

Henry E. Gossage  
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September 10, 2019

Mr. Baker  
Mr. Scott Harris, Clerk  
Supreme Court of the United States  
One First Street, N.E.  
Washington, D.C. 20543  
(202) 479-3038

Re: Henry Eugene Gossage v. Merit System  
Protection Board  
Case No. 19-143

Petitioner Henry Eugene Gossage, pro se veteran, brings to the Court's attention, recent opinions from the court of appeals, as they relate to this petition. These decisions were issued shortly or after filing of the pro se veteran's petition for a writ of certiorari before judgment, and addresses its impact on this pending petition. The Gossage v. MSPB decision conflicts with recent holdings from the Federal, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> Circuit Courts.

1. Joseph v. MSPB, Federal Circuit 2018-2241 (June 7, 2019).

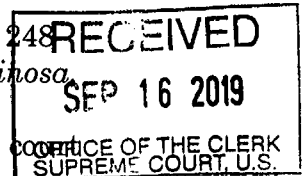
The Federal Circuit and MSPB held that it lacked jurisdiction, because "OPM has not issued an initial or final decision" in the matter. *See Joseph v. Office of Pers. Mgmt.*, No. PH-0841-16-0228-I-1, 2016 WL 6837492 (MSPB Nov. 15, 2016).

2. Sharpe v. DOJ, Federal Circuit 2017-2356 (March 1, 2019).

The Federal Circuit held the MSPB abused its discretion in excluding evidence, we vacate the MSPB's decision and remand for further proceedings.

3. Hoffmann v. Pulido, 9th Circuit 2018-15661 (July 8, 2019).

We recognize that FRCP 60(b)(4) expressly allows for final judgments to be declared void in some circumstances, including certain limited situations in which the court lacked subject-matter jurisdiction to enter the judgment in the first place. *See Yanow v. Weyerhaeuser S.S. Co.*, 274 F.2d 274, 278 n.7 (9<sup>th</sup> Cir. 1958). But the scope of what constitutes a void judgment is narrowly circumscribed, and judgments are deemed void only where the assertion of jurisdiction is truly unsupported. *Jones v. Giles*, 741 F.2d 245, 248 (9<sup>th</sup> Cir. 1984); *see also United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) ("[A] judgment is void because of a jurisdictional defect [only in the] exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction.").



4. Hunt v. National Mortgage, 11th Circuit 2018-12348 (July 19, 2019).

To warrant relief under Rule 60(b)(2): the evidence must be newly discovered since the trial; material; and the evidence must be such that a new trial would probably produce a new result.

Rule 60(b)(3) allows a court to grant relief from a judgment for fraud, misrepresentation, or misconduct by an opposing party. "To prevail on a 60(b)(3) motion, the movant must prove by clear and convincing evidence that an adverse party has obtained the verdict through fraud, misrepresentation, or other misconduct." *Cox Nuclear Pharmacy, Inc. v. CTI, Inc.*, 478 F.3d 1303, 1314 (CA11 2007).

"Additionally, the moving party must show that the conduct prevented the losing party from fully and fairly presenting his case or defense."

Relief for fraud on the court under Rule 60(d)(3) is a narrow doctrine and constitutes only that species of fraud that defiles, or attempts to defile, the court itself, "or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *see Travelers Indem. V. Gore*, 761 F.2d 1649, 1551 (CA11 1985).

A judgment is void under this rule 60(b)(4), "if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001).

5. Re: Veg Liquidation, Inc., 8<sup>th</sup> Circuit 2018-1786 (July 16, 2019).

"A finding of fraud on the court, however, "is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel." *Landscape Props., Inc. v. Vogel*, 46 F.3d 1416, 1422 (CA8 1995)."

6. Lall v. Bank of New York, 5<sup>th</sup> Circuit 2018-10554 (August 13, 2019).

Therefore, "only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud upon the court."

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Respectfully submitted,



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