

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

GREGORY TURNER,
Appellant,

DOCKET NUMBER
AT-3330-20-0125-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: March 2, 2020

Gregory Turner, Memphis, Tennessee, pro se.

Cynthia R. Allen, Memphis, Tennessee, for the agency.

Managing Counsel, Philadelphia, Pennsylvania, for the agency.

BEFORE
Brian Bohlen
Administrative Judge

INITIAL DECISION

On November 17, 2019, the appellant, Gregory Turner, filed the above-captioned appeal alleging that his rights as a veteran were violated by the agency, in violation of the Veterans Employment Opportunities Act (VEOA), 5 U.S.C. § 3330a. For the reasons explained below, the appeal is dismissed because the appellant earlier raised and withdrew the same claim, which was dismissed with prejudice within MSPB Docket No. AT-3330-17-0026-I-1 on December 21, 2016.

APPENDIX

A

JURISDICTION

Background Facts Bearing on Jurisdiction

Within the appellant's initial appeal, he stated that he was denied veterans preference effective November 18, 2019, though he did not say exactly how. *See* Initial Appeal File (IAF), Tab 4, p. 3. He also indicated on the next page of his appeal that he had not filed a complaint with the Department of Labor concerning his claims, and he answered "NOT APPLICABLE" to the question whether the Department of Labor (DOL) had notified him that his USERRA or VEOA complaint could not be resolved. *Id.*, p. 4. Within the narrative portion of his appeal he also stated,

I have been escorted out of the workplace for not Accepting the last Job offer from the Office of Worker's Compensation. The United States Postal Service has violated my Protective rights under Veterans Employment Opportunity Act of 1998. The Office of Personnel Management rules under Adverse Actions said Preference Eligibles has Protection Against Adverse Actions.

On November 20, 2019, I issued a Jurisdiction Order to the parties concerning VEOA appeals. IAF, Tab 3. The Order explained that the Board has jurisdiction over two types of VEOA appeals and directed the appellant to explain the Board's jurisdiction within VEOA over his claims, with relevant supporting evidence. The appellant's response to this Order documented that he is a military veteran, and that he previously complained to DOL in September, 2016, that the U.S. Postal Service had removed him from his position as a letter carrier without proper adverse action procedures in violation of his rights as a veteran. *See* IAF, Tab 6, p. 4. He provided a copy of the closure letter from DOL dated September 20, 2016, and he tendered a copy of a DOL Form 1010 complaint he sent to DOL on October 15, 2019. Within the narrative section of this Form 1010, the appellant clarified:

I contacted my Employer the U.S. Postal Service in August 2019 to discuss how many years they will keep me out of the work place and why I haven't heard from them concerning anything. I was order to leave the U.S. Postal Service in September 2014. It has been 5 yrs.

The U.S. Postal Service refuse to charge me so I can exercise my rights to due process to resolve whatever the situation is. I am a 30% Service Connected Disabled Veteran. I want to use my rights under the Veterans Preference Act of 1944.

This is a Prohibited Personnel violation. The Office of Personnel Management clearly states than any ADVERSE ACTIONS says this.

Preference eligibles have protections against adverse actions, including demotion, suspension for more than 14 days, furlough for 30 days or less, and removal. These protections include advance notice a reasonable time to respond, representation by an attorney or other person, a final written decision, and an appeal right to Merit Systems Protection.

IAF, Tab 6, p. 18.

Based on the appellant's explanation of his claim, I find that this appeal must be dismissed because the same matter was previously raised and withdrawn by the appellant within MSPB Docket No. AT-3330-17-0026-I-1. In MSPB Docket No. AT-333-17-0026-I-1, the appellant claimed that he was denied veterans' preference in violation of VEOA, and enclosed the same September 20, 2016 closure letter from DOL as he provided in the present appeal. The matter was later further clarified as a claim that the appellant's veteran's preference rights were violated through the agency failing to return him to work following an on-the-job injury. This is the identical issue that the appellant is now attempting to litigate through the present appeal. DOL closed its the investigation because the appellant did not provide it with documentation showing that he was preference eligible, and because the VEOA does not apply to issues covered by the Federal Employees Compensation Act (FECA), including a failure to restore an employee to work following a FECA covered workplace injury. *See* MSPB Docket No AT-3330-17-0026-I-1, Tab 6.

The administrative judge assigned to adjudicate MSPB Docket No. AT-3330-17-0026-I-1 issued two VEOA Jurisdiction Orders. Rather than address the jurisdictional issues identified within these Orders, the appellant requested to withdraw his appeal. *See* MSPB Docket No AT-3330-17-0026-I-1, Tab 8. The

administrative judge promptly issued an Order on December 6, 2016, which explained that if the appeal was withdrawn, that it would be an act of finality that it would permanently remove the issues within the appeal from the Board's jurisdiction. She then explained,

The appellant is free to withdraw his appeal; however, he is hereby put on notice that the withdrawal of an appeal is an act of finality that removes the appeal from the Board's jurisdiction. *See Wilson v. United States Postal Service*, 41 M.S.P.R. 628, 629 (1989). The Board will give effect to an appellant's withdrawal of an appeal and, in the absence of unusual circumstances such as misinformation or new and material evidence, it will not reinstate an appeal once it has been withdrawn merely because an appellant now wishes to proceed before the Board. *Dixon v. Office of Personnel Management*, 44 M.S.P.R.331, 335 (1990).

Unless the appellant notifies that me in a writing to be **received** no later **December 13, 2016**, that he does **not** wish to withdraw his appeal, I will dismiss the appeal as withdrawn, with prejudice to refile regarding the same issue. If the appellant should decide he does not wish to withdraw his appeal, he must comply with my November 8, 2016 Order to establish that the Board has jurisdiction over his VEOA appeal, and his response to that order must be **received** no later than **December 13, 2016**. If the appellant fails to respond to the instant order, his appeal will be dismissed as withdrawn, with prejudice to refile. (Emphasis in original)

The administrative judge assigned in the above-cited case issued an Initial Decision on December 21, 2016 dismissing the appeal with prejudice as withdrawn. Within that Initial Decision, the administrative judge noted that the appellant had not responded to her earlier Order, quoted above. The appellant did not appeal that Initial Decision which became the final decision of the Board several years ago.

The appellant through the present appeal seeks to relitigate the same VEOA issues he withdrew in December, 2016, and which were dismissed with prejudice by the Board on December 21, 2016. As the administrative judge who adjudicated that prior appeal properly explained, withdrawal of an appeal is an

act of finality which permanently removes the matter from the Board's consideration.

DECISION

The appeal is DISMISSED.

FOR THE BOARD:

/S/

Brian Bohlen
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on April 6, 2020, 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>).

NOTICE OF LACK OF QUORUM

The Merit Systems Protection Board ordinarily is composed of three members, 5 U.S.C. § 1201, but currently there are no members in place. Because a majority vote of the Board is required to decide a case, *see* 5 C.F.R. § 1200.3(a), (e), the Board is unable to issue decisions on petitions for review filed with it at this time. *See* 5 U.S.C. § 1203. Thus, while parties may continue to file petitions for review during this period, no decisions will be issued until at least two members are appointed by the President and confirmed by the Senate. The lack of a quorum does not serve to extend the time limit for filing a petition or cross petition. Any party who files such a petition must comply with the time limits specified herein.

For alternative review options, please consult the section below titled “Notice of Appeal Rights,” which sets forth other review options.

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. _____, 137 S. Ct. 1975 (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.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.

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

NOTE: This disposition is nonprecedential.

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

GREGORY TURNER,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2020-1650

Petition for review of the Merit Systems Protection Board in No. AT-3330-20-0125-I-1.

Decided: February 8, 2021.

GREGORY TURNER, Memphis, TN, pro se.

DEANNA SCHABACKER, Office of General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by TRISTAN L. LEAVITT, KATHERINE MICHELLE SMITH.

Before DYK, MAYER, and CHEN, *Circuit*
PER CURIAM.

APPENDIX

B

Gregory Turner seeks review of a final decision of the Merit Systems Protection Board (“Board”) that dismissed his appeal for lack of jurisdiction. *We affirm.*

BACKGROUND

Mr. Turner is a partially disabled veteran. He was employed by the United States Postal Service as a city carrier beginning 1986. He suffered an on-the-job injury in 2006. He ceased working at the Postal Service in 2015 and is not now being compensated. He has apparently rejected the Postal Service’s offers that would permit him to return to work with modified duty assignments.

On September 12, 2016, Mr. Turner filed a complaint with the Department of Labor, alleging that the United States Postal Service had violated his rights as a disabled veteran under the Veterans Employment Opportunities Act of 1998 by not reemploying him after 2015. In a letter dated September 20, 2016, the Department of Labor informed Mr. Turner that his case had been closed and that he could appeal to the Board. The letter stated:

This is to inform you that our investigation has determined that you do not meet the eligibility requirements of the applicable provisions of veterans’ preference statutes and regulations under Title 5, U.S. Code. Therefore, we are closing your case.

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MPSB) within 15 calendar days from the date of receipt of this letter.

SAppx 61.¹

¹ “SAppx” refers to the appendix attached to the government’s response brief.

On October 5, 2016, Mr. Turner filed an appeal with the Board and attached the letter from the Department of Labor dated September 20, 2016.² On October 18, 2016, the administrative judge presiding over Mr. Turner's appeal determined that he had not established jurisdiction and ordered Mr. Turner to provide information to establish that the Board had jurisdiction over his appeal under the Veterans Employment Opportunities Act. On October 22, 2016, Mr. Turner responded by filing certain documents. On November 8, 2016, the administrative judge issued another order, again finding that jurisdiction had not been established and requesting information from Mr. Turner to establish the Board's jurisdiction. On November 15, 2016, Mr. Turner requested that his appeal be withdrawn, stating that he was "requesting withdrawal at this time" because he felt "that it will become at time to file this action in the future [sic]." SAppx 55.

On December 6, 2016, in an "Order Regarding the Appellant's Request to Withdraw His Appeal," the administrative judge presiding over Mr. Turner's appeal acknowledged that Mr. Turner had "requested to withdraw his appeal stating that he might refile it in the future." *Id.* at 53. The administrative judge stated that Mr. Turner was "hereby put on notice that the withdrawal of an appeal is an act of finality that removes the appeal from the Board's jurisdiction," and, "in the absence of unusual circumstances such as misinformation or new and material evidence, [the Board would] not reinstate an appeal once it has been withdrawn merely because an appellant now

² The government refers to Docket No. AT-0353-16-0826-I-1 as the docket number for Mr. Turner's 2016 appeal. However, the filings included in the appendix attached to the government's response brief indicate that Mr. Turner's 2016 appeal was assigned Docket Number AT-3330-17-0026-I-1.

wishes to proceed before the Board.” *Id.* (citing *Dixon v. Off. of Pers. Mgmt.*, 44 M.S.P.R. 331, 335 (1990)).

The administrative judge also stated that, unless the appellant notified the administrative judge “in a writing to be received no later [than] December 13, 2016, that he [did] not wish to withdraw his appeal,” the administrative judge would “dismiss the appeal as withdrawn, with prejudice to refiling regarding the same issue.” *Id.* (emphases removed). Mr. Turner did not respond, and on December 21, 2016, the administrative judge dismissed the appeal with prejudice as withdrawn. Mr. Turner did not petition for review by the full Board, and the administrative judge’s decision became the Board’s final decision on January 25, 2017. *See* 5 C.F.R. § 1201.113. Mr. Turner did not appeal to this court.

On November 17, 2019, Mr. Turner filed another appeal with the Board that again appeared to raise a claim under the Veterans Employment Opportunities Act of 1998. The administrative judge presiding over Mr. Turner’s 2019 appeal ordered Mr. Turner to submit a statement containing certain information so that the administrative judge could determine “whether the Board ha[d] jurisdiction over [Mr. Turner’s] appeal and whether the exhaustion and timeliness requirements [had] been met.” SAppx 39. In response, Mr. Turner submitted a new complaint form for the Department of Labor dated October 15, 2019, asserting basically the same allegations as in his 2016 complaint to the Department of Labor. Mr. Turner submitted his new complaint to the Board, but he provided no indication the Department of Labor had acted on his new complaint. He did provide a copy of the letter from the Department of Labor dated September 20, 2016, acting on his 2016 complaint.

The administrative judge determined that Mr. Turner was seeking to relitigate the “same [Veterans Employment Opportunities Act] issues he withdrew in December, 2016.”

Id. at 4. The administrative judge pointed out that Mr. Turner had withdrawn his 2016 appeal, which was then dismissed with prejudice. Accordingly, the administrative judge dismissed Mr. Turner's 2019 appeal for lack of jurisdiction. Again, Mr. Turner did not petition for review by the full Board, and the administrative judge's decision became the final decision of the Board on April 6, 2020. 5 C.F.R. § 1201.113.

Mr. Turner appeals. We have jurisdiction under 5 U.S.C. § 7703(b)(1) and 28 U.S.C. § 1295(a)(9).

DISCUSSION

Our review of Board decisions is limited by statute. We are permitted to set aside Board decisions only if we find that they are (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence. 5 U.S.C. § 7703(c). "Whether the [B]oard had jurisdiction to adjudicate a case is a question of law, which we review *de novo*." *Forest v. Merit Sys. Prot. Bd.*, 47 F.3d 409, 410 (Fed. Cir. 1995).

Under the Board's precedent, "[t]he withdrawal of an appeal is an act of finality that removes the appeal from the Board's jurisdiction." *Dixon*, 44 M.S.P.R. at 334-35. "[T]he Board will not reinstate a withdrawn appeal absent unusual circumstances such as misinformation or new and material evidence." *White v. U.S. Postal Serv.*, 95 M.S.P.R. 220, 222 (2003).

Mr. Turner contends that the Board's 2016 rulings declining to find jurisdiction based on the then-existing record were erroneous, and these erroneous rulings compelled him to dismiss the appeal. However, he does not dispute that his 2019 appeal raised the same issues as his 2016 appeal, nor does he dispute that he withdrew his 2016 appeal. Mr. Turner also does not make any showing that he had

raised new and material evidence that might justify reinstating his case.³

Mr. Turner instead asserts that he thought that his withdrawal with prejudice in 2016 would affect only “the particular case with that Administrative Judge.” Pet’r’s Informal Reply Br. 5. Mr. Turner also argues that the administrative judge who presided over the 2016 appeal “failed to give [Mr. Turner] a better understanding of the impact” of a dismissal with prejudice. *Id.* at 6. We disagree. The December 6, 2016, order explained that “the withdrawal of an appeal is an act of finality that removes the appeal from the Board’s jurisdiction,” and that “[t]he Board will give effect to an appellant’s withdrawal of an appeal and, in the absence of unusual circumstances such as misinformation or new and material evidence, it will not reinstate an appeal once it has been withdrawn merely because an appellant now wishes to proceed before the Board.” SAppx 53.

Mr. Turner also invokes the doctrine of equitable tolling. The doctrine has no applicability here, where no limitations period is at issue, and in any case Mr. Turner provides no ground for equitable tolling.

The Board’s dismissal of Mr. Turner’s appeal for lack of jurisdiction was proper. Accordingly, the Board’s decision is affirmed.

³ “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.” 5 C.F.R. § 1201.115(d) (criteria for the Board in granting a petition for review).

TURNER v. MSPB

7

AFFIRMED

COSTS

No costs.

U.S. Department of Labor

Office of the Assistant Secretary for
Veterans' Employment and Training
1235 Echelon Parkway
Jackson MS, 39213
Phone: (601) 321-6235
FAX: (601) 321-8187
Smith.Robert@dcl.gov



September 20, 2016

Gregory Turner
[REDACTED]

RE: Turner, Gregory
TN-2016-00-019-VPR

Dear Mr. Turner:

This is to inform you that our investigation has determined that you do not meet the eligibility requirements of the applicable provisions of veterans' preference statutes and regulations under Title 5, U.S. Code. Therefore, we are closing your case.

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose.

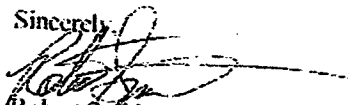
In your case, your appeal must be sent to:

Atlanta Regional Office,
Merit Systems Protection Board,
401 W. Peachtree Street, NE, Suite 1050,
Atlanta, Georgia 30308

A copy of the MSPB Appeal Form can be down loaded for your convenience. If you prefer, you may file your MSPB appeal electronically at <https://e-appeal.mspb.gov/comp.aspx>.

If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers about Appeals" at <http://www.mspb.gov/>.

Sincerely,


Robert Smith
Investigator

APPENDIX

C

Working for America's Wo

Mail (or FAX) to:

Veterans' Employment and Training Service
U.S. Department of Labor
ATTENTION: Form 1010
61 Forsyth Street, S.W., Room 6T85
Atlanta, Georgia 30303

Phone: (866) 4-USA-DOL ((866)-487-2365)
FAX: (404) 562-2313

PLEASE TYPE OR PRINT

Section I: Claimant Information

1. Name: Turner Gregory
Last Name First Name M.I.
2. Address: 5379 RiverStone Drive Memphis, Tennessee 38125-4348
Street City State ZIP
3. Social Security No: 412 15 2839 4. Home Phone: 901-267-2071 5. Cell Phone: 901-267-2071
6. Email Address: Fernbanklane@yahoo.com 7. Do you have a military service-connected disability? [X] Yes [] No

Section II: Uniformed Service Information

8. Serve(d) In: [] Air National Guard [] Army National Guard [] Army Reserve [] Air Force Reserve [] Naval Reserve
[] Marine Corps Reserve [] Coast Guard Reserve [] Army [] Air Force [] Navy [] Marine Corps [X] Coast Guard
[] Public Health Service [] Other (Explain in "Comments") [] None (Retaliation Claim - Explain in "Comments")
9. If Reserve/National Guard:
(a) Name of Unit:
(b) Unit Address:
(c) Unit Phone:
10. Dates of Service (If applicable): (a) From: To:
OR (b) Date of Examination/Rejection for Service:
11. Type of Discharge or Separation: [X] Honorable Conditions [] Entry Level [] Uncharacterized [] Medical [] Other than Honorable
[] Other (Explain in "Comments") [] Not Applicable

Section III: Employer Information

12. Employer or Prospective Employer's Name: United States Postal Service
13. Address: 555 South B.B. King Blvd Memphis, Tennessee 38101
Street City
14. Principal Employer Contact (PEC):
(a) PEC Name/Title: Reginald Capers (b) PEC Phon
15. Employment Dates (If applicable): From: 06/21/1986 To: Present
16. Since beginning work with this employer, has your cumulative uniformed service exceeded 5
If YES, explain in Comments box at end of this claim form.
17. Name of Union(s) That Represent You: National Association of Letter Carriers
18. Title of the Position or Occupation that is related to your claim (the job that you either now /
City Letter Carrier

APPENDIX

D

Section IV: Claim Information

19. Was the Employer Support of the Guard and Reserve (ESGR) involved in handling your claim initially? Yes No

Use items #20 and #21 to identify the program(s). (NOTE: Most claims – but not all – apply to only one program.)

- For this claim to apply only to **Veterans' Preference (VP) in Federal Employment**: Complete item #20, and skip #21.
- For this claim to apply only to **USERRA**: Skip item #20, and complete #21.
- For this claim to apply to both VP and USERRA: Complete both items #20 and #21.

20. Veterans' Preference Issue (Check One): Hiring Reduction-in-Force (RIF)

21. USERRA Issue(s): Military Obligations Discrimination Reinstatement Initial Hiring Discrimination
 Discrimination as Retaliation for any Action Status Pay Rate Seniority Other Non-Seniority Benefits
 Pension Layoff Promotion Vacation Health Benefits Special Protected Period Discharge
 Reasonable Accommodations/Retraining for Disabled Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled Other

If Claim Concerns Hiring, Promotion, RIF or Termination

22. Title of Position Held or Applied For: City Letter Carrier

23. Pay Rate: Hourly

24. Date of Application Employment/Promotion: _____

(a) Vacancy Announcement Number: _____

(b) Date Vacancy Opened: _____ (c) Date Vacancy Closed: _____

If Claim Concerns Reemployment Following Service

25. Was Prior Notice of Service Provided to Employer? Yes No (If "No," Explain in Comments)

26. (a) Who Provided Notice of Service to Employer? Self Other (name): _____

(b) Was the Notice of Service: Written Oral Both

(c) Date Notice of Service was given to Employer: _____

27. Name/Title of Person to Whom Notice of Service was Provided: _____

28. Date Applied for Reemployment: _____ OR Date Returned to Work: _____

29. Reemployment Application Made To: Name: _____ Title: _____

30. Reemployed or Reinstated? Yes (date): _____ No

(a) If YES, what position? _____ at what pay rate? _____

(b) If NO, Date denied: _____ Reason(s) given: _____

(c) Who denied (Name and Title): _____

PUNISHMENT FOR UNLAWFUL STATEMENTS

The information provided in this complaint will be utilized by the U.S. Department of Labor, Veterans' Employment and Training Service (VETS) to initiate an investigation of alleged violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) Title 38, U.S.C., Sections 4301-4335; and/or the Veterans' Preference (VP), provisions of the Veterans Employment Opportunities Act of 1998 (VEOA), 5 U.S.C. §3330a-3330c. Potential claimants should keep in mind that it is unlawful to "knowingly and willfully" make any "materially false, fictitious, or fraudulent statements or representation" to a federal agency. Violations can be punished under Section 2 of the False Statements Accountability Act of 1996 by a fine and/or imprisonment of not more than 5 years. 18 U.S.C. § 1001.

I certify that the above information is true and correct to the best of my knowledge and belief. I authorize the U.S. Department of Labor to contact my employer or any other person for information concerning this claim. I further authorize my employer or any other person to release such information to the U.S. Department of Labor. Pursuant to 5 U.S.C., Section 552a(b) of the Privacy Act, I authorize the U.S. Department of Labor and the U.S. Department of Defense to release information and records necessary for the investigation and prosecution of my claim.

SIGNATURE: Gregory Turner DATE: 10/12/2019

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Veterans' Employment and Training Service, Room-S1316, 200 Constitution Avenue, N.W., Washington, DC 20210.

NOTIFICATION OF USERRA CLAIMANT'S RIGHTS

For claims arising under USERRA, a person has a right to commence an action for relief directly against the employer in the appropriate federal district court (in the case of a complaint against a State or private employer), pursuant to 38 U.S.C. § 4323(a)(3), or the Merit Systems Protection Board (in the case of a complaint against a Federal executive agency or the Office of Personnel Management), pursuant to 38 U.S.C. § 4324(b).

PRIVACY ACT STATEMENT

The primary use of this information is by staff of the Veterans' Employment and Training Service in investigating cases under USERRA or laws/regulations relating to veterans' preference in Federal employment. Disclosure of this information may be made to: a Federal, state or local agency for appropriate reasons; in connection with litigation; and to an individual or contractor performing a Federal function. Furnishing the information on this form, including your Social Security Number, is voluntary. However, failure to provide this information may jeopardize the Department of Labor's ability to provide assistance on your claim.

Continue in Comments box &/or use additional sheet(s) to explain items if needed – Sign and date form (above)

Explain your claim in detail – List all remedies you seek

Use additional sheet(s) if needed – Initial & date each page at bottom

Comments:

I contacted my Employer the U.S. Postal Service in August 2019 to discuss how many years they will keep me out of the work place and why I haven't heard from them concerning anything. I was order to leave the U.S. Postal Service in September 2014. It has been 5 yrs.

The U.S. Postal Service refuse to charge me so I can exercise my rights to due process to reslove whatever the situation is. I am a 30% Service Connected Disabled Veteran. I want to use my rights under the Veterans Preference Act of 1944.

This is a Prohibited Personnel violation. The Office of Personnel Managment clearly states than any ADVERSE ACTIONS. says this

Preference eligibles have protections against adverse actions, including demotion, suspension for more than 14 days, furlough for 30 days or less, and removal. These protections include advance notice a reasonable time to respond, representation by an attorney or other person, a final written decision, and an appeal right to Merit Systems Protection

I am seeking restitution for the malicious act, Compensatory Damage and Punitive Damages. This has ruined my heath and my life.

INITIALS: GT DATE: 10/15/19

Mail (or FAX) to:

Veterans' Employment and Training Service
U.S. Department of Labor
ATTENTION: Form 1010
61 Forsyth Street, S.W., Room 6T85
Atlanta, Georgia 30303

Phone: (866) 4-USA-DOJ ((866)-487-2365)
FAX: (404) 562-2313

1. NAME (Last, first, middle) **TURNER, GREGORY, NMN**

2. DEPARTMENT, COMPONENT AND BRANCH **TRANSPORTATION - USCG**

3. SOCIAL SECURITY NO. **412 | 15 | 2839**

4. GRADE, RATE OR RANK **SR**

4b. PAY GRADE **E-1**

5. DATE OF BIRTH **62 09 02**

6. PLACE OF ENTRY INTO ACTIVE DUTY **MEMPHIS, TN**

7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND **USCG TRAINING CENTER, CAPE MAY NJ**

8. STATION WHERE SEPARATED **USCG TRAINING CENTER, CAPE MAY, NJ**

9. COMMAND TO WHICH TRANSFERRED **N/A**

10. SGLI COVERAGE AMOUNT \$ **20,000** NONE

11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles including periods of one or more years)

	X	X	X	X	X
	X	X	X	X	X
	X	X	X	X	X
	X	X	X	X	X

12. RECORD OF SERVICE

	YEAR (s)	MON (s)	DAY (s)
a. Date Entered AD This Period	79	10	01
b. Separation Date This Period	79	12	11
c. Net Active Service This Period	00	02	11
d. Total Prior Active Service	00	00	00
e. Total Prior Inactive Service	00	00	00
f. Foreign Service	00	00	00
g. Sea Service	00	00	00
h. Effective Date of Pay Grade	79	10	01
i. Reserve Oblig. Term. Date	00	00	00

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)

NONE	X	X	X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X	X	X	X

14. MILITARY EDUCATION (Course Title, number weeks, and month and year completed)

NONE	X	X	X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X	X	X	X

15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM. YES NO

16. HIGH SCHOOL GRADUATE OR EQUIVALENT YES NO

17. DAYS ACCRUED LEAVE PAID **NONE**

18. REMARKS **DD FORM 214 ADMINISTRATIVELY REISSUED AT COAST GUARD HEADQUARTERS:12 JUNE 1986**

HOME OF RECORD AT TIME OF ENTRY ON ACTIVE DUTY: **MEMPHI**

PLACE OF BIRTH: **MEMPHIS, TN**

X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X

APPENDIX E

19. MAILING ADDRESS AFTER SEPARATION: **1529 S. MONTGOMERY MEMPHIS, TN 38106**

20. SIGNATURE OF MEMBER BEING SEPARATED: *Gregory Turner*

21. TYPED NAME, GRADE, TITLE AND IS AUTHORIZED TO SIGN: **W. J. WILKINSON, LCDR, USCG**

24. CHARACTER OF SERVICE (Includes upgrades) **HONORABLE**

25. SEPARATION CODE **JAD**

26. REENLISTMENT CODE **RE-1**

27. MEMBER REQUESTS COPY 4

28. TYPE OF SEPARATION **DISCHARGE**

29. SEPARATION AUTHORITY **PERMANENT ARTICLE 12-B-12**

30. NARRATIVE REASON FOR SEPARATION

31. INCONVENIENCE OF THE GOVERNMENT DATES OF TIME LOST DURING THIS PERIOD

MEMBER-1

MEMBER-4



DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Ave NW
Washington, D.C. 20420

August 22, 2019

Gregory Turner
 5379 Riverstone Dr
 Memphis, TN 38125

In Reply Refer to:
 xx-xx1-326
 27/eBenefits

Dear Mr. Turner:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as state or local property or vehicle tax relief, civil service preference, to obtain housing entitlements, free or reduced state park annual memberships, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter is considered an official record of your VA entitlement.

Our records contain the following information:

Personal Claim Information

Your VA claim number is: xx-xx1-326

You are the Veteran.

Military Information

Your most recent, verified periods of service (up to three) include:

Branch of Service	Character of Service	Entered Active Duty	Released/Discharged
Coast Guard	Honorable	October 01, 1979	December 11, 1979

(There may be additional periods of service not listed above.)

VA Benefit Information

You have one or more service-connected disabilities: **Yes**

Your combined service-connected evaluation is: **30%**

Your current monthly award amount is: **\$~~400~~**

The effective date of the last change to your current award was: **December 01, 2018**

You are considered to be totally and permanently disabled due to service-connected disabilities:

You should contact your state or local office of Veterans' affairs for information benefits for which you may be eligible. State offices of Veterans' affairs are a <http://www.va.gov/statedva.htm>.

APPENDIX

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How You Can Contact Us

- If you need general information about benefits and eligibility, please visit <http://www.va.gov>.
- Call us at 1-800-827-1000. If you use a Telecommunications Device for 829-4833.