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APPENDIX A-1

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY E. GOSSAGE, Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD, Respondent

2020-2171

Petition for review of the Merit Systems Protection Board
in No. SE-0731-01-0261I-2.

PER CURIAM.

O R D E R

The court dismisses this petition after consideration of the parties' responses to the court's show cause order. The court received petitions from Henry E. Gossage identifying: (1) Office of Personnel Management (OPM) Case 01-904-277; and (2) a November 27, 2019 letter from the Clerk of the Merit Systems Protection Board regarding SE-0731-01-0261-I-2 and SE-0731-01-0261-I-5 explaining to Mr. Gossage that he had no further right to review in those matters.

The court does not have jurisdiction over these matters. This court does not have authority to directly review a decision by OPM. See *In re McAfee*, 65 F. App'x 292 (Fed. Cir. 2003). Moreover, although this court has jurisdiction to review

decisions of the Board, see 28 U.S.C. § 1295(a)(9), the Clerk of the Board's letter is nothing more than an administrative response to a repetitive request to reconsider a matter like those that this court has previously informed Mr. Gossage it lacks jurisdiction to review. See, e.g., *Gossage v. Merit Sys. Prot. Bd.*, No. 2018-1970, slip op. at 2–3 (Fed. Cir. Oct. 3, 2018) (citing *Haines v. Merit Sys. Prot. Bd.*, 44 F.3d 998, 1000 (Fed. Cir. 1995)). The court notes that this is now the fifth dismissal in four months of Mr. Gossage's attempts to dispute or reopen cases associated with SE-0731-01-0261-I-2 and SE-0731-01-0261-I-5. See *Gossage v. Off. of Pers. Mgmt.*, No. 2020-2178 (Fed. Cir. Oct. 20, 2020); *Gossage v. Off. of Pers. Mgmt.*, No. 2020-2194 (Fed. Cir. Oct. 20, 2020); *Gossage v. Off. of Pers. Mgmt.*, No. 2020-2195 (Fed. Cir. Oct. 20, 2020); *Gossage v. Off. of Pers. Mgmt.*, No. 2021-1026 (Fed. Cir. Dec. 18, 2020).

Any future filing pertaining to these matters will likely result in a filing injunction or sanctions.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition is dismissed.
- (2) All pending motions are denied as moot.

FOR THE COURT

/s/ Peter R. Marksteiner

February 18, 2021
Date

APPENDIX A-2

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY E. GOSSAGE, Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD, Respondent

2020-2171

Petition for review of the Merit Systems Protection Board
in No. SE-0731-01-0261I-2.

ON MOTION

PER CURIAM.

O R D E R

Henry E. Gossage moves for leave to proceed *in forma pauperis*. The court considers its jurisdiction over this case.

On December 27, 2019, the court received petitions from Mr. Gossage identifying: (1) a November 27, 2019 letter from the Clerk of the Merit Systems Protection Board regarding SE-0731-01-0261-I-2 and SE-0731-01-0261-I-5 explaining to Mr. Gossage he had no further right to review in those matters; and (2) OPM Case 01-904-277.

It does not appear that this court has jurisdiction over these matters.

Although this court has jurisdiction to review decisions of the board, it does not have authority to directly review a decision by OPM. The Clerk of the Board's letter also appears to be nothing more than an administrative response to a repetitive request to reconsider a matter like those that this Court has previously informed Mr. Gossage it lacks jurisdiction to review. *See Gossage v. Merit Sys. Prot. Bd.*, No. 2018-1970, slip op. 2-3 (Fed. Cir. Oct. 3, 2018) (citing *Haines v. Merit Sys. Prot. Bd.*, 44 F.3d 998, 1000 (Fed. Cir. 1995)).

Accordingly,

IT IS ORDERED THAT:

- (1) The parties are directed to show cause, within 30 days from the date of filing of this order, why this petition should not be dismissed.
- (2) The motion is held in abeyance and the briefing schedule is stayed.

FOR THE COURT

October 16, 2020
Date

/s/ Peter R. Marksteiner

APPENDIX B-1
Merit Systems Protection Board Order

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

97 M.S.P.R. 366

HENRY E. GOSSAGE,

Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Agency.

DOCKET NUMBER

SE-0731-01-0261-I-2

DATE: September 27, 2004

Paul D. Doumit, Esquire, Olympia, Washington, for the appellant.
Kimya I. Jones, Esquire, Washington, D.C., for the agency.

BEFORE

Neil A. G. McPhie, Acting Chairman
Susanne T. Marshall, Member

Acting Chairman McPhie and Member Marshall both issue separate opinions.

ORDER

This case is before the Board by petition for review of the initial decision which dismissed the refiled petition for appeal as moot. The two Board members cannot agree on the disposition of the petition for review. Therefore, the initial decision now becomes the final decision of the Merit Systems Protection Board in

this appeal. Title 5 of the Code of Federal Regulations, section 1200.3(b)
(5 C.F.R. § 1200.3(b)). This decision shall not be considered as precedent by the
Board in any other case. 5 C.F.R. § 1200.3(d).

FOR THE BOARD:
Washington, D.C.

Bentley M. Roberts, Jr.
Clerk of the Board

SEPARATE OPINION OF NEIL A. G. MCPHIE
in
Henry E. Gossage v. Office of Personnel Management
MSPB Docket No. SE-0731-01-0261-I-2

¶1 I write separately to express my views that: (1) The agency's actions did not render moot the appellant's appeal of his suitability determination; and (2) the Board may have jurisdiction over an alleged constructive suitability determination, and that matter is not barred by collateral estoppel.

¶2 The facts of this case, which are not in dispute, are as follows: The appellant pleaded guilty in 1992 to charges of rape and incest. After serving approximately three years in prison, he was released on parole. Initial Appeal File (IAF), Tab 10, Subtab 2o. He applied for various positions with the Federal government. *Id.*, Subtab 2u. The Office of Personnel Management (OPM) found him unsuitable on the basis of an investigation showing his conviction and falsification of employment documents and false statements in connection with his application for an Industrial Hygienist position with the Occupational Safety & Health Administration (OSHA). OPM debarred him from Federal employment until July 21, 2000. *Id.*, Subtab 2o. The appellant filed an appeal with the Board of that decision. The administrative judge (AJ) affirmed OPM's decision, and the Board denied his petition for review. *Gossage v. Office of Personnel Management*, MSPB Docket No. SE-0731-98-0139-I-1 (Initial Decision, June 30, 1998), *review denied*, 81 M.S.P.R. 651 (1998) (Table), *review dismissed*, 215 F.3d 1340 (Fed. Cir. 1999) (Table); IAF, Tab 10, Subtab 2o.

¶3 When the period of debarment expired, the appellant, who is preference eligible,

again applied for an Industrial Hygienist position with OSHA. His name was at the top of a certificate of eligibility, along with two other candidates, both of whom withdrew their applications. OSHA requested authority from OPM to pass over his application. IAF, Tab 10, Subtab 2o. OSHA also notified the appellant that it intended to object to him on the basis of suitability for the position, specifically his incarceration between 1992 and 1995. *Id.* On November 30, 2000, OPM issued a written decision granting OSHA's request to pass over the appellant. OPM informed him that it would conduct an investigation as to his suitability. *Id.*, Subtab 2l. After notifying the appellant that it proposed to find him unsuitable and affording him an opportunity to respond, OPM issued a determination on May 16, 2001, rating the appellant ineligible for the Industrial Hygienist position with OSHA, canceling any eligibilities he had obtained from this application or other pending applications, and debarring him until May 16, 2003. The determination was based on his criminal conviction and resulting penalties and the falsification and false statement made in connection with his applications in 1996 and 1997. *Id.*, Subtabs 2a, 2b, 2d.

¶4 The appellant filed an appeal of OPM's May 16, 2001 decision finding him unsuitable for Federal employment and debarring him for two years. IAF, Tabs 1, 2. OPM filed a motion to dismiss the appeal as moot based on its withdrawal of the May 16, 2001 negative suitability and debarment determination. Refiled IAF, Tab 6. The appellant objected to the dismissal of his appeal. *Id.*, Tabs 7, 9. Without affording the appellant the hearing he requested, the AJ issued an initial decision dismissing the appeal. He found that the appeal had been rendered moot

by OPM's withdrawal of its negative suitability determination and debarment and by the collateral estoppel effect of the Board's earlier decision regarding the same charge of criminal conduct. Refiled IAF, Tab 12.

The appellant's appeal of the May 16, 2001, suitability determination is not moot.

¶5 The Board's jurisdiction is not plenary; it 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). Ordinarily, the Board lacks jurisdiction over an appeal of a nonselection for a vacant position. *Metzenbaum v. General Services Administration*, 83 M.S.P.R. 243, ¶ 4 (1999). The Board has jurisdiction over appeals of negative suitability determinations, however, under 5 C.F.R. §§ 731.1-3(d) and 731.501.

¶6 The Board's jurisdiction attaches at the time an appeal is filed and is generally unaffected by the parties' subsequent action. The agency's unilateral modification of an appealable action after an appeal has been filed cannot divest the Board of jurisdiction, unless the appellant consents to such divestiture, or the agency completely rescinds the action being appealed. Thus, the Board may dismiss an appeal as moot if the appealable action has been completely rescinded, i.e., the employee must be returned to the status quo ante and not left in a worse position because of the cancellation than he would have been if the matter had been adjudicated. *Gillespie v. Department of Defense*, 90 M.S.P.R. 327, ¶ 7 (2001).

¶7 Nevertheless, when an appellant has outstanding, viable claims for compensatory damages before the Board, the agency's complete rescission of the action appealed does not afford him all of the relief available before the Board and therefore does not render the appeal moot. *Currier v. U.S. Postal Service*, 72 M.S.P.R. 191, 197 (1996). Here, the appellant raised claims of discrimination based on race, age, and disability. IAF, Tab 2. The AJ failed to inform him of his burden of proof on the discrimination issues or any necessity to raise a claim for compensatory damages to avoid dismissal of the appeal as moot. Based on that failure, I would remand this appeal to the AJ for adjudication of the appellant's discrimination claims. *See Botello v. Department of Justice*, 76 M.S.P.R. 117, 124 (1997) (the Board ordered the AJ on remand to adjudicate the appellant's claims of reprisal for filing equal employment opportunity complaints, if he found that the action appealed was a negative suitability determination within the Board's jurisdiction); *Vannoy v. Office of Personnel Management*, 75 M.S.P.R. 170, 175-77 (1997) (the AJ erred in failing to apprise the appellant of his burden of proof and the elements of proof on his disability discrimination claim, but the error did not harm his substantive rights because he was not a qualified disabled individual). I would instruct the AJ to notify the appellant of his burden of proof and the elements of such discrimination claims, and to afford him an opportunity to engage in discovery relevant to his discrimination claims and to raise a claim for compensatory damages. I would also instruct the AJ to convene a hearing, if the appellant expressed his desire for one.

The Board may have jurisdiction over the alleged constructive negative suitability determination and the matter is not barred by collateral estoppel.

¶8 The appellant argues that, despite OPM's withdrawal of the May 16, 2001 negative suitability determination, the appeal is not moot because the continued existence of the authority for OSHA to pass over his application constitutes a constructive negative suitability determination governed by the holding in *Edwards v. Department of Justice*, 86 M.S.P.R. 365, ¶¶ 5-14 (2000). In that case, the Board found that, under certain circumstances, a sustained objection to consideration of an applicant could constitute a negative suitability determination.

¶9 In this case, the AJ found that, even if the approval of OSHA's request to pass over the appellant were a constructive negative suitability determination, the appellant was collaterally estopped from making that argument because the only issue within the Board's authority to review under OPM's revised regulation had already been adjudicated. Initial Decision at 2-3. I disagree.

¶10 Under OPM's regulation at 5 C.F.R. § 731.501, which is the source of the Board's jurisdiction over appeals of negative suitability determinations and which, effective January 29, 2001, revised OPM's previous regulation, [a]n individual who has been found unsuitable for employment may appeal the determination to [the Board]. If the Board finds one or more charges are supported by a preponderance of the evidence, it shall affirm the determination. If the Board sustains fewer than all the charges, the Board shall remand the case to OPM or the

agency to determine whether the action taken is still appropriate based on the sustained charge(s). This determination of whether the action taken is appropriate shall be final without any further appeal to the Board. 5 C.F.R. § 731.501 (2003). The AJ interpreted this regulation to mean that the Board's review of a negative suitability determination is limited to the substance of the conduct on which the negative suitability determination is based. The AJ found that the conduct underlying this alleged constructive negative suitability determination was previously adjudicated in the earlier appeal in which it was found that the appellant engaged in the criminal conduct and that the conduct supported a negative suitability determination. Based on his interpretation of OPM's revised regulation, the AJ in this case gave collateral estoppel effect to that earlier finding.

¶11 OPM's regulations at 5 C.F.R. part 731 do not define "charge," and the Board has not yet interpreted OPM's revised regulation. "Charge" is susceptible of two meanings. It can mean the factual basis for the negative suitability determination or the suitability determination itself.

¶12 In the supplementary information in the Federal Register notice regarding the revised regulation, OPM responded to comments to its proposed regulations, specifically in regard to Board appeal rights. OPM explained the revised regulation, stating: Specifically, the regulation is designed to clarify that the Board's role in reviewing OPM or agency unsuitability decisions always has been a limited one. The Board may determine only whether a charge of unsuitability is sustained by a preponderance of the evidence in accordance with the substantive

standard set forth in section 731.202. 65 Fed. Reg. 82239, 82242-43 (Dec. 28, 2000). Based on OPM's reference to a "charge of unsuitability," I would find that 5 C.F.R. § 731.501 provides the Board with jurisdiction to review the determination of whether an individual is suitable for Federal employment. That determination encompasses the factors set forth at 5 C.F.R. §§ 731.202(a) and (b) as well as the additional considerations listed at subpart 731.202(c).

¶13 Thus, I would find that the AJ judge erred in affording collateral estoppel effect in this case to the Board's previous decision affirming the negative suitability determination in *Gossage*, MSPB Docket No. SE-0731-98-0139-I-1 (Initial Decision, June 30, 1998). Collateral estoppel, or issue preclusion, is appropriate when (1) an issue is identical to that involved in the prior action; (2) the issue was actually litigated in the prior action; (3) the determination on the issue in the prior action was necessary to the resulting judgment; and (4) the party precluded was fully represented in the prior action. *Kroeger v. U.S. Postal Service*, 865 F.2d 235, 239 (Fed. Cir. 1988). Although the instant alleged constructive negative suitability determination and request to pass over his application were based on the same criminal conduct, the additional considerations appropriate to a suitability determination require further review to determine whether the felony conviction and incarceration continue to warrant a determination of unsuitability. Among the additional considerations at 5 C.F.R. § 731.202I are the recency of the conduct and the absence or presence of rehabilitation or efforts toward rehabilitation. As these circumstances may have changed between the issuance of

the first negative suitability determination and this alleged constructive negative suitability determination, these issues, as they relate to the appellant's current suitability for Federal employment, were not previously litigated.

¶14 Therefore, I would remand this matter to the AJ for a determination of whether the request to pass over the appellant is within the Board's jurisdiction as a constructive negative suitability determination. If so, then I would instruct the AJ to decide whether that determination is supported by preponderant evidence, on the basis of not only the fact of the appellant's conviction and incarceration but also the additional considerations at 5 C.F.R. § 731.202I. I would further instruct the AJ to adjudicate the appellant's claims of discrimination as they relate to the alleged constructive negative suitability determination.

Date

Neil A. G. McPhie
Acting Chairman

SEPARATE OPINION OF SUSANNE T. MARSHALL
in
Henry E. Gossage v. Office of Personnel Management
MSPB Docket No. SE-0731-01-0261-I-2

¶15 The administrative judge correctly found that this appeal is moot because all of the issues previously litigated in this negative suitability determination were the same as the ones raised in the present appeal and therefore had collateral estoppel effect. Indeed, the Office of Personnel Management (OPM) cancelled the negative suitability determination and reinstated the appellant so he could compete for federal positions, except for the positions for which OPM, acting under proper authority, previously found the appellant unsuitable.

¶16 A June 30, 1998 initial decision by the Board's administrative judge sustained OPM's decision that the appellant was unsuitable for federal employment, including positions as an Industrial Hygienist or a Safety & Occupational Specialist with the Occupational Safety & Health Administration (OSHA). *Gossage v. Office of Personnel Management*, MSPB Docket No. SE-0731-98-0139-I-1 (Initial Decision June 30, 1998). The administrative judge based his decision on the appellant's plea of guilty in state court to four criminal counts – two counts of incest (first degree), one count of rape (third degree), and one count of attempted incest (first degree). *Id.* At 3. The appellant spent ten years in jail on those charges. Petition for Review File, Tab 1. The June 30, 1998 initial decision also found that the appellant made false and deceptive statements during his application process for the OSHA jobs regarding his criminal record. Initial Decision at 4-6. That initial decision became the Board's final decision when the Board denied the appellant's petition for review

by final order. 81 M.S.P.R. 651 (1998) (Table). The United States Court of Appeals for the Federal Circuit dismissed the appellant's request for review of the Board's decision in that case. *Gossage v. Office of Personnel Management*, 215 F.3d 1349 (Fed. Cir. 1999) (Table).

¶17 As thoroughly explained in the administrative judge's April 22, 2002 initial decision, OPM's decision to reinstate the appellant for consideration for federal employment moots out the appeal. *Gossage v. Office of Personnel Management*, MSPB Docket No. SE-0731-01-0261-I-2, Initial Decision at 2 (April 22, 2002). What OPM did here was simply keep in place the appellant's disqualification for the OSHA positions for which he was previously found unsuitable – the Industrial Hygienist and Safety & Occupational Specialist positions. *Id.* At 1-2. That was a decision which the Board sustained in its final decision in the 1998 initial decision, and which was not overturned by the Federal Circuit. The administrative judge properly concluded that OPM's decisions on the OSHA positions, which were fully decided in a final 1998 Board decision, collaterally estopped the appellant from raising those matters in the instant appeal. Collateral estoppel also precludes the appellant from raising any discrimination or claims of violations of the Veterans Employment Opportunities Act of 1998 (VEOA) that he raised or could have raised in the 1998 appeal. *Id.* At 2-3; see *Kroeger v. U.S. Postal Service*, 865 F.2d 235, 239 (Fed. Cir. 1988) (collateral estoppel, or issue preclusion, is appropriate when (1) an issue is identical to that involved in the prior action, (2) the issue was actually

litigated in the prior action, (3) the determination on the issue in the prior action was necessary to the resulting judgment, and (4) the party precluded was fully represented in the prior action).

¶18 In the present appeal, the appellant has merely argued that he is “of Japanese heritage” and has a “physical disability” of an unspecified nature. Initial Appeal File, Tab 1. Such bare assertions are insufficient to raise a suitability determination claim based on a final Board decision in a 1998 appeal. In fact, on petition for review, the appellant acknowledges that OPM’s actions moot out the appeal except for the matter of the OSHA positions which were filled many years ago. That case is long over. Remand under these circumstances serves no purpose. The administrative judge therefore correctly decided that the prior Board decision has collateral estoppel effect with regard to the OSHA positions at issue.

¶19 The administrative judge’s decision here was neither arbitrary, capricious, nor an abuse of discretion, and it comported with Board procedures. *See United States Postal Service v. Gregory*, 534 U.S. 1, 6-7, 122 S. Ct. 431, 434 (2001). Absolutely no reason exists to disturb it. The appellant’s petition for review should therefore be denied.

Date

Susanne T. Marshall
Member

APPENDIX B-2
Administrative Law Judge Decision

UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

HENRY E. GOSSAGE, Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT, Agency.

DOCKET NUMBER: SE-0731-01-0261-I-2

DATE: April 22, 2002

Paul D. Doumit, Esquire, Olympia, Washington, for the appellant.

Kimya I. Jones, Esquire, Washington, D.C., for the agency.

BEFORE

James H. Freet, Administrative Judge

INITIAL DECISION

By appeal refiled October 12, 2001, the appellant has challenged a May 16, 2001, suitability decision by the Office of Personnel management (OPM). For the reasons discussed below, the appeal is **DISMISSED**.

In its suitability decision, OPM found the appellant unsuitable for Federal employment. It cancelled all eligibilities for employment which the appellant might currently have and debarred him from competition for, or appointment to, any position in the competitive Federal service for a period of 2 years. *See* OPM File, Tab 21. In that decision, OPM also rated ineligible a particular application for the position of Industrial Hygienist which the appellant has filed with the

Occupational Safety & Health Administration (OSHA). *See Id.* OSHA had requested that the appellant be removed from consideration because his prior conviction and incarceration for a felony would interfere with his ability represent OSHA as an expert witness in court. Such court appearances are expected of OSHA's compliance officers. *See OPM file, Tab2b (OPM Form86A).* An agency may make such objection to a particular candidate; OPM has authority to grant the objection by disqualifying the candidate for particular positions. *See 5 CFR § 332.406 (2001).*

By Motion filed January 16, 2002, OPM stated that it was thereby reinstating the appellant's eligibility for competitive registers and withdrawing its debarment of him from competition for, appointment to federal positions. OPM stated, however, that its action did not change its decision to grant OSHA's request for permission to disqualify the appellant for the Industrial Hygienist position.

OPM moved that the appeal be dismissed as moot. The appellant has objected to that motion. *See Appellant's Submission of January 24 and March 8, 2002.* For the reasons discussed below, OPM's motion is GRANTED.

It is clear that OPM's action moots the portions of its May 16, 2001, suitability decision which concerned the general cancellation of eligibilities for employment and the general 2-year debarment. The appellant has received full relief on these elements of his appeal.

The remaining question is the reviewability of the OPM permission for OSHA to disqualify the appellant for the industrial hygienist position. Such actions by OPM are not necessarily appealable to the Board. Depending on the true nature of

the grounds for an agency's request for disqualification, OPM's approval may be either a non-appealable non-selection decision or an appealable constructive suitability decision. *See Edwards v. Department of Justice*, 87 M.S.P.R. 518, 522-23 (2001).

Even if it is assumed that OPM's permission to OSHA to disqualify the appellant is a constructive suitability determination, there is no issue for the Board to resolve in this particular appeal. OSHA's disqualification request was based on the appellant's felony conviction in 1992 and his resulting incarceration. The issue of the appellant's felony conviction and incarceration is barred from further consideration by the board by the doctrine of collateral estoppel. Collateral estoppel, or issue preclusion, is appropriate when (1) an issue is identical to that involved in the prior action, (2) the issue was actually litigated in the prior action, (3) the determination on the issue in the prior action was necessary to the resulting judgment, and (4) the party precluded was fully represented in the prior action. *See Kroeger v. U.S. Postal Service*, 865 F.2d 235, 239 (Fed. Cir. 1988); *Jay v. Department of Navy*, 90 M.S.P.R. 635, 641 (2001). The same conviction and incarceration which is the basis for OSHA's request for permission to disqualify the appellant was an element in a prior appeal to this Board concerning an earlier suitability decision by OPM which covered the period ending July 21, 2000. *See Gossage v. Office of Personnel Management*, MSPB Docket SE-0731-98-0139-I-1 (Initial Decision, June 30, 1998), *petition for review denied*, 81 M.S.P.R. 651 (1998) (Table), review

dismissed, 215 F.3d 1340 (Fed. Cir. 1999) (Table). The appellant was found to have engaged in this criminal conduct. *See Gossage*, slip. At 3-4.

Since the charge concerning the appellant's conviction and incarceration has been established by collateral estoppel, no issue remains for the adjudication by the Board. Having found the charge to be factually accurate, the board is precluded by regulation from considering whether the charge warrants the suitability determination made by OPM. See 5 C.F.R. § 731.501(a) (Jan. 29, 2001) ("If the Board find that one or more charges are supported by preponderance of the evidence, it shall affirm the [suitability] determination.").

In summary, the issues of OPM's general cancellation of eligibilities and general debarment from future consideration are mooted by OPM's reinstatement decisions and the issue of OSHA's request to disqualify the appellant is mooted by collateral estoppel. Therefore, there is no matter for adjudication by the Board.

DECISION

The appeal is DISMISSED.¹

FOR THE BOARD

James H. Freet
Administrative Judge

¹ The appellant has raised the issue of attorney fees. The matter is premature. See 5 CFR § 1201.203(d) (time of filing of attorney fee motions).

APPENDIX B-3



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk of the Board
1615 M Street, N.W.
Washington, D.C. 20419

Phone: 202 653 7200; Fax: 202 653 7130; E-Mail: mspb@comptrol.gov

November 27, 2019

Mr. Henry E. Gossage
9421 Johnson Pl LP NE
Olympia, WA 98516

Re: *Henry E. Gossage v. Office of Personnel Management*
MSPB Docket No. SE-0731-01-0261-1-5

Dear Mr. Gossage:

This is in response to your November 18, 2019 correspondence to the Office of the Clerk of the Board and your November 25, 2019 fax correspondence to the Board's Western Regional Office. These submissions have been construed as a request for reconsideration of the Board's order dated March 24, 2009, in the appeal named above.

As set forth in the letters sent to you by this office on August 3, 2012, January 16, 2015, and April 27, 2018, the Board's March 24, 2009 order included a specific statement that it represents the final decision of the Board in this appeal and also notified you of your further review rights. The Board's regulations do not provide for your request for reconsideration of the Board's final decision. There is, therefore, no further right to review of this appeal by the Board. The Board will not respond to further requests to reconsider this matter.

On November 20, 2019, you also filed a duplicate copy of your November 18, 2019 correspondence by e-appeal with the Board's Western Regional Office in MSPB Docket No. SE-0731-01-0261-1-2. While your November 18, 2019 correspondence refers to SE-0731-01-0261-1-2, this matter was subsequently adjudicated by the Board and the U.S. Court of Appeals for the Federal Circuit and is closed. Specifically, on April 22, 2001, an MSPB administrative judge issued an initial decision dismissing your appeal in SE-0731-01-0261-1-2. On September 27, 2004, on petition for review, the Board issued a decision in SE-0731-01-0261-1-2, indicating that the initial decision became the final decision of the Board, as the Board members could not agree on the disposition. You exercised your further right of review by filing a request for review with the U.S. Court of Appeals for the Federal Circuit. Following the Court's January 25, 2006 decision remanding the matter to the Board, your appeal was dismissed without prejudice in SE-0731-01-0261-1-1, SE-0731-01-0261-1-3, and SE-0731-01-0261-1-4. On July 8, 2008, an MSPB administrative judge issued an initial decision in SE-0731-01-0261-1-5, affirming the action of the Office of Personnel Management. On March 24, 2009, on petition for review, the Board issued a final order in this matter.

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