*, subtab 4m. Shortly before his start date, however, the appellant sustained a knee injury that required surgery and allegedly rendered him unable to report for duty in Memphis. IAF, Tab 8, subtabs 22-23. He subsequently retired, effective December 31, 2001. IAF, Tab 9, subtab 4j.

¶5 According to a May 6, 2003 letter sent to the appellant by the Office of Special Counsel (OSC), he filed a complaint with OSC on April 15, 2003, alleging that the agency had discriminated against him on the basis of his age and had engaged in "violations of law, rule and regulation in violation of 5 U.S.C. § 2302(b)(12)." IAF, Tab 9, subtabs 4d, 4e. In its letter, OSC notified the appellant that it had made a preliminary determination to close its inquiry into his allegations of discrimination because such claims "are more appropriately resolved through the EEO [equal employment opportunity] process." *Id.*, subtab 4d. OSC further stated that, in light of the appellant's retirement, corrective action on the remaining alleged agency actions, such as an "extended detail to Tuskegee University to non-veterinarian duties" and an agency-imposed "work at home restriction," is no longer achievable. *Id.* at 1-2. OSC further noted that the appellant stated "several times … in [his] submission that [he does] not claim to

be a whistleblower." *Id.* at 2. OSC afforded the appellant an opportunity to provide a written response to OSC's preliminary determination. *Id.*[2]

¶6 On May 19, 2003, the appellant amended his OSC complaint to allege that he suffered reprisal for his whistleblowing activities. IAF, Tab 9, subtab 4c. Specifically, he contended that, in reprisal for his disclosures to agency and government officials, the agency denied his requests for leave, placed him on a home-work restriction, required him to submit to a psychiatric examination, placed him on absence without leave (AWOL), and proposed "conduct/performance charges." *Id.* at 8-9, 14-17. On May 28, 2003, OSC advised the appellant that it was terminating its inquiry into the allegations made in his April 15, 2003 complaint but would continue to investigate the whistleblowing allegations raised in his May 19, 2003 amended complaint. IAF, Tab 9, subtab 4b. On September 2, 2003, OSC notified the appellant that its investigation into the allegations raised in his amended complaint was still pending. IAF, Tab 8, subtab 21.

¶7 On September 16, 2003, 120 days after he had filed his May 19, 2003 amended complaint with OSC, the appellant filed an appeal with the Board that the administrative judge docketed as an IRA appeal. IAF, Tabs 1, 3. In his appeal, the appellant claimed that he was forced to retire because the agency created intolerable working conditions "as a direct result" of the disclosures he made to the Governor, State Attorney General, and Senator Lugar. IAF, Tab 1 at 2. The appellant further explained that the agency had given him an ultimatum to retire, resign, or be reassigned to Tennessee, but he was unable to move to Tennessee because of a health condition that needed surgical attention. *Id.* Finally, the appellant related that he had filed a discrimination complaint with the

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[2] According to OSC, the appellant submitted a written response to its May 6, 2003 letter. IAF, Tab 9, subtab 4b. That response, however, is not a part of the record.

agency's EEO office that was ultimately dismissed for lack of jurisdiction. *Id.* at 2-3.

¶8 In a September 30, 2003 order, the administrative judge advised the appellant of the requirements for establishing jurisdiction over his appeal as an adverse action involuntary retirement appeal and as an IRA appeal. IAF, Tab 7. The administrative judge ordered the appellant to file evidence and argument on the jurisdictional issues and informed the parties that the record on jurisdiction would close on October 29, 2003. *Id.*

¶9 Following submissions from both parties, IAF, Tabs 8-9, the administrative judge issued an initial decision dismissing the appeal for lack of jurisdiction. Initial Decision (ID) at 1-5. Specifically, the administrative judge found that the appellant failed to make a nonfrivolous allegation that his retirement was involuntary. *Id.* The administrative judge further found that, because a voluntary action is not a covered "personnel action" under 5 U.S.C. § 2302(a), the Board also lacks jurisdiction over the appellant's appeal as an IRA appeal. ID at 5.

¶10 In his petition for review, the appellant asserts that the administrative judge erred in finding that he failed to raise a nonfrivolous allegation that his retirement was involuntary and in failing to address all of the personnel actions he asserted in his IRA appeal and the merits of his IRA appeal. Petition For Review File (PFRF), Tab 1 at 2-4, 9-20. He also argues that he should have been afforded the opportunity to conduct discovery and to have a hearing. *Id.* at 3, 20. The agency has filed a response in opposition to the appellant's petition. PFRF, Tab 3. On January 14, 2004, the appellant filed a motion for leave to reply to the agency's response to his petition for review, along with his reply. *Id.*, Tab 4. The agency has responded in opposition to the appellant's motion. *Id.*, Tab 5. We need not consider the appellant's January 14, 2004 submission, however, because it was filed after the record on review had closed and he has not shown that it is based

on evidence that was not readily available before the record closed. PFRF, Tabs 2, 4; *see* 5 C.F.R. § 1201.114(i).[3]

ANALYSIS

The administrative judge correctly dismissed the appellant's alleged adverse action involuntary retirement appeal for lack of jurisdiction.

¶11 A retirement request initiated by an employee is presumed to be voluntary. *Schultz v. U.S. Navy*, 810 F.2d 1133, 1135-36 (Fed. Cir. 1987); ID at 2. Thus, a retiree who requests retirement has the burden of proof that his retirement is involuntary. *Staats v. U.S. Postal Service,* 99 F.3d 1120, 1124 (Fed. Cir. 1996). A retirement may be proved involuntary if an appellant can demonstrate that it was obtained by agency coercion or duress. *Schultz*, 810 F.2d at 1136. Allegations of coerced resignations or retirements tend to fall into one of two scenarios: when the agency has proposed or threatened an adverse action and the employee resigns or retires in the face of the impending action; or when the agency takes actions that make working conditions so intolerable that the employee is driven to an involuntary resignation or retirement. *Lawley v. Department of the Treasury*, 84 M.S.P.R. 253, ¶ 9 (1999), *review dismissed*, 230 F.3d 1381 (Fed. Cir. 2000) (Table). In cases where intolerable working conditions are alleged, both the courts and the Board will find an action involuntary only if the employee demonstrates that the employer engaged in a course of action that made working conditions so difficult or unpleasant that a reasonable person in that employee's position would have felt compelled to

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[3] We note that the appellant's January 14, 2004 submission includes a January 6, 2004 letter from OSC informing him that it had terminated its inquiry into his allegations of whistleblowing and advising him that he may seek corrective action with the Board. PFRF, Tab 4, subtab 1. OSC's termination letter, however, does not affect the outcome of this case or our determination not to consider the appellant's January 14, 2004 submission, which is a mere restatement of the arguments made in his petition for review. *Id.*, Tab 4.

resign or retire. *Frison v. Department of the Army*, 94 M.S.P.R. 431, ¶ 7 (2003); *Markon v. Department of State*, 71 M.S.P.R. 574, 577-78 (1996).

¶12 Here, the administrative judge found that the appellant failed to raise a nonfrivolous allegation that his retirement was involuntary. ID at 5. In so finding, the administrative judge correctly pointed out that, although the appellant alleged that he was subjected to intolerable working conditions, he also alleged that he had accepted his directed reassignment and fully intended to move to Memphis until an intervening medical condition prevented him from relocating. ID at 4. The administrative judge also found compelling the appellant's December 21, 2001 letter to the agency's Associate Deputy Administrator, Dr. Chester Gipson, wherein he informed Dr. Gipson that he was retiring because he had exhausted his sick leave and was faced with potential pay suspension, pending performance charges, and financial pressures. IAF, Tab 8, subtab 23. Thus, the administrative judge determined that the appellant had chosen retirement in the face of unpleasant alternatives and that such choice did not render his retirement involuntary. ID at 4. We agree. *See, e.g., Smitka v. U.S. Postal Service,* 66 M.S.P.R. 680, 687 (1995) (the mere fact that an employee is faced with unpleasant alternatives does not render his choice of one of those alternatives to be involuntary), *aff'd*, 78 F.3d 605 (Fed. Cir. 1996) (Table). Therefore, the administrative judge properly dismissed the appellant's alleged adverse action involuntary retirement appeal for lack of jurisdiction without holding a hearing.[4]

[4] In his petition for review, the appellant claims that he should have been given an opportunity to conduct discovery. PFRF, Tab 1 at 3. However, the record does not indicate that the appellant ever attempted to utilize the Board's procedures to conduct discovery. IAF, Tabs 1, 3, 6-8.

The administrative judge erred by failing to address the appellant's claim that the agency engaged in additional personnel actions covered by the Whistleblower Protection Act (WPA).

¶13 In order to show Board jurisdiction over an IRA appeal, an appellant must show that he has exhausted his remedies before OSC, and he must make nonfrivolous allegations that he made a disclosure protected under 5 U.S.C. § 2302(b)(8) and that the disclosure was a contributing factor in the agency's decision to take a personnel action under 5 U.S.C. § 2302(a). *Yunus v. Department of Veterans Affairs*, 242 F.3d 1367, 1371-72 (Fed. Cir. 2001); *Rusin v. Department of the Treasury*, 92 M.S.P.R. 298, ¶ 12 (2002). In order to establish jurisdiction over an IRA appeal, an appellant is not required to *prove* that he made protected disclosures but must merely make nonfrivolous allegations that his disclosures were protected. *Rusin*, 92 M.S.P.R. 298, ¶¶ 10-11. If an appellant establishes Board jurisdiction over an IRA appeal by exhausting his administrative remedies before OSC and making the requisite nonfrivolous allegations, he has a right to a hearing on the merits of his claim. *See Spencer v. Department of the Navy*, 327 F.3d 1354, 1356 (Fed. Cir. 2003); *Rusin*, 92 M.S.P.R. 298, ¶ 20.

¶14 In this case, the administrative judge concluded that the Board lacks IRA jurisdiction "because the appellant has not made a nonfrivolous allegation that he was subjected to a personnel action under 5 U.S.C. § 2302(a); a voluntary retirement is not one of the enumerated personnel actions." ID at 5. In his petition for review, the appellant counters that his "whistleblowing claim [was] not limited to the involuntary retirement" and that his "whistleblowing resulted in his being debarred from state facilities, being forced to work from his home, being forced to submit to psychiatric testing, being suspended, being denied leave, being placed [on] AWOL and finally being forced to retire involuntarily." PFRF, Tab 1 at 4. He claims that the administrative judge erred by failing to

consider these actions of alleged reprisal, in addition to his claimed involuntary retirement, raised in his IRA appeal. *Id.* at 4, 18-19. We agree.

The appellant made a nonfrivolous allegation that he was the subject of additional personnel actions covered by 5 U.S.C. § 2302(a).

¶15 Section 2302(a)(2) of title 5 of the United States Code lists the following as a covered "personnel action" in an IRA appeal:

> (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
>
> . . . .
>
> (ix) a decision concerning pay, benefits … ;
>
> (x) a decision to order psychiatric testing or examination; and
>
> (xi) any other significant change in duties, responsibilities, or working conditions….

5 U.S.C. § 2302(a)(2)(A)(iii), (ix)-(xi).

¶16 Here, the appellant asserted before OSC and in his Board appeal that, in reprisal for his disclosures to government officials during the period from September 2000 to January 2001, the agency: (1) ordered him to work from home, beginning on January 8, 2001, requiring him to contact the agency within 15 minutes of being contacted by a supervisor, and allegedly assigned him only "menial clerk work"; (2) ordered him to submit to a psychiatric evaluation on January 29, 2001; (3) gave him an ultimatum to "transfer," retire, resign, or be separated from Federal service; (4) initially denied his request for sick leave from June through August 2001; (5) placed him on AWOL from June 25 to August 25, 2001, with no pay[5]; and (6) threatened a suspension for "insubordination" on September 25, 2001. IAF, Tab 1, subtab 3 at 6-7, 9, 14-17; Tab 8 at 17-18; Tab

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[5] After the appellant submitted additional medical documentation, the agency granted the appellant's request for sick leave on September 7, 2001, and corrected his time and attendance reports to reflect sick leave for the period of June 25 through August 25, 2001. IAF, Tab 9, subtab 4l.

9, subtab 4l. These alleged actions, if proven, constitute covered personnel actions in an IRA appeal and should have been considered below. *See* 5 U.S.C. § 2302(a)(2)(A)(iii), (ix)-(xi); *Lawley,* 84 M.S.P.R. 253, ¶ 14 ("Placing an employee in a leave without pay or AWOL status are decisions concerning pay or benefits, and are therefore personnel actions under 5 U.S.C. § 2302(a)(2)(A)(ix)."); *Marren v. Department of Justice*, 50 M.S.P.R. 369, 373 (1991) (finding that a denial of annual leave constitutes a "decision concerning ... benefits" under 5 U.S.C. § 2302(a)(2)(A)(ix)).

¶17 Therefore, we find that the appellant has made nonfrivolous allegations that he was the subject of these additional personnel actions under the WPA.

The appellant has not raised a nonfrivolous allegation that he made a protected disclosure.

¶18 Disclosures protected by section 2302(b)(8) include any disclosure that the employee reasonably believes evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. *Christensen v. Department of Justice*, 82 M.S.P.R. 430, ¶ 10 (1999). The Board will not require, as a basis for its jurisdiction, that an appellant in an IRA appeal correctly label a category of wrongdoing under section 2302(b)(8). *Thomas v. Department of the Treasury*, 77 M.S.P.R. 224, 236 (1998), *overruled on other grounds*, *Ganski v. Department of the Interior*, 86 M.S.P.R. 32, ¶¶ 10-11, 13 (2000). However, the disclosures must be specific and detailed, not vague allegations of wrongdoing regarding broad or imprecise matters. *Keefer v. Department of Agriculture*, 82 M.S.P.R. 687, ¶ 10 (1999); *see Padilla v. Department of the Air Force*, 55 M.S.P.R. 540, 543-44 (1992) (the appellant's assertions of fraud, waste, and abuse in a particular Civil Engineering Squadron were vague allegations of wrongdoing that did not constitute whistleblowing).

¶19 The proper test for determining whether an employee had a reasonable belief that his disclosures revealed misconduct prohibited under the WPA is this:

Could a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee reasonably conclude that the actions of the government evidence wrongdoing as defined by the WPA? *White v. Department of the Air Force*, 95 M.S.P.R. 1, ¶¶ 27-28 (2003); *see also Lachance v. White*, 174 F.3d 1378 (Fed. Cir. 1999), *cert. denied*, 528 U.S. 1153 (2000).

¶20 In response to the administrative judge's jurisdictional order, the appellant claimed that he had a reasonable belief that his letters to government officials disclosed violations of law, rule, or regulation, gross mismanagement, gross waste of funds, and an abuse of authority. IAF, Tab 8 at 15-16. In his letters, the appellant contended, inter alia, that the agency "wasted … three years of [his] time [and] three years of taxpayers['] money" when it "exile[d]" him to Tuskegee University where he performed only "menial and manual" duties "without a job description, performance standards or support." IAF, Tab 8, subtabs 3, 5-6. The appellant further claimed that managerial "irregularities" existed at the agency, along with "[i]ncidents of harassment and discrimination … too numerous to list on three pages." *Id.*, subtab 3. In addition, in each letter, the appellant listed "charges" of alleged agency wrongdoing, including discrimination, harassment, criminal conspiracy, defamation, physical injury, "doctoring" of documents, and theft of time and money, which the appellant claims "have been substantiated by documentation" in the form of "reports" forwarded to the agency. *Id.*, subtabs 5-6.

¶21 We find that the appellant has failed to make a nonfrivolous allegation of a disclosure that he reasonably believed evidenced a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, or an abuse of authority. As a general matter, the majority of the appellant's alleged disclosures are conclusory allegations lacking in specificity and, as such, do not constitute nonfrivolous allegations of IRA jurisdiction. IAF, Tab 8, subtabs 3-8; *see Keefer*, 82 M.S.P.R. 687, ¶ 10. For example, the appellant's bare allegation that the agency engaged in "[i]ncidents of harassment and discrimination … too numerous

to list on three pages[,]" without more, does not constitute a specific and detailed disclosure of a violation of law, rule, or regulation, protected by 5 U.S.C. § 2302(b)(8).[6] IAF, Tab 8, subtabs 3, 5-6. The Board requires an appellant to provide more than vague and conclusory allegations of wrongdoing by agency officials. *See Carr v. Department of Defense*, 61 M.S.P.R. 172, 181 (1994) (the appellant's broad and imprecise assertions that he was being harassed and subjected to a stressful work environment failed to set forth allegations of a protected disclosure). Further, alleged disclosures that an agency has engaged in discrimination and a pattern of harassment and created a hostile work environment in violation of title VII are covered under 5 U.S.C. § 2302(b)(1) and (b)(9) and are excluded from coverage under section 2302(b)(8). *E.g., Applewhite v. Equal Employment Opportunity Commission*, 94 M.S.P.R. 300, ¶ 23 (2003).

¶22 Nor has the appellant alleged facts sufficient to establish a nonfrivolous allegation that he disclosed gross mismanagement. "Gross mismanagement" is a decision that creates a "substantial risk of significant adverse impact upon the agency's ability to accomplish its mission." *Coons v. Department of the Navy*, 63 M.S.P.R. 485, 488 (1994). First, most of the appellant's comments in his letters to government officials reporting managerial "irregularities" are so broad, nonspecific, and vague that they do not constitute nonfrivolous allegations of gross mismanagement. *See Special Counsel v. Costello*, 75 M.S.P.R. 562, 584-85 (1997) (the appellant's letter did not contain a single example to support his bare allegation of mismanagement and was therefore not a nonfrivolous allegation of a protected disclosure), *rev'd on other grounds*, 182 F.3d 1372 (Fed. Cir. 1999);

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[6] We note that, although the appellant claimed in his jurisdictional submission below and on petition for review that he disclosed agency violations of the Family and Medical Leave Act in his letters to government officials, IAF, Tab 8 at 15; PFRF, Tab 1 at 17, his letters to Governor Siegelman, Attorney General Pryor, and Senator Lugar contain no such assertions. IAF, Tab 8, subtabs 3-8.

IAF, Tab 8, subtabs 3, 5-6. Second, the appellant's contention that the agency wasted his time and expertise when it allegedly assigned him clerical and other duties does not qualify as a disclosure of gross mismanagement. IAF, Tab 8, subtabs 3, 5-6. A disclosure questioning management decisions that are merely debatable or just simple negligence or wrongdoing, with no element of blatancy" is not protected as a disclosure of "gross mismanagement." *Sazinski v. Department of Housing & Urban Development,* 73 M.S.P.R. 682, 686-87 (1997). The appellant's allegations here appear to reveal nothing more than his disagreement with agency policy, i.e., the assignment of job duties and responsibilities. *Accord, e.g., id.,* at 686-87 (1997). Further, the appellant has not asserted nonfrivolous allegations of facts sufficient to indicate that he reasonably believed his alleged performance of clerical and other duties would have a substantial adverse impact on the agency's ability to accomplish its mission.

¶23 Next, the appellant's disclosure that the agency wasted "three years of taxpayers['] money," when it allegedly assigned him clerical and other duties, does not constitute a nonfrivolous allegation of a "gross waste of funds." IAF, Tab 8, subtabs 3, 5-6. A "gross waste of funds" is defined as more than merely a debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government. *Embree v. Department of the Treasury*, 70 M.S.P.R. 79, 85 (1996). Again, the appellant's alleged disclosure constitutes, at most, an expression of disagreement with the agency's assignment of duties and his opinion that he was being underutilized. Further, the appellant failed to explain how he reasonably believed that his salary was significantly out of proportion to the benefit that the agency received from the duties he performed. *See id.*

¶24 Finally, the appellant's allegation that agency officials engaged in an "abuse of authority" suffers the same flaw as the majority of the disclosures discussed above. "Abuse of authority" occurs when there is an "arbitrary or

capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *Embree*, 70 M.S.P.R. at 85. On appeal, the appellant contended that the actions of his supervisors evidenced an abuse of authority because they were "arbitrary and capricious, as well as discriminatory…." IAF, Tab 8 at 15. In his letters, the appellant alleged that his superiors "fabricated" conduct charges against him "in a conspiratorial act" "master-minded" by two Area Veterinarians. IAF, Tab 8, subtabs 3, 5-6. He further contended that "upper management" "controlled [and] manipulated" "employee efforts to redress grievances." *Id.* These vague allegations of wrongdoing, lacking in specific detail, fail to rise to the level of nonfrivolous allegations of a protected disclosure. *See Costello*, 75 M.S.P.R. at 580, 585-86. Taken as a whole, the appellant's rambling allegations of abuses of authority are fundamentally his own personal complaints and grievances about how he was treated by the agency or mere debatable disagreements with the agency's policy decisions and therefore do constitute not a nonfrivolous allegation of a protected disclosure. *See, e.g., Willis v. Department of Agriculture*, 141 F.3d 1139, 1144 (Fed. Cir. 1998) (the WPA "is intended to protect government employees who risk their own personal job security for the advancement of the public good by disclosing abuses by government personnel"); *Frederick v. Department of Justice*, 73 F.3d 349, 353 (Fed. Cir. 1996) (the purpose of the WPA is to "root out real wrongdoing"; the WPA was not designed as a remedy for employee grievances). Further, insofar as the appellant claims that the agency engaged in discrimination and a pattern of harassment and created a hostile work environment in violation of title VII, such disclosures are not ones that a reasonable person in his position would believe evidenced an "abuse of authority" under section 2302(b)(8). *See, e.g., Applewhite,* 94 M.S.P.R. 300, ¶ 23.

¶25 In sum, we conclude that, while the appellant exhausted his OSC remedy and raised nonfrivolous allegations that he was the subject of covered personnel

actions, the written record shows that he has not raised a nonfrivolous allegation that he made a protected disclosure. Therefore, his appeal is not within the Board's IRA jurisdiction. *See Yunus,* 242 F.3d at 1371; *Rusin*, 92 M.S.P.R. 298, ¶ 12.

ORDER

¶26 Accordingly, we dismiss this appeal for lack of jurisdiction. This is the final decision of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read

this law as well as review the Board's regulations and other related material at our web site, http://www.mspb.gov.

FOR THE BOARD:

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Bentley M. Roberts, Jr.
Clerk of the Board

Washington, D.C.