

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

Henry Eugene Gossage v. Merit Systems Protection Board

MOTION TO PROCEED AS A VETERAN

Henry Gossage, Pro Se Veteran moves to proceed as a Veteran on Petition for Writ of Certiorari, pursuant to 38 U.S.C. § 4323(h)(1), prohibits the shifting of any defendant's fees or costs to a USERRA plaintiff.

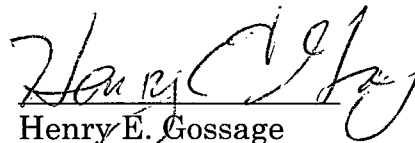
38 U.S.C. § 4323(h)(1), without "No fees or court costs may be charged or taxed against any person claiming rights under this chapter". *see also* 20 CFR 1002.310

This is a veteran case from the MSPB 2001 original appeal from inception, as a claimed right under USERRA the MSPB and Federal Circuit.

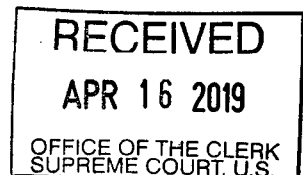
1. Henry Gossage is an Honorably Discharged Vietnam Era Veteran
2. Henry Gossage is a Service Connected Disabled Veteran
3. Henry Gossage applied for numerous Employment positions with USDOL from 1995-2004.
4. Henry Gossage was USDOL highest scoring and only CPS Veteran candidate.
5. Henry Gossage was Denied Initial Employment, non-veterans were hired for these positions between 1995-2004.

April 11, 2019

Respectfully Submitted



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NOTE: This order is nonprecedential.

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

HENRY E. GOSSAGE,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2018-1970

Petition for review of the Merit Systems Protection
Board in No. SE-0731-01-0261-I-5.

ON PETITION FOR REHEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,
and STOLL, *Circuit Judges**.

PER CURIAM.

ORDER

Petitioner Henry E. Gossage filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal,

and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for rehearing en banc is denied.

The mandate of the court will issue on February 8, 2019.

FOR THE COURT

February 1, 2019
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

* Circuit Judge Hughes did not participate

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**United States Court of Appeals
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HENRY E. GOSSAGE,
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v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2018-1970

Petition for review of the Merit Systems Protection Board in No. SE-0731-01-0261-I-5.

Before REYNA, TARANTO, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

After receiving the parties' responses to this court's show cause order, the court dismisses Henry E. Gossage's petition for review for lack of jurisdiction.

I.

In July 2008, an administrative judge of the Merit Systems Protection Board affirmed the determination of the Office of Personnel Management ("OPM") that Mr. Gossage was not suitable for employment. The full Board

affirmed that decision on March 24, 2009. Mr. Gossage petitioned this court to review that final Board decision, but the petition was ultimately dismissed in October 2009 for failure to prosecute after he failed to file a brief.

In February 2012, Mr. Gossage sought the Board's reconsideration, alleging that he obtained evidence in 2011 that revealed OPM had defrauded the Board during the course of his first appeal. Mr. Gossage filed a second request for reconsideration in May 2012, which repeated these allegations. On August 3, 2012, the Board's Office of the Clerk ("Clerk") sent Mr. Gossage a form letter explaining that he had no right to seek reconsideration of the Board's March 24, 2009 final decision. Mr. Gossage did not seek review of that letter in this court.

On March 12, 2018, Mr. Gossage filed at the Board a document styled as a new appeal but merely reasserting the allegations from his prior requests for reconsideration.* On April 27, 2018, the Clerk again sent Mr. Gossage a letter identical in substance to the previous letter, explaining he had no right to seek reconsideration of the Board's March 24, 2009 final decision. Mr. Gossage then petitioned this court for review of the letter.

II.

This court's jurisdiction to review decisions by the Board is limited. Pursuant to 28 U.S.C. § 1295(a)(9), we may only hear "an appeal from a final order or final decision" of the Board. We conclude that the Clerk's letter

* It appears that on August 6, 2012 and February 7, 2013, Mr. Gossage filed a third and fourth request for reconsideration making the same allegations, which were again met with a letter from the Clerk of the Board. Mr. Gossage also did not seek review of that letter.

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denying Mr. Gossage's request to reconsider his appeal was not a final order or decision of the Board.

In *Haines v. Merit Systems Protection Board*, 44 F.3d 998, 1000 (Fed. Cir. 1995), this court held that a form letter from the Clerk denying a repetitive motion to reopen was not a "final order or final decision" of the Board because it was not akin to an initial decision, a denial of a petition for review by the Board, or a Board decision disposing of an entire action. Rather, the Clerk's form letter was "merely an administrative response" to the petitioner's third request to reopen the appeal, and the Clerk "was performing only a ministerial function" within his delegated authority. *Id.*; see also *McCarthy v. Merit Sys. Prot. Bd.*, 809 F.3d 1365, 1370 (Fed. Cir. 2016).

As in *Haines*, the Clerk's April 2018 letter was simply an administrative response to a repetitive motion for reconsideration. We therefore dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The stay of the briefing schedule is lifted.
- (2) The petition for review is dismissed.
- (3) All pending motions are denied.
- (4) Each side shall bear its own costs.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

**Additional material
from this filing is
available in the
Clerk's Office.**