

January 16, 2018

Clerk of the Court
U.S. Supreme Court
1 First St, N.E.
Washington, DC 20543

Attention: Chief Justice Roberts

Subject: Request for an extension of time to file petition for writ of certiorari in Carson v. Merit Systems Protection Board, Docket no. 2015-3135; -3211, U.S. Court of Appeals for Federal Circuit.

Dear Chief Judge Roberts,

I respectfully request a 60 day extension of time to file a petition for certiorari of the Order of November 13, 2017. My writ is currently due by February 12, 2018, this extension would be through April 13, 2018. I contacted the Office of Solicitor General and was told that if they objected to this request, it would notify the Court.

My reasons for seeking this extension are to locate an attorney to represent me as well as one or more amicus curiae to file a supporting brief.

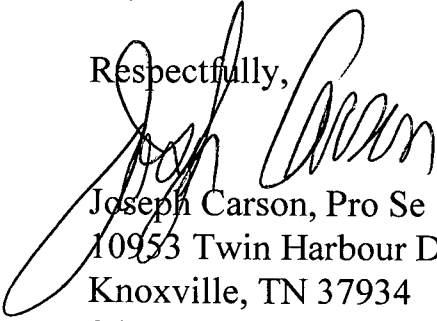
My petition will be narrow in focus - I seek the Supreme Court remand the nonprecedential, near summary, decision of March 17, 2017 with instructions to replace it with a precedential one. The case involves an issue of first impression (at Appellate level) of a 24 year-old law of significant import to protecting federal agency employees, including in FBI and intelligence agencies, from workplace reprisal - what is the criteria for determining whether the "catch-all" personnel action of "any other significant change in working conditions" is present (5 U.S.C. §2302(a)(2)(A)(xii)).

I hope a number of people and organizations will express interest, possibly including the Special Counsel of the U.S. Office of Special Counsel and members of Congress filing supportive amicus curiae briefs - resulting in the Solicitor General filing a brief of acquiescence.

A copy of the Federal Circuit decision of March 17, 2017 and Order of November

13, 2017 are attached.

Respectfully,

A handwritten signature in black ink, appearing to read "Joseph Carson". The signature is written in a cursive style with a large, sweeping initial "J".

Joseph Carson, Pro Se
10953 Twin Harbour Dr
Knoxville, TN 37934
865-300-5831

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOSEPH P. CARSON,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2015-3135, 2015-3211

Petitions for review of the Merit Systems Protection Board in Nos. AT-1221-14-0620-W-1, AT-1221-15-0092-W-1.

Decided: March 17, 2017

JOSEPH P. CARSON, Knoxville, TN, pro se after argument. LORING EDWIN JUSTICE, Loring Justice, PLLC, Knoxville, TN, argued for petitioner. Also formerly represented by BRIAN CHADWICK RICKMAN.

JEFFREY GAUGER, Office of the General Counsel, Merit Systems Protection Board, Washington, DC, argued for respondent. Also represented by BRYAN G. POLISUK.

ZENA DENISE CRENSHAW-LOGAL, Crown Point, IN, pro se, as amicus curiae.

ANDREW DUDLEY JACKSON, Crown Point, IN, pro se, as amicus curiae.

BRENDA MCCRACKEN, Joliet, IL, pro se, as amicus curiae.

Before NEWMAN, MOORE, and O'MALLEY, *Circuit Judges*.

PER CURIAM.

Joseph P. Carson seeks review of the March 25, 2015 and August 17, 2015 decisions of the Merit Systems Protection Board (“the Board”) dismissing his whistleblower claims against the Office of Special Counsel (“OSC”) for lack of jurisdiction and adjudicatory efficiency, respectively. *Carson v. Office of Special Counsel*, 2015 WL 1353650 (M.S.P.B. Mar. 25, 2015); *Carson v. Office of Special Counsel*, 2015 WL 4884874 (M.S.P.B. Aug. 17, 2015).

In the first case, the Board determined that Carson’s allegations against the OSC—in brief, that the OSC failed to investigate or resolve his other whistleblower allegations against his employer, the Department of Energy—did not themselves describe a “personnel action” within the meaning of the Whistleblower Protection Enhancement Act. *Carson*, 2015 WL 1353650, at ¶¶ 11–12 (quoting 5 U.S.C. § 2302(a)(2)(A) (2012)). Accordingly, the Board dismissed Carson’s claim for lack of jurisdiction. *Id.* at ¶ 1. Carson timely appealed that decision to this court. In the second case, the Board determined that a subsequent claim filed by Carson essentially “raise[d] the same claims” and, because the first case was still pending on appeal and not yet final, “dismiss[ed] . . . based upon adjudicatory efficiency.” *Carson*, 2015 WL 4884874, at

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¶ 12 (citing *Bean v. U.S. Postal Serv.*, 120 M.S.P.R. 447 (2013); *Zgonc v. Dep't of Def.*, 103 M.S.P.R. 666 (2006)). Carson timely appealed that decision as well, and the two cases were consolidated before this court.

After full review of the record, oral argument, and Carson's proposed corrections to statements made at oral argument, we find no error in the Board's analysis. Specifically, we find that Carson failed to allege that a cognizable personnel action was taken against him and that, in the absence of such allegations, the Board lacked jurisdiction to review Carson's claims. We also find that the Board did not err in dismissing Carson's duplicate claim on administrative efficiency grounds. And, we do not find Carson's proposed corrections to the record material to these findings. Accordingly, the Board's decisions are affirmed and Carson's motion to correct is denied as moot.¹

AFFIRMED

¹ To the extent that Carson, in that same motion, requests that we administer "disciplinary action" to one or more of the attorneys involved in this appeal, that request is denied. Such complaints should be addressed, instead, to the relevant disciplinary tribunals, not to this court.

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2015-3135, 2015-3211

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ON MOTION

Before NEWMAN, MOORE, and O'MALLEY, *Circuit Judges*.
PER CURIAM.

ORDER

Petitioner moves to reconsider the court's order from August 11, 2017 denying petitioner's motion to reissue the opinion as precedential.

The opinion and judgment in this case were filed on March 17, 2017. (ECF Doc. 84.) On April 27, 2017, and June 7, 2017, petitioner filed motions for extensions of time to file a petition for rehearing. (ECF Docs. 85, 87.)

The panel granted both motions, and in its order regarding the second motion, authorized petitioner to file a petition for panel rehearing on or before July 31, 2017, and instructed him that no further extensions of time would be granted. (ECF Doc. 86, 88.)

Petitioner did not file a petition for panel rehearing that “state[s] with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended . . .” Fed. R. App. P. 40(a)(2). Instead, three days before the expiration of the July 31, 2017 deadline, petitioner filed a document titled “Petitioner’s Petition for Panel Rehearing Requesting a Precedential Decision,” asking the panel to “issue a precedential decision to replace its non-precedential decision” for the benefit of Congress and the President. (ECF Doc. 89.) The panel, operating under the principle “that pro se pleadings are to be liberally construed,” *Durr v. Nicholson*, 400 F.3d 1375, 1380 (Fed. Cir. 2005) (citations omitted), construed this petition as a motion to reissue the panel opinion as precedential based on the relief requested therein. (ECF Doc. 90.) On August 11, 2017, the panel denied the motion, as construed, and issued a formal mandate to the Merit Systems Protection Board pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (ECF Doc. 90.) The matter was then closed by the court.

While he has not directly asked that we do so, in the best light, we could construe petitioner’s current motion as a motion to recall the mandate so that we may reissue our decision. Even so construed, we see no reason to grant the motion. Petitioner has neither demonstrated a basis on which this court should grant the relief requested, nor explained why we are required to do so as he asserts. If petitioner wishes to seek review in the Supreme Court, he must comply with that Court’s procedural rules.

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IT IS ORDERED THAT:

- (1) The motion is denied.
- (2) The court considers this matter closed.

FOR THE COURT

November 13, 2017

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court