

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

MARTIN AKERMAN,
Appellant,

DOCKET NUMBER
DC-0752-23-0457-I-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: July 19, 2023

Martin Akerman, Arlington, Virginia, pro se.

Jenny Lin Naylor, Esquire, Arlington, Virginia, for the agency.

BEFORE
Joshua Henline
Administrative Judge

INITIAL DECISION

On May 3, 2023, the appellant filed this appeal alleging his June 18, 2022 retirement was involuntary. *See* Appeal File (AF), Tab 1. Because I find the appellant has failed to nonfrivolously allege facts which, if proven, could establish Board jurisdiction over this appeal, my decision in this matter is based on the written record. *See Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1344 (Fed. Cir. 2006) (en banc). For the following reasons, the agency's motion to dismiss is GRANTED and the appeal is DISMISSED for lack of Board jurisdiction.¹

¹ While there is an apparent issue with the timeliness of this appeal, given the jurisdictional disposition herein, I need not further address it. *See Rosell v. Department of Defense*, 100 M.S.P.R. 594, ¶ 5 (2005) (outlining that Board jurisdiction is a

JURISDICTION

Background

The appellant was a former IT Specialist, GS-2210-15, with the National Guard Bureau (agency) until his resignation on June 6, 2022.² *See* AF, Tab 1 and 53 at 79. As noted above, the appellant filed this appeal on May 3, 2023. AF, Tab 1. On his appeal form, when asked to explain the decision or action that was wrong, he stated, “The Agency refuses to respond to OPM and has lied to OPM LMER and DOL-OWCP as it relates to my constructive removal.” AF, Tab 1 at 3. In the narrative portion of his appeal form he alleged:

1. Petitioner was constructively forced into retirement.
2. Petitioner has been under false arrest and false imprisonment since [February 14, 2022.]
3. The Agency refuses to respond to OPM since November 2022.
4. The Agency initially blamed an officer of the Nevada Air National Guard, [but] now appears to be blaming the Army National Guard.
5. Petitioner is now disabled and on Medicaid without income.
6. Petitioner requests urgent intervention by way of the Office of Workmans’ Compensation Programs.

AF, Tab 1 at 4. As it appeared the Board lacked jurisdiction over the appellant’s claims, on May 3, 2023, I issued an Order to Show Cause - Jurisdiction (Jurisdictional Order). AF, Tab 3. The Jurisdictional Order notified the appellant

threshold issue and normally should be determined first), *aff’d*, 191 Fed. Appx. 954 (Fed. Cir. 2006). Specifically, the appellant states that he retired on June 18, 2022 – and he did not file this appeal until May 3, 2023 – or 289 days late. *See* AF, Tab 1.

² On November 3, 2022, the United States District Court for the Eastern District of Virginia issued a decision on the appellant’s constructive discharge claim. *See Akerman v. Austin*, 2022 WL 16700382 (E.D.Va. Nov. 3, 2022). The court determined that the Supreme Court’s decision in *Department of the Navy v. Egan*, 484 U.S. 518, 529, 530-32, precluded its review of the appellant’s constructive discharge claim. *Id.* As a result, the court dismissed the appellant’s complaint. *Id.* In this appeal, the appellant states that he is not raising a constructive discharge claim related to his resignation but is instead raising an unrelated constructive retirement claim that occurred after his resignation. *See* AF, Tab 50 at 4.

of his burden of proof with respect to the issue of Board jurisdiction and instructed him to file evidence and argument on the jurisdictional issue. *Id.*

On May 4, 2023, the appellant filed a Motion for Certification and Stay wherein he alleged his “right to disability retirement, which is the case before the [B]oard,” and further referenced, “the denial of disability retirement.” AF, Tab 7 at 3. On the same date, I issued an Order to Clarify Claim, ordering the appellant to file a brief statement concerning whether he was challenging an Office of Personnel Management (OPM) final reconsideration decision denying him a disability retirement annuity. AF, Tab 12 at 1-2. Moreover, I instructed him to inform me of the date he received OPM’s final reconsideration decision and to submit a copy of it with his response. *Id.* at 2. In his response, he did not state whether OPM had issued a final reconsideration decision nor did he provide a copy of OPM’s final decision. AF, Tab 13. His response also included an allegation that the agency subjected him to a false arrest or imprisonment. *Id.* As a result, I notified the appellant that (1) the Board’s jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule, or regulation; and (2) to raise a disability retirement claim, a threshold requirement is that OPM must have issued him a final reconsideration letter. AF, Tab 14. Moreover, I ordered him to file evidence and argument to establish Board jurisdiction over these claims. *Id.* at 5.

On May 15, 2023, the appellant filed a timely response to the Jurisdictional Order wherein he alleged his appeal included the following claims: (1) an involuntary retirement; (2) a retirement appeal; and (3) a violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). AF, Tab 19. He further alleged his retirement was involuntary because it was based on misleading information and coercion by the agency. *Id.* at 3. He also alleged the agency failed to respond to OPM concerning his application for disability retirement. *Id.* at 2, 4. Again, he did not inform me whether OPM issued a final reconsideration decision on his request for a disability retirement annuity. *Id.*

Because the appellant's USERRA claim was unclear, on May 16, 2023, I ordered him to clarify it.³ AF, Tab 20 at 2. In response, he alleged the agency violated USERRA when it retaliated against him by coercing his retirement and blocking his disability retirement because of his "efforts to safeguard an officer of the Air National Guard." AF, Tab 21 at 6. He also argued that his claims of a constructive resignation and involuntary retirement are "distinct legal concepts" and should be "considered under its appropriate legal framework." AF, Tab 21 at 9. He averred that his constructive resignation claim is before the United States Court of Appeals for the Fourth Circuit (not the Board) and his involuntary retirement is before the Board. *Id.* at 9-10. Additionally, he claimed for the first time that his appeal concerned "an adverse Voluntary Early Retirement Authority (VERA) action." *Id.* at 10.

On May 17, 2023, I advised the appellant how to establish Board jurisdiction over his USERRA and VERA claims. *See* AF, Tab 26 at 3-6. Moreover, I advised him that the Board may not have jurisdiction over his alleged June 18, 2022 involuntary retirement claim because it appeared that he was no longer an "employee" at the time of the alleged action (i.e., the appellant had resigned from federal service on June 6, 2022). *Id.* at 6-7. I further instructed him that he could supplement his prior submissions with argument or evidence to establish Board jurisdiction over his USERRA, VERA, and involuntary retirement claims. *Id.* at 7. Specifically, as to his involuntary retirement claim, I directed him to submit evidence or argument to establish he was an "employee" with Board appeal rights at the time of his June 18, 2022 retirement. *Id.*

³ Additionally, as the United States District Court for the Eastern District of Virginia had already issued a decision on his constructive discharge claim, I also ordered the appellant to show cause why his appeal should not be dismissed on the basis of either res judicata or collateral estoppel. AF, Tab 20 at 4. As the appellant has stated that he is not raising a constructive discharge claim related to his resignation, I will not address these issues here.

On May 23, 2023, the appellant submitted his final jurisdictional response wherein he repeated many of his prior arguments, including that the agency coerced him into retiring, he was falsely arrested by the agency, and he reported violations of USERRA to the Office of Special Counsel, the Board, the United States District Court for the Eastern District of Virginia, and the United States Court of Appeals for the Fourth Circuit. AF, Tab 50. Notably, however, he did not argue or submit evidence to establish that he was an “employee” with Board appeal rights at the time of his June 18, 2022 retirement.

On June 5, 2023, the agency filed its response to the jurisdictional issues wherein it moved to dismiss the appellant’s appeal for lack of Board jurisdiction. *See* AF, Tab 53. Specifically, the agency argued the Board lacked jurisdiction over each of his claims and that he failed to make nonfrivolous allegations establishing Board jurisdiction. *Id.* On June 11, 2023, the appellant filed his response to the agency’s motion to dismiss – repeating the same arguments he has made throughout this appeal. *See* AF, Tab 55. The record is now closed.

Applicable Law

The Board’s jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. *Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985). An employee seeking to establish Board jurisdiction must satisfy a two-step process. First, he must make a non-frivolous claim establishing Board jurisdiction. *Gibeault v. Department of Treasury*, 114 M.S.P.R. 664, ¶ 6 (2010) (citing *Burgess v. Merit Systems Protection Board*, 758 F.2d 641, 643 (Fed. Cir. 1985)). A nonfrivolous claim is one that, if proven, would establish the Board’s jurisdiction. *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1344 (Fed. Cir. 2006). Having made a nonfrivolous allegation, the employee is entitled to a jurisdictional hearing at which he must prove jurisdiction by preponderant evidence. *Id.*; 5 C.F.R. § 1201.56(b)(2)(i)(A). A preponderance of the evidence is the degree of relevant evidence a reasonable person, considering the record as a

whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q).

The appellant failed to nonfrivolously allege that he was an “employee” with Board appeal rights at the time of his involuntary retirement.

Whether the Board has jurisdiction over a constructive adverse action, such as an involuntary retirement, depends in part on whether the appellant is a federal employee as defined by 5 U.S.C. § 7511(a)(1). As such, whether the appellant qualifies as an “employee” with Board appeal rights is a threshold issue. To qualify as an “employee” with statutory Board appeal rights, the appellant must show that at the time of the challenged action he was serving in the competitive service and was not serving a probationary or trial period under an initial appointment, or that he had completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less. 5 U.S.C. § 7511(a)(1)(A); *see McCormick v. Department of the Air Force*, 307 F.3d 1339 (Fed. Cir. 2002), *reh’g denied*, 329 F.3d 1354 (Fed. Cir. 2003); *Henderson v. Department of Treasury*, 114 M.S.P.R. 149, ¶ 9 (2010). Or, he may show at the time of the challenged action he was serving in the excepted service and that he was: (1) a preference-eligible employee who had completed one year of current, continuous service in the same or similar positions; or (2) a nonpreference eligible employee who was not serving a probationary or trial period under an initial appointment pending conversion to the competitive service or who had completed two years of current, continuous service in the same or similar positions other than a temporary appointment limited to two years or less. 5 U.S.C. § 7511(1)(B), (C). “Current continuous service” means a period of employment or service immediately preceding an adverse action without a break in federal civilian employment of a workday. *Ellefson v. Department of the Army*, 98 M.S.P.R. 191, ¶ 14 (2005).

Assuming *arguendo* that the appellant’s constructive retirement claim is a separate and distinct claim from his constructive termination claim pending

before the United States Court of Appeals for the Fourth Circuit⁴, he has not made a nonfrivolous allegation that at the time of his June 18, 2022 retirement that he was an “employee” with Board appeal rights. Indeed, despite ample opportunity to establish that he was an “employee,” he failed to do so. *See* AF, Tabs 50 and 55. Nevertheless, the information in his initial appeal reflects that at the time of the alleged involuntary retirement he was not a federal employee. *See* AF, Tab 1 at 1 (Questions Nos. 6 and 10). Moreover, it is uncontroverted that the appellant resigned from federal service on June 6, 2022 – or 12 days before his alleged involuntary retirement. *See* AF, Tab 53 at 79. Thus, I find the appellant failed to establish or even allege that he was an “employee” with Board appeal rights when he purportedly retired on June 18, 2022.⁵ *See* 5 U.S.C. § 7511(a). As such, I find the appellant failed to set forth nonfrivolous allegations that, when taken as true, would establish that he was an “employee” under chapter 75 with Board appeal rights at the time of his alleged involuntary retirement. *Id.* Consequently, his involuntary retirement claim must be dismissed.

The appellant failed to nonfrivolously allege Board jurisdiction over his disability retirement claim.

To raise a disability retirement claim, it is a threshold issue that OPM must have issued the appellant a final reconsideration decision letter. *See DeGrant v. Office of Personnel Management*, 107 M.S.P.R. 414 (2007) (the Board generally lacks jurisdiction to hear an appeal of a retirement matter when OPM has not issued a reconsideration decision on the matter). Despite ample opportunity to do so, the appellant failed to nonfrivolously allege that OPM issued such a decision, nor has he submitted OPM’s final reconsideration decision with any of his numerous filings. Therefore, I find the appellant has failed to nonfrivolously

⁴ *See generally, Akerman v. Austin*, No. 22-2147 (4th Cir.).

⁵ In fact, the appellant has put forth no evidence or argument that he is actually retired. *See generally*, AF.

allege Board jurisdiction over his allegation that OPM or the agency denied him a disability retirement annuity benefit. Accordingly, this claim must be dismissed.

The appellant failed to nonfrivolously allege Board jurisdiction over his Voluntary Early Retirement Authority claim.

To raise a VERA retirement claim, it is a threshold issue that OPM or the agency must have issued the appellant a final decision letter on his request for early retirement. *See Manning v. Office of Personnel Management*, 2023 WL 2606682, ¶ 12 (MSPB Mar. 22, 2023) (unless and until the appellant establishes that he actually applied for voluntary early optional retirement and received a decision from OPM or the agency on his application, there is no basis to find Board jurisdiction over this retirement matter). Despite ample opportunity to do so, the appellant failed to nonfrivolously allege that he applied for voluntary early optional retirement or that his application was denied by either OPM or the agency. *See* AF, Tabs 50 and 55. Consequently, I find the appellant has failed to nonfrivolously allege Board jurisdiction over his VERA retirement claim; therefore, this claim must be dismissed.

The appellant failed to nonfrivolously allege Board jurisdiction over his USERRA claim.

The Board has USERRA jurisdiction over appeals from any action taken by a federal employer against any person alleging a violation of that law in that person's civilian Federal employment. *See* 38 U.S.C. §§ 4311(a), (b), 4303(4)(A)(ii), 4324(b). As is relevant here, a USERRA claim may be filed concerning discrimination or retaliation because a person:

(1) has taken an action to enforce a protection afforded any person under [38 U.S.C. Chapter 43], (2) has testified or otherwise made a statement in or in connection with any proceeding under [that] chapter, (3) has assisted or otherwise participated in an investigation under [that] chapter, or (4) has exercised a right provided for in [that] chapter.

38 U.S.C. § 4311(b).

This prohibition against retaliation applies regardless of whether the person has performed service in the uniformed services. 38 U.S.C. § 4311(b). To establish Board jurisdiction over an appeal alleging a violation of this provision of USERRA, the appellant must make nonfrivolous allegations that: (1) he took action to enforce a protection afforded any person under chapter 43 of Title 38 of the U.S. Code, gave testimony or made a statement in or in connection with any proceeding under that chapter, rendered assistance or otherwise participated in an investigation under that chapter, or exercised a right provided for in that chapter; and (2) his action was a substantial or motivating factor in the agency action that he claims was based on USERRA discrimination or retaliation.

Here, the appellant alleges the agency retaliated against him because he reported USERRA violations concerning the treatment of General Garduno. *See* AF, Tab 50 at 15-16. As to the first prong, I find the appellant nonfrivolously alleged that he reported what he believed were violations of USERRA concerning the treatment of “General Garduno, a General Officer of the Nevada Air National Guard.” *See* AF, Tab 50 at 15-16. Specifically, he alleged that he reported the USERRA violation to the Department of Labor (DOL), the Office of Special Counsel, the Board, and the United States District Court for the Eastern District of Virginia, and the United States Court of Appeals for the Fourth Circuit. *See* AF, Tab 50 at 4, 15-16. The appellant, however, did not provide the dates or otherwise identify when he made these USERRA-related disclosures to each of the above entities. *Id.* Likewise, he did not allege the agency or its decision makers were aware of his USERRA-related disclosures or complaints prior to his June 6, 2022 resignation or his June 18, 2022 retirement. Nevertheless, the uncontroverted record shows that the appellant’s USERRA allegations were made almost one year after he resigned from the agency on June 6, 2022. *See e.g.*, AF, Tab 50 at 14-15 (Letter to DOL, dated May 5, 2023) (“new evidence has come to light suggesting that General Garduno may have been wrongly accused.”).

Based on the foregoing, I find the appellant failed to nonfrivolously allege that his reporting of an alleged USERRA violation concerning General Garduno was a substantial or motivating factor in his allegedly involuntary retirement.⁶ *See Lodge v. E.E.O.C.*, 389 Fed.Appx 993, 997 (the appellant must “show that an Agency employee involved in the selection process had knowledge of his [USERRA] appeal prior to [taking the employment action] and acted based on that knowledge.”). Accordingly, the appellant’s USERRA claim must be dismissed.⁷

The appellant failed to nonfrivolously allege Board jurisdiction over his false arrest, false imprisonment, habeas corpus, and writ of replevin claims.

As noted above, the Board’s jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. *Maddox*, 759 F.2d at 10. Thus, it follows the Board does not have jurisdiction over all matters alleged to be unfair or incorrect. *Roberts v. Department of the Army*, 168 F.3d 22, 23-24 (Fed. Cir. 1999). Appealable actions within the Board’s jurisdiction include: a removal; a suspension for more than 14 days; a reduction in grade; a reduction in pay; and a furlough of 30 days or less. *See* 5 U.S.C. § 7512(1)-(5). It is well-settled that the Board does not have general jurisdiction to entertain any statutory challenge and that its jurisdiction is “strictly confined to those matters over which it has been given jurisdiction by

⁶ In reaching this decision, I also considered the appellant’s conclusory allegation that his retirement was the result of a hostile work environment that was the product of forbidden retaliation under section 4311(b), the anti-retaliation provision of USERRA.

⁷ I initially ordered a separate USERRA appeal be docketed because it appeared that the appellant was raising a USERRA claim separate and apart from his involuntary retirement claim. *See* AF, Tab 25. Nevertheless, the appellant objected to the docketing of a separate USERRA appeal and informed me that he was not raising a separate USERRA claim. *Id.* As such, I granted his request and I did not docket a new USERRA appeal. *Id.*

statute, rule, or regulation.” *Meeker v. Merit Systems Protection Board*, 319 F.3d 1368 (Fed. Cir. 2003).

Here, the appellant has alleged the agency subjected him to false arrest; false imprisonment; violation of habeas corpus; and violation of a writ of replevin. *See* AF, Tabs 1, 10, 35, 40, 42, 44, 50 and 55. Despite ample opportunity to establish Board jurisdiction over these claims, he failed to do so. *See* AF, Tabs 50 and 55. Accordingly, I find the appellant failed to nonfrivolously allege Board jurisdiction over these purported actions; thus, these claims must be dismissed.

The Board lacks jurisdiction over the appellant’s Workers’ Compensation claim.

In the appellant’s closing brief, he referenced the denial of or an impediment to receiving federal workers’ compensation benefits. *See* AF, Tab 50 at 4; *see also* AF, Tab 1 at 4 (“Petitioner requests urgent intervention by way of the Office of Workmans’ Compensation Program.”). To the extent he seeks review of the denial of his workers’ compensations claim, the Board does not have the authority to review it. *See Lewis v. Office of Personnel Management*, 114 M.S.P.R. 537, 539 n. 1 (2010); *Clavin v. United States Postal Service*, 99 M.S.P.R. 619, 622 (2005). Accordingly, any claim related to the denial of the appellant’s request for workers’ compensation benefits is dismissed.

Based on the foregoing, I find the appellant failed to set forth nonfrivolous allegations that, when taken as true, would establish Board jurisdiction or a right to a jurisdictional hearing. Accordingly, the agency’s motion to dismiss is GRANTED and the appeal is dismissed for lack of Board jurisdiction.

DECISION

The appeal is DISMISSED.

FOR THE BOARD:

/S/

Joshua Henline
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **August 23, 2023**, unless a petition for review is filed by that date. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. If you are represented, the 30-day period begins to run upon either your receipt of the initial decision or its receipt by your representative, whichever comes first. You must establish the date on which you or your representative received it. The date on which the initial decision becomes final also controls when you can file a petition for review with one of the authorities discussed in the “Notice of Appeal Rights” section, below. The paragraphs that follow tell you how and when to file with the Board or one of those authorities. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review.

If the other party has already filed a timely petition for review, you may file a cross petition for review. Your petition or cross petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file it with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.
Washington, DC 20419

A petition or cross petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov>).

Criteria for Granting a Petition or Cross Petition for Review

Pursuant to 5 C.F.R. § 1201.115, the Board normally will consider only issues raised in a timely filed petition or cross petition for review. Situations in which the Board may grant a petition or cross petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact. (1) Any alleged factual error must be material, meaning of sufficient weight to warrant an outcome different from that of the initial decision. (2) A petitioner who alleges that the judge made erroneous findings of material fact must explain why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will give deference to an administrative judge's credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing.

(b) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The petitioner must explain how the error affected the outcome of the case.

(c) The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed.

As stated in 5 C.F.R. § 1201.114(h), a petition for review, a cross petition for review, or a response to a petition for review, whether computer generated, typed, or handwritten, is limited to 30 pages or 7500 words, whichever is less. A reply to a response to a petition for review is limited to 15 pages or 3750 words, whichever is less. Computer generated and typed pleadings must use no less than 12-point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to submit pleadings of the maximum length. Typically, a well-written petition for review is between 5 and 10 pages long.

If you file a petition or cross petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. A petition for review must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you or your representative more than 5 days after the date of issuance, 30 days after the date you or your representative actually received the initial decision, whichever was first. If you claim that you and your representative both received this decision more than 5 days after its issuance, you have the burden to prove to the Board the

earlier date of receipt. You must also show that any delay in receiving the initial decision was not due to the deliberate evasion of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (*see* 5 C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by fax or by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. *See* 5 C.F.R. § 1201.4(j). If the petition is filed electronically, the online process itself will serve the petition on other e-filers. *See* 5 C.F.R. § 1201.14(j)(1).

A cross petition for review must be filed within 25 days after the date of service of the petition for review.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

NOTICE OF APPEAL RIGHTS

You may obtain review of this initial decision only after it becomes final, as explained in the “Notice to Appellant” section above. 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 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 decision when it becomes final, 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 this decision becomes final. 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 this decision becomes final** under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). 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 this decision becomes final** as explained above. 5 U.S.C. § 7702(b)(1).

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 with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. The court of appeals must receive your petition for review within **60 days** of the date this decision becomes final under the rules set out in the Notice to Appellant section, above. 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.caafc.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.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

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