

No. _____

In the SUPREME COURT OF THE UNITED STATES

HENRY E. GOSSAGE, Petitioner,

v.

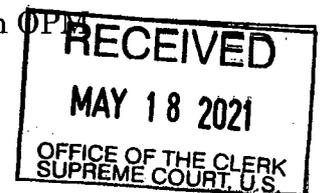
OFFICE OF PERSONNEL MANAGEMENT (OPM) and
MERIT SYSTEMS PROTECTION BOARD (MSPB),
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

AFFADAVIT AND MOTION FOR LEAVE TO PROCEED AS A VETERAN

I, Henry E. Gossage, am the Petitioner in the above-entitled case (USCA 2020-2178, 2020-2194, and 2020-2195), declares that I am a wartime Veteran in support of my motion to proceed as a Veteran, pursuant to Supreme Court Rule 40 and USERRA, respectfully request to proceed in this Court without fees or costs from Federal Circuit Court of Appeals: 2020-2178, 2020-2194, 2020-2195. All of these cases are intertwined with Two separate OPM 5 C.F.R. § 731 et seq. suitability decision (May 16, 2001 and December 27, 2004) in Case 01-904-277. and OPM May 16, 2001, negative suitability determination

Petitioner will show that he was entitled to proceed as a Veteran in this Court without fees or costs as a Veteran. Petitioner under 38 U.S.C. § 4323(h) and Supreme Court Rule 40, exempting from payment of filing fees and costs in OPM



investigation case 01-904-277. The following documents is submitted in support of this motion:

1. DD 214 Honorable Discharge;
2. OSH-00-87-01/S-1 Certificate of Eligibles CPS Veteran;
3. November 30, 2000-Pass Over authorization of preference veteran;
4. May 16, 2001-OPM Negative Suitability Determination, debarment, and employment disqualification;
5. December 27, 2004-OPM VACATED Karen McCue's May 16, 2001, Negative Suitability Determination, reinstating Petitioner's Veteran rights to initial Federal Employment.

Petitioner was denied initial federal employment, as a preference eligible veteran under USERRA. Petitioner's USERRA, VEOA, 5 U.S.C. § 3318, 5 C.F.R. § 300.104 and 5 U.S.C. § 2302 rights were violated in OPM Investigation Case 01-904-277. OPM implemented a separate "suitability" employment, concealment policy and practice under 5 U.S.C. § 2302(b)(13) and 5 C.F.R. § 300.104, from Lead Specialist Kim Truckley's December 27, 2004, Final OPM 5 C.F.R. § 731 et seq. suitability decision, amending/vacating OPM's Karen McCue's May 16, 2001, negative suitability determination. Based on OPM new, material, and Final December 27, 2004, decision, Henry E. Gossage submitted a new USERRA/VEOA appeal to the MSPB, MSPB SE-0731-01-0261-I-2 and Federal Circuit Court of Appeals (2021-1026), in OPM Investigation Case 01-904-277.

For the above reasons, Petitioner respectfully request the Court accept this petition without costs under Supreme Court Rule 40 and/or 38 U.S.C. § 4323(h).

DATED: May 11, 2021

Respectfully Submitted,

/s/ Henry E. Gossage
Henry E. Gossage, Pro se Veteran

APPENDIX A-1

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY E. GOSSAGE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2020-2178

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

HENRY E. GOSSAGE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2020-2194

Petition for review of the Merit Systems Protection
Board in No. SF-0731-13-0252-I-1.

HENRY E. GOSSAGE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2020-2195

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

ON MOTION

PER CURIAM.

ORDER

The Office of Personnel Management (OPM) moves to dismiss the above-captioned petitions for lack of jurisdiction. Henry E. Gossage has not responded.

Mr. Gossage's petitions concern a matter before the Merit Systems Protection Board that has been closed since 2009. He identifies case number SE-0731-01-0261-I-2 in which the Board issued a decision in September 2004 that was subsequently vacated by this court in *Gossage v. Office of Personnel Management*, 163 F. App'x 909 (Fed. Cir. 2006), and remanded for further proceedings. He also identifies No. SE-0731-01-0261-I-5, which was assigned to the same controversy after our remand in which the Board issued its final decision in March 2009. *Gossage v. Office of Pers. Mgmt.*, No. SE-0731-01-0261-I-5, 2009 WL 982584 (M.S.P.B. Mar. 24, 2009). Finally, he identifies SF-0731-13-0252-I-1, which was initially assigned to a submission Mr. Gossage filed with the Board's Western Regional Office in February 2013 and seven days later construed as a motion to reopen SF-0731-01-0261-I-5 and forwarded to the Board. The Board subsequently informed Mr. Gossage

through letters that he had no further right to review of that decision, and this court has explained that those letters were not subject to our review. *Gossage v. Office of Pers. Mgmt.*, No. 2018-1970 (Fed. Cir. Oct. 3, 2018), ECF No. 22.

We agree with OPM that we lack jurisdiction over these petitions. This court previously vacated the Board's September 2004 decision. The Board's subsequent decision on remand in SE-0731-01-0261-I-5 became final upon the Board's March 24, 2009 denial of Mr. Gossage's petition for review. See 5 C.F.R. § 1201.113(b) ("If the Board denies all petitions for review, the initial decision will become final when the Board issues its last decision denying a petition for review."). Mr. Gossage had 60 days to file an appeal from that decision, which he failed to do. See 5 U.S.C. § 7703(b)(1); *Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017). Finally, we have already determined that the letters identified in connection with SF-0731-13-0252-I-1 are not reviewable.

Accordingly,

IT IS ORDERED THAT:

- (1) The motions are granted. The petitions are dismissed.
- (2) Each side shall bear its own costs.
- (3) All other pending motions are denied.

FOR THE COURT

October 20, 2020
Date

/s/ Peter R. Marksteiner

s31

ISSUED AS A MANDATE: October 20, 2020

APPENDIX A-2

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY GOSSAGE, *Petitioner*

v.

OFFICE OF PERSONNEL MANAGEMENT, *Respondent*

2020-2178

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

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

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

PER CURIAM.

ORDER

Henry Gossage filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that issued the order, 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 panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

February 24, 2021

Date

/s/ Peter R. Marksteiner

* Circuit Judge Hughes did not participate.

APPENDIX A-3

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY GOSSAGE, *Petitioner*

v.

OFFICE OF PERSONNEL MANAGEMENT, *Respondent*

2020-2194

Petition for review of the Merit Systems Protection
Board in No. SF-0731-13-0252-I-1.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

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

PER CURIAM.

ORDER

Henry Gossage filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that issued the order, 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 panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

February 24, 2021

Date

/s/ Peter R. Marksteiner

* Circuit Judge Hughes did not participate.

APPENDIX A-4

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY GOSSAGE, *Petitioner*

v.

OFFICE OF PERSONNEL MANAGEMENT, *Respondent*

2020-2195

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

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

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

PER CURIAM.

ORDER

Henry Gossage filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that issued the order, 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 panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

February 24, 2021

Date

/s/ Peter R. Marksteiner

* Circuit Judge Hughes did not participate.

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