



[My Account](#) [File a Pleading](#) [Reload Case](#) [Print](#) [Access Another Case](#) [Tech Support](#) [Save & Exit](#)

ATTENTION: Please do NOT resubmit if you received a confirmation of submission. Processing time can be minutes or hours depending on system workload.

Case View

**LORETTA JEAN ALFORD v. COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND AND SEVERELY DISABLED**

DC-3443-21-0448-I-1

Case Status:Regional Closed

8 documents returned

Tab	Download/View	Doc Info.	Submitted by	Date Issued/Received
<b>Initial Appeal</b>				
8	Download/View	Certificate of Service	MSPB	6/30/2021
7	Download/View	Initial Decision	MSPB	6/30/2021
6	Download/View	Additional Information	Appellant	6/14/2021
5	Download/View	Order to Show Cause - Jurisdiction	MSPB	6/7/2021
4	Download/View	Change of e-Filing Status	Appellant	6/4/2021
3	Download/View	Acknowledgment Order	MSPB	6/4/2021
2	Download/View	Supplemental Documentation	Appellant	6/3/2021
1	Download/View	Initial Appeal	Appellant	5/28/2021

Help Links

[Contract All](#) | [Expand All](#)

[Reopen my Navigation](#) +

[How to access pleadings filed on a case?](#) +

[How to view an Appeal or a Pleading?](#) +

TAB 2  
Action 2

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

LORETTA JEAN ALFORD,  
Appellant,

DOCKET NUMBER  
DC-3443-21-0448-I-1

v.

COMMITTEE FOR PURCHASE  
FROM PEOPLE WHO ARE BLIND  
AND SEVERE HANDICAPED,  
Agency.

DATE: June 7, 2021

**THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT  
THIS APPEAL AND ITS PROCESSING. PLEASE READ THE ENTIRE  
DOCUMENT CAREFULLY.**

There is a question whether this appeal is within the Board's jurisdiction. As a result, the Board might dismiss the appeal for lack of jurisdiction without addressing the merits of the case. This Order provides necessary information concerning the jurisdictional issue and steps the appellant must take to show that the Board should not dismiss the appeal for lack of jurisdiction.

**ORDER TO SHOW CAUSE - JURISDICTION**

On May 28, 2021, the appellant filed the above-captioned appeal with the Board, which appeared to contest her nonselection for the position of Oversight and Compliance Specialist, GS-1801-11, advertised under Job Announcement Number ST-11028236-21-RS. Appeal File (AF), Tab 1. The appellant also submitted additional information in support of her appeal on June 3, 2021. AF, Tab 2. In her initial appeal and supplemental submission, the appellant appeared to allege that her nonselection for the Oversight and Compliance Specialist

A2  
A7

position was in retaliation for protected whistleblowing. *Id.* at 4. Specifically, the appellant asserted that she was not selected because she made protected disclosures to the U.S. House of Representatives Committee on Oversight and Reform on November 30, 2020, and January 28, 2021. *Id.* at 4. Additionally, the appellant's supporting documentation suggests she may be alleging that her nonselection was also based on alleged whistleblowing disclosures she made to the General Services Administration (GSA) Inspector General between 2012 and 2014. *See, e.g.*, AF, Tab 2 at 6.

Jurisdiction

The Board's jurisdiction 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). Thus, it follows the Board does not have jurisdiction over all matters alleged to be unfair or incorrect. *Roberts v. Department of the Army*, 168 F.3d 22, 23-24 (Fed. Cir. 1999).

Generally, the appellant has the burden of establishing the Board's jurisdiction by a preponderance of the evidence. 5 C.F.R. § 1201.56 (b)(2)(i)(A). A preponderance of the evidence is the degree of relevant evidence a reasonable person, considering the record as a whole, would accept as sufficient to find a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q).

The appellant has requested a hearing. An appellant is entitled to a hearing only if she makes nonfrivolous allegations of facts, which, if proven, would establish Board jurisdiction over the appeal. *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1344 (Fed. Cir. 2006) (en banc). A nonfrivolous allegation is a claim of facts which, if proven, could establish a prima facie case that the Board has jurisdiction over the appellant's appeal. Mere pro forma and conclusory allegations are insufficient to satisfy the nonfrivolous pleading

A3

standard. *Lara v. Department of Homeland Security*, 101 M.S.P.R. 190, ¶ 7 (2006); 5 C.F.R. § 1201.4(s)(1)-(3).

Generally, a nonselection for employment is not directly appealable to the Board. *See Sapla v. Department of the Navy*, 118 M.S.P.R. 551, ¶ 8 (2012) (no jurisdiction over a nonselection). Additionally, the Board lacks jurisdiction over alleged prohibited personnel practices in the absence of an otherwise appealable action within the Board's jurisdiction. *See Rosario-Fabregas v. Department of the Army*, 122 M.S.P.R. 468, ¶ 20 (2015); *Pridgen v. Office of Management and Budget*, 117 M.S.P.R. 665, ¶ 7 (2012) (the list of prohibited personnel practices under section 2302(b) are not self-executing and are not an independent grant of jurisdiction). Appealable actions within the Board's jurisdiction include: a removal; a suspension for more than 14 days; a reduction in grade; a reduction in pay; and a furlough of 30 days or less. *See* 5 U.S.C. § 7512(1)-(5). The appellant's challenge to her nonselection thus falls outside of the Board's jurisdiction under chapter 75. *See Morales v. Social Security Administration*, 108 M.S.P.R. 583, ¶ 5 (2008) (the Board lacks jurisdiction over a nonselection under chapter 75).

However, the Board has noted six exceptions to the general rule that an unsuccessful candidate for a civil service job has no right to appeal her nonselection. The first two allow the Board to address the merits of the nonselection as an employment practice or a suitability action.

First, an applicant for employment or competitive promotion in the competitive service who believes that an employment practice applied to him or her by the Office of Personnel Management (OPM) violates a basic requirement in 5 C.F.R. § 300.103<sup>1</sup> is entitled to appeal to the Board under 5 C.F.R.

---

<sup>1</sup> (a) Job analysis. Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:  
(1) The basic duties and responsibilities;

AY  
A.16

§ 300.104(a). The Board has jurisdiction in such a case when two conditions are met: First, the appeal must concern an employment practice that OPM is involved in administering; and second, the appellant must make a nonfrivolous allegation that the employment practice violated one of the "basic requirements" for employment practices set forth in 5 C.F.R. § 300.103. The term "employment practices" includes the development and use of examinations, qualification standards, tests, and other measurement instruments. 5 C.F.R. § 300.101. Although an individual agency action or decision that is not a rule or practice of some kind does not qualify as an employment practice, an agency's

---

(2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and

(3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) Relevance.

(1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice was professionally developed. A minimum educational requirement may not be established except as authorized under section 3308 of title 5, United States Code.

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

(c) Equal employment opportunity and prohibited forms of discrimination. An employment practice must not discriminate on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Employee selection procedures shall meet the standards established by the "Uniform Guidelines on Employee Selection Procedures," where applicable.

AS  
^

misapplication of a valid OPM requirement may constitute an employment practice.

Second, pursuant to Office of Personnel Management regulations at 5 C.F.R. Part 731, the Board has jurisdiction over certain matters involving suitability for employment in federal service positions. A "suitability action" is defined as a cancellation of eligibility, a removal, a cancellation of reinstatement eligibility, and a debarment. 5 C.F.R. § 731.203(a). Nonselection or cancellation of eligibility for a specific position is not a "suitability action" and is not appealable to the Board. 5 C.F.R. § 731.203(b).

If the appellant claims that the Board has jurisdiction over her appeal on one of these two bases, and she makes nonfrivolous allegations of fact that, if proven, could establish the Board's jurisdiction, then she is entitled to a hearing at which she must prove jurisdiction by a preponderance of the evidence.

In addition, there are four circumstances which allow the Board to consider the extent to which the nonselection was due to improper reasons. They are when the unsuccessful candidate claims that the agency's decision was: made in retaliation for her whistleblowing, *see* 5 U.S.C. §§ 2302(a)(2)(A)(i), (ii), 2302(b)(8);<sup>2</sup> made in retaliation for certain protected activities specified in

---

<sup>2</sup> Section 2302(b)(8) prohibits retaliation for any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences any violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences any violation (other than a violation of this section) of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Ab

5 U.S.C. § 2302(b)(9);<sup>3</sup> the product of discrimination based on uniformed service, *see* 38 U.S.C. §§ 4311, 4324; or violative of the candidate's veterans' preference rights, *see* 5 U.S.C. § 3330a(d)(1).

A nonfrivolous allegation suffices to prove jurisdiction on the basis of each of these four exceptions, but the appellant must then prove her claim on the merits by preponderant evidence if he meets his initial burden of proof. 5 C.F.R. §§ 1201.57(a), (b), (c).

Here, the appellant may be alleging reprisal for making protected disclosures or engaging in whistleblowing activity. 5 U.S.C. §§ 2302(b)(8), (b)(9). The Whistleblower Protection Act of 1989 (WPA), Pub. L. No. 101-12, 103 Stat. 16, as amended by the Whistleblower Protection Enhancement Act of 2012 (WPEA), Pub. L. No. 112-199, 126 Stat. 1465, prohibits an agency from taking a personnel action because of a whistleblowing disclosure or activity. The Board has jurisdiction over an individual right of action (IRA) appeal if the appellant has exhausted her administrative remedies before the OSC and makes nonfrivolous allegations that: (1) she made a protected disclosure described under 5 U.S.C. § 2302(b)(8) or engaged in protected activity described under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D), and (2) the disclosure or protected activity was a contributing factor in the agency's decision to take or fail to take a personnel action as defined by 5 U.S.C. § 2302(a). 5 U.S.C. § 1221(a); *Salerno v. Department of the Interior*, 123 M.S.P.R. 230, ¶ 5 (2016); *Yunus v. Department of Veterans Affairs*, 242 F.3d 1367, 1371 (Fed. Cir. 2001).

---

<sup>3</sup> This section prohibits retaliation for the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation with regard to remedying a violation of section (b)(8); testifying for or otherwise lawfully assisting any individual in the exercise of any appeal, complaint, or grievance right; cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or for refusing to obey an order that would require the individual to violate a law, rule, or regulation.

A7  
A7

Section 1214(a)(3), title 5 of the U.S. Code, requires that an employee first seek corrective action from the OSC before filing an IRA appeal with the Board. An appellant raising an IRA claim can establish that she exhausted her remedies before the OSC by showing that she filed a request for corrective action and either: (1) received written notification that the OSC was terminating its investigation into her complaints; or (2) 120 days have passed since the appellant filed her request with the OSC and she has not received written notification from the OSC informing her that it was terminating its investigation into her complaints. 5 U.S.C. § 1214(a)(3); *Garrison v. Department of Defense*, 101 M.S.P.R. 229, ¶ 6, (2006); *Mullins v. Department of Justice*, 57 M.S.P.R. 496, 501 (1993). Exhaustion must be proven by preponderant evidence. *Boechler v. Department of the Interior*, 109 M.S.P.R. 638, ¶ 13 (2008).

To meet the exhaustion requirement, the appellant must provide the OSC a sufficient basis to pursue an investigation which might have led to corrective action. *Briley v. National Archives & Records Administration*, 236 F.3d 1373, 1377 (Fed. Cir. 2001). That is, the appellant must articulate with reasonable clarity and precision before the OSC the basis for her complaint of whistleblowing reprisal. *Id.*; *Coufal v. Department of Justice*, 98 M.S.P.R. 31, 37-38 (2004). Exhaustion is demonstrated through the appellant's initial OSC complaint, evidence the original complaint was amended (including but not limited to OSC's determination letter and other letters from the OSC referencing any amended allegations), and the appellant's written responses to the OSC referencing the amended allegations, not her post hoc characterization of those statements. *Mason v. Department of Homeland Security*, 116 M.S.P.R. 135, ¶ 8 (2011); *Ward v. Merit Systems Protection Board*, 981 F.2d 521, 526 (Fed. Cir. 1992); *Ellison v. Merit Systems Protection Board*, 7 F.3d 1031, 1036 (Fed. Cir. 1993). However, an appellant who has informed the OSC of the basis for her retaliation claims may add further detail to those claims before the Board. *Briley*, 236 F.3d at 1378.

A8

Here, neither the appellant's initial appeal nor her supplemental submission appear to suggest that she has filed a complaint with OSC regarding claims of whistleblower retaliation related to her nonselection. *See* AF, Tabs 1 and 2.

To the extent the appellant also alleged discrimination in her petition for appeal, the statutory prohibited personnel practices set forth at 5 U.S.C. § 2302(b)(1)-(b)(14) are not an independent source of Board jurisdiction. In the absence of jurisdiction over an otherwise appealable action, the Board does not have jurisdiction to adjudicate the appellant's discrimination claims. *See Cruz v. Department of the Navy*, 934 F.2d 1240, 1245-46 (Fed. Cir. 1991) (en banc); *see also Wren v. Department of the Army*, 2 M.S.P.R. 1, 2 (1980) (5 U.S.C. § 2302(b) is not an independent source of Board jurisdiction), *aff'd*, 681 F.2d 867, 871-73 (D.C. Cir. 1982)).

#### ORDER

Accordingly, I **ORDER** the appellant to file evidence and argument that this action is within the Board's jurisdiction. The appellant's submission must be filed by **June 17, 2021**. **If the appellant determines that she is incapable of satisfying her jurisdictional burden and decides to withdraw her appeal, she may file a written request to withdraw her appeal and/or contact me at (703) 756-6250 and so advise me of her decision to withdraw her appeal. If the appellant decides to withdraw her appeal, she is advised that the withdrawal of an appeal is an act of finality and she may not refile her appeal at a later date. If the appellant fails to timely respond to this order, the jurisdictional issue will be decided on the existing written record.**

I **ORDER** the agency to file and serve any response to the appellant's submission so that it is **received on or before June 27, 2021**.

**The deadline for the agency response to this appeal and for both parties to initiate discovery is STAYED until the jurisdictional issue is resolved.**

A9

Unless I notify the parties to the contrary, the record on jurisdiction will close on the due date of the agency's response. No evidence or argument on this issue filed after the close of record will be accepted unless a party shows that it is new and material evidence that was unavailable before the record closed. Notwithstanding the close of the record, however, pursuant to 5 C.F.R. § 1201.59(c), a party must be allowed to respond to new evidence or argument submitted by the other party just before the close of the record. Thus, any rebuttal under this rule addressing new evidence or argument only must be received within 5 days of the other party's filing.

FOR THE BOARD:

/S/

Lindsay Young Harrell  
Administrative Judge

AID  
AID

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Mail      Loretta Jean Alford  
15190 Brickwood Drive #103  
Dale City, VA 22193

Agency Representative

Electronic Mail      Mr. Floyd Allen Phaup, II  
Committee for Purchase from People Who Are Blind and  
Severe Handicaped  
1800 F Street, NW  
Room 2009  
Washington, DC, DC 20405

June 7, 2021

(Date)

/S/

Lindsay Young Harrell  
Administrative Judge

All



## Merit Systems Protection Board

-- Designation of Representative --

Please print or type:

**Appellant's Name:** Loretta Jean Alford  
**Agency Name:** Committee for Purchase from People Who Are Blind and Severe Handicaped  
**Docket Number:** DC-3443-21-0448-1-1

The parties may use this form or a similar document to designate any organization or individual to represent them before the Board. (Appellants representing themselves do not need to submit a designation of representative). The choice of representative must not result in a conflict of interest for the organization or person chosen. Each party must make all arrangements for representation. **The Board does not designate a representative for any party to this appeal.** The representative(s) must be able to proceed promptly. Normally, continuances or extensions of time **will not be granted** if the appellant or agency delays in seeking or arranging representation, if the representative cannot proceed in a timely manner, or for changes in representative(s). Despite the designation of representative, **the parties remain personally responsible for prosecuting the case in a timely manner.**

The purpose of the representative is to assist and counsel the appellant or agency in the preparation, presentation, or defense of the appeal. The representative appears with, or for, the party at hearings, settlement negotiations, or other proceedings before the Board. **The representative has the authority to settle the appeal. Any limitation on the representative's settlement authority must be filed in writing with the Board. By designating a representative, you agree to allow the Board to disclose to your representative all information concerning the appeal.**

**DESIGNATION:** The individual or organization named below is hereby designated to represent the  
Appellant  Agency

in connection with this appeal before the Board. **This individual or organization is to be served copies of all communications concerning this appeal from the Board or from the other party(ies).** The address and telephone number of the representative provided below must be correct and specific to ensure that mail or other communications are received promptly. Any change or cancellation of this designation **must be provided, in writing, to the Board, and to the other party(ies).**

**SERVICE METHOD:** US Mail  FAX  E-Mail

Name of Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ FAX: \_\_\_\_\_ Other(E-Mail, etc.): \_\_\_\_\_

Signature of Appellant or Agency Authorizing Official: \_\_\_\_\_ Date: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**RETURN THIS FORM TO THE BOARD OFFICE WHERE THE APPEAL IS PENDING. PROVIDE A COPY TO THE OTHER PARTY(IES). BOARD REGULATIONS REQUIRE THAT COPIES OF ALL COMMUNICATIONS MUST BE SERVED ON THE OTHER PARTY(IES).**

A12

## PRIVACY ACT STATEMENT

During the course of processing the appeal, which you or your representative has filed, the Merit Systems Protection Board collects personal information that is relevant and necessary to reach a decision in your case. The Merit Systems Protection Board collects this information in order to process appeals under one or more of the following authorities: Title 5 U.S.C. §§ 1302, 1221, 3301, 3302, 4302, 5115, 5338, 5345, 5346, 7151, 7154, 7301, 7501, 7512, 7701, and 8347; as well as Executive Orders 9803, 11222, 11478, 11491, and 11787. Because your appeal is a voluntary action, you are not required to provide any personal information to the Merit Systems Protection Board in connection with your appeal. Conceivably, failure to provide all information essential to reaching a decision in your case could result in the dismissal or denial of your appeal.

**DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD ARE AVAILABLE TO THE PUBLIC UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT AND ARE POSTED TO THE MERIT SYSTEMS PROTECTION BOARD'S PUBLIC WEBSITE. SOME INFORMATION ABOUT THE APPEAL ALSO IS USED IN DEPERSONALIZED FORM FOR STATISTICAL PURPOSES. FINALLY, INFORMATION FROM YOUR APPEAL FILE MAY BE DISCLOSED AS REQUIRED BY LAW UNDER THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT. SEE 5 U.S.C. §§ 552, 552A.**

A13

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD**

**NOTICE**

**SUSPENDED APPEAL PROCEDURE**

Both the appellant and the agency are entitled to have this appeal adjudicated as quickly as possible, usually within 120 days (*see* 5 U.S.C. §7702(a)(1)). In some situations, however, the parties or the judge may conclude that more time than is routinely provided should be granted. Therefore, the judge may issue an order suspending the processing of an appeal for up to 30 days. The judge may grant a second order suspending the processing of an appeal for up to an additional 30 days. No case may be suspended for more than a total of 60 days under these procedures. *See* 5 C.F.R. § 1201.28.

Should the parties contact the administrative judge during the period of suspension for assistance, and if the administrative judge's involvement is likely to be extensive, the judge will notify the parties that it will be necessary to terminate the suspension and return the case to standard processing.

A14

and

## NOTICE

### ALTERNATIVE DISPUTE RESOLUTION

The Merit Systems Protection Board (MSPB), in an effort to provide alternatives to the regulatory adjudication process, offers the parties to the appeals brought to the Board several dispute resolution options. This notice will familiarize you with those possibilities so that you can consider them and discuss them with the Administrative Judge before you decide how to proceed. All options are cost free. Settling your case with the assistance of the professional who will guide the parties through the process offers your best chance of reaching a resolution of the appeal that benefits both parties. Accordingly, the MSPB urges you to be open to the possibility of such a resolution at all times.

### THE MEDIATION APPEALS PROGRAM

The Mediation Appeals Program (MAP) is a voluntary, confidential process in which the parties meet with a trained mediator in a non-litigious, non-adversarial setting. Even more than the other settlement options available, MAP encourages the parties to approach settlement with an open mind and to consider possible resolutions that may not mirror a potential outcome of the adjudication process. Both parties must agree to mediation, and the MSPB must concur that it could be beneficial, given the circumstances of the case and of the parties. Because the appeal will be outside the normal adjudication process while it is in MAP, your agreement to mediate requires that you be ready to proceed to mediation without delay, and that you be willing to finalize any settlement you may reach expeditiously. Cases should normally not spend more than 30 days in the program.

The mediator will meet with the parties and facilitate discussions between them in an effort to find common grounds on which to resolve the appeal. In some circumstances, mediations may be done by video-conference or by telephone, but they are usually done in person. If the efforts to resolve the appeal do not result in a settlement, the mediator will have no input into the adjudication of the appeal. Nonetheless, the parties are likely to return to adjudication with a better understanding of what is important to them and to the other party, which often helps them reach a settlement during the adjudicatory process. A brochure that further explains MAP is enclosed for your review or is available on-line at [www.mspb.gov/map](http://www.mspb.gov/map). If you have other questions specific to the mediation option, in addition to discussing them with the Administrative Judge, you may call the MAP Regional Operations Coordinator, Kiecia Payne, at (202) 653-6772, ext. 1840, or e-mail at [regionaloperations@mspb.gov](mailto:regionaloperations@mspb.gov).

## **THE SETTLEMENT JUDGE PROGRAM**

A Settlement Judge is an Administrative Judge like the one assigned to your appeal, but he or she is assigned specifically and solely to discuss settlement options with the parties. Like the Administrative Judge assigned to your appeal, a Settlement Judge is skilled at evaluating the parties' positions and offering sound advice on the strengths and weaknesses of each party's position. A Settlement Judge plays no part in the processes and procedures through which an appeal goes during the course of the traditional adjudication process, and has no input into the decision if the appeal does not settle. For this reason, some parties feel more open to frank discussion of their appeals and their settlement goals with a Settlement Judge.

Unlike MAP, both parties do not have to request the services of a Settlement Judge. However, there must be a genuine willingness by both parties to explore settlement before one will be appointed. Accordingly, if, after initial settlement discussions between the parties and with the assigned Administrative Judge, a party believes the assignment of a Settlement Judge would be useful, a request may be made to the Administrative Judge or the Regional Director. If the Regional Director or Chief Administrative Judge concurs, a Settlement Judge will be assigned.

## **THE MSPB SETTLEMENT PROGRAM**

The Administrative Judge assigned to decide your appeal will explore the possibility of settlement with the parties to almost all appeals. Thus, you need not make any election if this is the option you prefer. Through the documents filed by the parties and the evidence submitted, the Administrative Judge becomes thoroughly familiar with the case and is in the best position to discuss the strengths and weaknesses of the appeal, as well as to evaluate not just the likelihood of success but also the validity of settlement offers made by the parties, and to suggest proposals for their consideration. Administrative Judges often spend considerable time working with the parties to help them craft mutually beneficial settlements in lieu of adjudication, in which it is more likely that there will be a "winning" and a "losing" side. Any settlement discussions with the Administrative Judge, however, have no effect on the ultimate outcome of the appeal if the case does not settle.

A16

## ELECTRONIC FILING AT THE MSPB

Parties and representatives who register as e-filers can file virtually any type of pleading, including a new appeal, in electronic form. Those who register as e-filers will receive documents issued by the Board, and pleadings filed by other e-filers, in electronic form. Registration and filing are done via the Board's e-Appeal site on the Internet: (<https://e-appeal.mspb.gov>). The Board's electronic filing application includes the following features:

- Both the Board and e-filers will receive electronic documents on the same day they are submitted.
- E-filers need not disclose their e-mail addresses to anyone except the MSPB.
- E-filers can either enter their pleadings online or upload them as electronic files.
- Documents can be submitted in any common electronic format, including word-processing and image formats (electronic files created by scanning paper documents).
- Should they choose to do so, e-filers will be able to submit their pleadings and supporting attachments in the form of declarations made under penalty of perjury. The Board gives greater evidentiary weight to statements in this form than to unsworn statements.
- Regardless of whether it is uploaded or entered online, each pleading will be assembled into a single PDF document, which will include all electronic attachments, and which will contain sequential page numbers. Pagination will enable everyone involved to make specific citations to the record.
- If unable to complete a pleading while online, an e-filer will be able to save his or her work and complete it during a later session.
- E-filers will be provided a confirmation of electronic filing, and will be able to print or download a copy of the assembled pleading as a PDF document.
- Service of pleadings on other e-filers will be automated.
- When you register as an e-filer, MSPB will e-mail you notification when documents are posted to the e-Appeal repository. You will need to download or read the documents from the repository. If your mail service has spam filters, please ensure that mail from @mspb.gov is approved or check your junk folder routinely.
- When an individual is represented, if only the representative is a registered e-filer, the individual will continue to receive documents by regular mail.

For further information about electronic filing, please read the Board's regulation at 5 C.F.R. § 1201.14, or visit the Board's regular website (<http://www.mspb.gov>), or the Board's e-Appeal site (<https://e-appeal.mspb.gov>).

A17

A17

## NOTICE TO SELF-REPRESENTED APPELLANTS

Your petition for appeal indicates that you are currently representing yourself before this office. The Federal Circuit Bar Association (FCBA) may be able to assist you in finding an attorney to represent you, if you are interested in pro bono representation, that is, representation at no cost to you. If you are interested in being represented in your appeal before this office, please click on this link or paste it into the address bar on your browser:

<https://fedcirbar.org/Pro-Bono-Scholarships/Government-Employees-Pro-Bono/Overview-FAQ>

**Please note** that the MSPB neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case. It will be the decision of the individual appellant to contact the FCBA about the possibility of pro bono representation, and it will be the decision of any attorney an appellant is referred to whether they will provide pro bono representation.

A18

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Mail      Loretta Jean Alford  
15190 Brickwood Drive #103  
Dale City, VA 22193

Agency Representative

Electronic Mail      Floyd Allen Phaup, II  
Committee for Purchase from People Who Are Blind and  
Severe Handicaped  
1800 F Street, NW  
Room 2009  
Washington, DC, DC 20405

June 4, 2021  
\_\_\_\_\_  
(Date)

/s/  
\_\_\_\_\_  
Latisha Clinton  
Paralegal Specialist

A19  
A19

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

LORETTA JEAN ALFORD,  
Appellant,

DOCKET NUMBER  
DC-3443-21-0448-I-1

v.

COMMITTEE FOR PURCHASE  
FROM PEOPLE WHO ARE BLIND  
AND SEVERE HANDICAPED,  
Agency.

DATE: June 30, 2021

Loretta Jean Alford, Dale City, Virginia, pro se.

Floyd Allen Phaup, II, Esquire, Washington, DC, D.C., for the agency.

**BEFORE**

Lindsay Young Harrell  
Administrative Judge

**INITIAL DECISION**

On May 28, 2021, the appellant filed the above-captioned appeal in which she appeared to challenge her nonselection for the position of Oversight and Compliance Specialist, GS-1801-11, with the Committee for Purchase From People Who Are Blind and Severely Handicapped (“Committee for Purchase” or “agency”). Appeal File (AF), Tab 1. This decision is based on the written record.<sup>1</sup> For the reasons that follow, the appellant’s appeal is DISMISSED for lack of Board jurisdiction.

---

<sup>1</sup> The appellant requested a hearing. AF, Tab 1 at 2. Nevertheless, she is not entitled to one because she has failed to raise nonfrivolous allegations of fact which, if proven,

A20

## ANALYSIS AND FINDINGS

### Background

On or about February 13, 2021, the appellant submitted her application for the position of Oversight and Compliance Specialist, GS-1801-11, advertised under Job Announcement Number ST-11028236-21-RS. Appeal File (AF), Tab 1 at 4; Tab 6 at 18. On April 21, 2021, USA Staffing<sup>2</sup> contacted the appellant by email to notify her that she had been rated tentatively eligible for this position. AF, Tab 6 at 19. According to the appellant's initial appeal, she was never interviewed for the position. AF, Tab 1 at 4. On May 24, 2021, USA Staffing again emailed the appellant, this time informing her that she had not been selected. AF, Tab 6 at 20.

The appellant filed this appeal on May 28, 2021. AF, Tab 1. In her initial appeal, she appeared to allege that her nonselection for the Oversight and Compliance Specialist position was in retaliation for protected whistleblowing. AF, Tab 1 at 4. Specifically, the appellant asserted that she was not selected because she made protected disclosures to the U.S. House of Representatives Committee on Oversight and Reform on November 30, 2020, and January 28, 2021. *Id.* at 4. The appellant provided copies of these communications in a supplemental submission filed on June 3, 2021. AF, Tab 2. Additionally, the appellant's supporting documentation suggested she may be alleging that her nonselection was also based on alleged whistleblowing disclosures she made to the General Services Administration (GSA) Inspector General between 2012 and 2014, as well as to the Department of the Treasury Inspector General for Tax Administration (TIGTA) Hotline and the U.S. Securities and Exchange

---

could establish Board jurisdiction over this appeal. *See Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1344 (Fed. Cir. 2006) (en banc).

<sup>2</sup> USA Staffing is OPM's automated online talent acquisition system, which is integrated with USAJOBS.

Commission (SEC) Office of Inspector General (OIG) in May 2021. *See, e.g.*, AF, Tab 2 at 6, 165, 256, and 280.

On June 7, 2021, I issued an Order to Show Cause – Jurisdiction, as it appeared the Board may lack jurisdiction over the appellant's claims. AF, Tab 5. My Order notified the appellant of her burden of proof with respect to the issue of Board jurisdiction and directed her to file evidence and argument in support thereof. *See id.* Additionally, my Order explained that a nonselection is generally not appealable to the Board, and also noted that in the absence of an appealable action, the Board lacks jurisdiction over claims of prohibited personnel practices. *See id.* Nevertheless, my Order also discussed several exceptions to this general rule, including but not limited to the elements of employment practices claims and claims of retaliation for making protected disclosures and/or engaging in protected activity (i.e., whistleblower retaliation). *See id.*

On June 14, 2021, the appellant timely responded to my Order. AF, Tab 6. Therein, the appellant asserted the Board has jurisdiction over her appeal as both an employment practice claim and a whistleblower retaliation claim. *Id.* at 4-5. Although my Order to Show Cause afforded the agency an opportunity to respond on the issue of Board jurisdiction by June 27, 2021, the agency filed no response. *See AF, Tab 5 at 5.*

#### Jurisdiction

The Board's jurisdiction 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). Thus, it follows the Board does not have jurisdiction over all matters alleged to be unfair or incorrect. *Roberts v. Department of the Army*, 168 F.3d 22, 23-24 (Fed. Cir. 1999).

A22  
A 22

Generally, the appellant has the burden of establishing the Board's jurisdiction by a preponderance of the evidence. 5 C.F.R. § 1201.56 (b)(2)(i)(A). A preponderance of the evidence is the degree of relevant evidence a reasonable person, considering the record as a whole, would accept as sufficient to find a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q).

The appellant has requested a hearing. An appellant is entitled to a hearing only if she makes nonfrivolous allegations of facts, which, if proven, would establish Board jurisdiction over the appeal. *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1344 (Fed. Cir. 2006) (en banc). A nonfrivolous allegation is a claim of facts which, if proven, could establish a prima facie case that the Board has jurisdiction over the appellant's appeal. Mere pro forma and conclusory allegations are insufficient to satisfy the nonfrivolous pleading standard. *Lara v. Department of Homeland Security*, 101 M.S.P.R. 190, ¶ 7 (2006); 5 C.F.R. § 1201.4(s)(1)-(3).

Generally, a nonselection for employment is not directly appealable to the Board. *See Sapla v. Department of the Navy*, 118 M.S.P.R. 551, ¶ 8 (2012) (no jurisdiction over a nonselection). Additionally, the Board lacks jurisdiction over alleged prohibited personnel practices in the absence of an otherwise appealable action within the Board's jurisdiction. *See Rosario-Fabregas v. Department of the Army*, 122 M.S.P.R. 468, ¶ 20 (2015); *Pridgen v. Office of Management and Budget*, 117 M.S.P.R. 665, ¶ 7 (2012) (the list of prohibited personnel practices under section 2302(b) are not self-executing and are not an independent grant of jurisdiction). Appealable actions within the Board's jurisdiction include: a removal; a suspension for more than 14 days; a reduction in grade; a reduction in pay; and a furlough of 30 days or less. *See 5 U.S.C. § 7512(1)-(5)*. The appellant's challenge to her nonselection thus falls outside of the Board's jurisdiction under chapter 75. *See Morales v. Social Security Administration*, 108 M.S.P.R. 583, ¶ 5 (2008) (the Board lacks jurisdiction over a nonselection

under chapter 75). Here, having carefully reviewed the appellant's initial appeal and further submissions, I find no indication that she has raised an otherwise appealable action in connection with her nonselection. *See* AF, Tabs 1, 2, and 6. Therefore, I find the Board lacks jurisdiction over her general nonselection claim.

#### Employment Practices Claim

As discussed above, the appellant has also alleged that her nonselection was the result of improper employment practices which were applied to her. *See* AF, Tab 6 at 4. An applicant for employment or competitive promotion in the competitive service who believes that an employment practice applied to her by the Office of Personnel Management (OPM) violates a basic requirement in 5 C.F.R. § 300.103<sup>3</sup> is entitled to appeal to the Board under

---

<sup>3</sup> (a) Job analysis. Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:

- (1) The basic duties and responsibilities;
- (2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and
- (3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) Relevance.

(1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice was professionally developed. A minimum educational requirement may not be established except as authorized under section 3308 of title 5, United States Code.

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

(c) Equal employment opportunity and prohibited forms of discrimination. An employment practice must not discriminate on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic

A24  
2011

5 C.F.R. § 300.104(a). The Board has jurisdiction in such a case when two conditions are met. First, the appeal must concern an employment practice that OPM is involved in administering; and second, the appellant must make a nonfrivolous allegation that the employment practice violated one of the "basic requirements" for employment practices set forth in 5 C.F.R. § 300.103. *Meeker v. Merit Systems Protection Board*, 319 F.3d 1368, 1373 (Fed. Cir. 2003). In addition, in order for a particular appellant to have standing to contest an employment practice, the challenged employment practice must have been applied to the appellant as the basis for the adverse hiring decision. *Dow v. General Services Administration*, 590 F.3d 1338, 1342 (Fed. Cir. 2010). The term "employment practices" includes the development and use of examinations, qualification standards, tests, and other measurement instruments. 5 C.F.R. § 300.101. An individual agency action or decision that is not a rule or practice of some kind does not qualify as an employment practice. *Prewitt v. Merit Systems Protection Board*, 133 F.3d 885, 887 (Fed. Cir. 1998); see also *Richardson v. Department of Defense*, 78 M.S.P.R. 58, 61 (1998) (the Board lacks jurisdiction over a claim regarding the rating and handling of a candidate's individual application); *Banks v. Department of Agriculture*, 59 M.S.P.R. 157, 160 (1993) (the appellant's bare allegation that the agency failed to fully consider his education and experience in making a selection did not establish that the agency subjected him to an employment practice that fell within the Board's jurisdiction). Even so, an agency's misapplication of a valid OPM requirement may constitute an employment practice. *Holse v. Department of Agriculture*, 97 M.S.P.R. 624, ¶ 6 (2004) (citing *Prewitt*, 133 F.3d at 887).

---

information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Employee selection procedures shall meet the standards established by the "Uniform Guidelines on Employee Selection Procedures," where applicable.

In support of her claim, the appellant alleged that OPM violated a basic requirement with respect to an employment practice which applied to her. *See generally* AF, Tab 6 at 4-5. First, the appellant alleged that OPM is directly responsible for administering personnel services for the agency, which she asserted lacks its own personnel office. *Id.* at 4. Additionally, she alleged OPM failed to appropriately consider supporting information she submitted with respect to her application for the Oversight and Compliance Specialist position. *Id.* at 4. More specifically, she claimed that OPM did not apply "the basic requirements" in assessing her resume, her performance appraisal, and a proposed termination; she asserted that all of these documents demonstrated her prior employment with the agency in a Compliance Specialist role for a 2-year period. *Id.* at 4-5.

Upon review of her claims, I find the appellant has failed to identify an employment practice, even assuming that OPM does administer the personnel services for the agency such as hiring, as she has alleged. Indeed, the appellant has not asserted that any specific OPM examination, qualification standard, test or measurement instrument resulted in, or was connected to, her nonselection. *See* AF, Tabs 1, 2, and 6. As such, I find the appellant has not established that she has standing to contest a particular employment practice. *Dow*, 590 F.3d at 1342. Moreover, as discussed above, an individual agency action or decision does not qualify as an employment practice, with limited exceptions not applicable here; I find the agency's decision to nonselect the appellant for the position at issue here was such an action or decision. Further, I find that despite the appellant's nominal reference to a "basic requirement," she has failed to identify any of the requirements set forth within 5 C.F.R. § 300.103 as having been violated here. *See Richardson*, 78 M.S.P.R. at 61 ("The appellant has not identified a basic requirement that was missing from the instrument the agency used to evaluate her application. Rather, she is simply contesting the agency's rating and handling of her individual application. Such a challenge is not within

the Board's jurisdiction.""). As is the case here, an allegation of error or procedural irregularity in a particular selection process, even if resulting in an applicant's non-selection, is not appealable to the Board. See *Manno v. Department of Justice*, 85 M.S.P.R. 696, 699-700 (2000) (the agency's error in determining if an individual had provided necessary materials to support application was not an appealable employment practice).

For these reasons, I find the appellant has failed to raise a nonfrivolous allegation of Board jurisdiction with respect to an employment practices claim.

#### Whistleblower Retaliation Claim

Here, the appellant has also reprisal for making protected disclosures or engaging in whistleblowing activity. The Whistleblower Protection Act of 1989 (WPA), Pub. L. No. 101-12, 103 Stat. 16, as amended by the Whistleblower Protection Enhancement Act of 2012 (WPEA), Pub. L. No. 112-199, 126 Stat. 1465, prohibits an agency from taking a personnel action because of a whistleblowing disclosure or activity. The Board has jurisdiction over an individual right of action (IRA) appeal if the appellant has exhausted her administrative remedies before the OSC and makes nonfrivolous allegations that: (1) she made a protected disclosure described under 5 U.S.C. § 2302(b)(8) or engaged in protected activity described under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D), and (2) the disclosure or protected activity was a contributing factor in the agency's decision to take or fail to take a personnel action as defined by 5 U.S.C. § 2302(a). 5 U.S.C. § 1221(a); *Salerno v. Department of the Interior*, 123 M.S.P.R. 230, ¶ 5 (2016); *Yunus v. Department of Veterans Affairs*, 242 F.3d 1367, 1371 (Fed. Cir. 2001).

Section 1214(a)(3), title 5 of the U.S. Code, requires that an employee first seek corrective action from the OSC before filing an IRA appeal with the Board. An appellant raising an IRA claim can establish that she exhausted her remedies before the OSC by showing that she filed a request for corrective action and

either: (1) received written notification that the OSC was terminating its investigation into her complaints; or (2) 120 days have passed since the appellant filed her request with the OSC and she has not received written notification from the OSC informing her that it was terminating its investigation into her complaints. 5 U.S.C. § 1214(a)(3); *Garrison v. Department of Defense*, 101 M.S.P.R. 229, ¶ 6, (2006); *Mullins v. Department of Justice*, 57 M.S.P.R. 496, 501 (1993). Exhaustion must be proven by preponderant evidence. *Boechler v. Department of the Interior*, 109 M.S.P.R. 638, ¶ 13 (2008).

Here, although the appellant has asserted she is raising claims of whistleblower reprisal, she has also asserted that there is no requirement that an individual "take actions or report to the Office of Special Counsel." See AF, Tab 6 at 5. The appellant's belief in this regard is misplaced. Upon review of her submissions, she appears to be alleging that she made protected disclosures which were contributing factors in the agency's decision to nonselect her for the position of Oversight and Compliance Specialist. See, e.g., AF, Tab 6 at 5-7. As discussed above, however, the appellant's nonselection is not directly appealable to the Board. See *Morales*, 108 M.S.P.R. 583, ¶ 5. Thus, in order to establish Board jurisdiction over her appeal as an IRA, she must first demonstrate that she has exhausted her administrative remedies before OSC. See 5 U.S.C. § 7512. The appellant's submissions provide no indication that she has filed a complaint with OSC alleging whistleblower retaliation with respect to her nonselection, or any other action. See AF, Tabs 1, 2, and 6. Additionally, her statement regarding the lack of any need to do so further suggests that she did not, in fact, file a complaint with OSC. See AF, Tab 6 at 5. Therefore, I find the appellant has failed to exhaust her administrative remedies and, as such, the Board lacks jurisdiction over her appeal as an IRA at this time. See *Garrison*, 101 M.S.P.R. 229, ¶ 6.



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

A30

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).

A33

22

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](http://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](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.

A35  
A25

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](http://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](http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx)

CASE 21-2151

SUBJ: Department of Justice Violates my Civil Rights of Due  
Process

This document serves as notice that the Department of Justice is using the Merit Systems Protection Board as a Delay tactic which has caused a Civil Rights Violation of Due Process with my case at the US Courts of Appeals for the Federal Circuit.

I previously requested a trial or give me a non-supervision position back at the agency effective April 2014 with the termination of the executive staff, but it has only been ignored by the Department of Justice. I have submitted documentation to both the courts and representing counsel with my witness information (Zafor Ullah, Compliance Specialist for Committee for Purchase operating as Abilityone Commission) who has yet to be subpoena in my defense nor have I received a trial date due to this violation of due process. This additionally, constitutes a violation of witness tampering (18 US Code 1512).

Definition:

"Witness tampering is the act of attempting to improperly influence, alter or prevent the testimony of witness within criminal or civil proceedings".

I have sent several documents referencing the previous Discrimination Case that has existed since 2014 along with a copy of the Committee for Purchase operating as the Abilityone Commission's FY22 Budget Justification Report indicating that this issue was yet as the agencies representative have not responded or resolved this issue as the agency representative with evidence of the agency lying to Congress about the funding which is a violation of Title 18 US Code 1001 and the violation of The False Statements Accountability Act of 1996. (Section 1001 violations may be penalized by a fine, imprisonment for not more than five years, or both).

The MSPB violated my Civil Rights of Due Process for failing to provide a trial with my witness. It was just like I clearly indicated in my MSPB complaint "Retaliation for filing a whistleblowers Complaint to Congress". As of December 2021, the amount owed to me is as follows:

2014	GS15	\$111,282 as of April 15
2015	GS15	\$158,700
2016	GS15	\$160,300
2017	GS15	\$161,900
2018	GS15	\$164,200
2019	GS15	\$166,500
2020	GS15	\$170,800
2021	GS15	\$172,500

**Total Owed \$1,166,182 plus interest.** For some reason if the agency is shut down (which I am suspecting) permanently I would also like to request punitive damages and reassignment to another federal agency so that I may retire when I get ready.

I certify that I served a copy of the foregoing filing on January 2, 2022 as follows:

Certified Mail: US Courts of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439

Email: Richard Schroeder  
P.O. Box 480  
Ben Franklin Station  
Washington, DC 20044  
Richard.Schroeder@usdoj.gov

Email: Robert E. Kirschman  
c/o Thee Matthews  
US DOJ  
1100 L Street, NW, Room 9503  
Washington, DC 20005  
Thee.Matthews@usdoj.gov

I certify under perjury that the submitted information is true and accurate.

Antita Alford

Signature

January 2, 2022

Date

The UPS Store #6656  
15000 Potomac Town Pl Ste 100  
Woodbridge, VA 22191-6587  
703-878-6575

Terminal.....: POS6656A                      Date.: 1/2/2022  
Employee.....: 176969                         Time.: 01:29 PM

ITEM NAME	QTY	PRICE	TOTAL
Ground Commercial			\$11.22
	1 @	\$11.22	
Tax			\$0.00
NNRB9E0QCAV1H			
Tracking Number - 1Z1EF0250335049557			
Photo Mailer Med			\$2.99
	1 @	\$2.99	
Tax			\$0.18
-----			
Subtotal			\$14.21
Shipping/Other Charges			\$0.00
Total tax			\$0.18
-----			
Total			\$14.39
Cash			\$20.00
Change back (Cash)			(\$5.61)

Items Designated NR are NOT eligible  
for Returns, Refunds or Exchanges.

US Postal Rates Are Subject to Surcharge.



1 2 2 0 1 0 2 6 6 5 6 A 0 1 1 1 0 3

View The UPS Store, Inc.'s privacy notice at  
<https://www.theupsstore.com/privacy-policy>

B4

---

**Violation of Civil Rights**

1 message

---

Loretta Alford <ljalford60@gmail.com>

Sun, Jan 2, 2022 at 2:47 PM

To: "Schroeder, Richard (CIV)" <Richard.Schroeder@usdoj.gov>, Thee.matthews@usdoj.gov

Case 21-2151  
Good Afternoon:

Please see attached notice of the Department of Justice Violating My Civil Rights of Due Process which was also sent to the US Courts of Appeals.

Thanks!

---

 DOJ0001.pdf  
1566K



**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**  
717 MADISON PLACE, N.W.  
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER  
CLERK OF COURT

CLERK'S OFFICE  
202-275-8000

2021-2151- Alford v. MSPB

**NOTICE OF SUBMISSION WITHOUT ORAL ARGUMENT**

Your case will not be scheduled for oral argument. On March 10, 2022, the Clerk's Office will submit your case to a three-judge panel. The panel will then decide your case based on the argument in the briefs and the materials in the record of your case. This procedure is called "submission on briefs."

Oral argument will not be held if the briefs and the record fully explain the facts and the legal arguments in the case, and oral argument would not help the panel decide the case. Fed. R. App. P. 34(a)(2). In argued and in submitted cases, the panel fully considers all arguments raised by the parties, regardless of whether oral argument occurred.

**Before Your Case is Submitted**

You may file two other documents:

**1. Memorandum in Lieu of Oral Argument**

This Memorandum allows you to discuss any items the opposing party raised in its brief. The Memorandum may not exceed five (5) pages and must be hand- or type-written on 8 ½ by 11-inch paper.

The court must receive your Memorandum, should you choose to file one, no later than 02/21/2022.

**2. Motion Requesting Oral Argument**

You may choose to file a motion explaining why oral argument would help the court decide your case. If your motion for oral argument is granted, the argument would be scheduled for hearing on the same date that your case is scheduled to be submitted to the court. The Clerk's Office will notify you if the panel allows argument in your case.

If you choose to file a Motion, please file one signed original motion by 02/21/2022.

Memorandum in Lieu of Oral Argument

Case: 2021-2151 – Alford vs MSPB

I am submitting this documentation in Lieu of Oral Argument for the 3-Judge Panel's review scheduled for March 10, 2022. This document contains 5 pages to include 2 attachments; 1) of the Committee for Purchase FY22 Budget Report and; 2) copy of emails submitted to the Committee from my witness Zafor Ullah dated January 18, 2022.

The Committee for Purchase submitted the FY22 Congressional Budget Justification Report to Congress for funding. On page 14 of the Budget Report the Commission indicates that "The Commission is also involved in a civil complaint against the Agency under the Equal Employment Opportunity Act by a former employee. (That employee is me and this action has been unresolved since 2014). The Commission engages assistance from GSA counsel to represent the Agency in employment litigation matters. The General Counsel coordinates with GSA counsel to prepare declarations and the Agency record in these matters. At this time, the Commission and the plaintiff are discussing settlement"). This action is a false statement. At no time has the GSA Counsel, the Equal Employment Opportunity or the Committee for Purchase ever contacted me for any resolution. The Committee fails to resolve the issue even thou the funds were requested from Congress to do so. (ATTACHMENT A).

In addition, I am submitting an email from my witness to the Commission which specifically mentioned my case with the Federal Circuit. However, I believe that the Courts are denying me my due process and not notifying my witness for any investigation or court hearing and are trying to avoid my witness in testifying in any matter. In the email provided as he explained to the Commission his reason of harassment and death threats that he has received for being a witness in my case. I believe there was prejudice to my case as I requested a trial and my case was sent to a 3-judge panel. (ATTACHMENT B)

In addition, in 2019, I was contacted by John Han Tsai who identifies himself as a treasury agent claiming to be investigating Kimberely Zeich, Deputy Director at the time of the Commission and presently one of the defendants in my present case. May 2021, I became aware that John Han Tsai was not in fact a treasury agent but an attorney for the Department of Commerce therefore, misrepresenting himself making the so-called investigation bogus. I filed a complaint with the Department of Commerce Inspector General office. In further research it was found that John Han Tsai is presently employed with the Security & Exchange Commission (SEC) as an attorney and I filed a complaint with the SEC to their Inspector General's office.

**COMMITTEE FOR PURCHASE FROM PEOPLE  
WHO ARE BLIND OR SEVERELY DISABLED**

**FISCAL YEAR 2022  
CONGRESSIONAL BUDGET JUSTIFICATION**



An independent Federal Agency responsible for administering the  
Javits-Wagner-O'Day Act (41 U.S.C. §§8501-8506) and the AbilityOne Program

*Operating as the U.S. AbilityOne Commission*



Attachment A1

C3

authorized NPA has not met the contract performance requirements. Melwood filed a preliminary injunction in June 2020 to prevent the Commission from issuing an Opportunity Notice to proceed with the competition. The court denied that injunction in July 2020, permitting the Commission to issue the Opportunity Notice. Melwood filed a second protest after the competition pilot was underway. The court reissued the redacted (public) version of its opinion on May 21, 2021.

- A protest was filed against the United States involving the AbilityOne Program, although the case is challenging actions made by the Defense Commissary Agency (DeCA) restating its requirements for stocking Commissaries under contract through the AbilityOne Program. The protest alleges that DeCA has violated the Competition in Contracting Act (CICA) by not competing the new contracts. In all, 10 contracts were scheduled to be awarded to the NPAs already performing the work. The modifications would expand the types of food being stocked, but the NPAs would continue performing the same work at the same locations. DeCA agreed to a voluntary stay pending the outcome of the protest.
- The Commission is also involved in a civil complaint against the Agency under the Equal Employment Opportunity Act by a former employee. The Commission engages assistance from GSA counsel to represent the Agency in employment litigation matters. The General Counsel coordinates with GSA counsel to prepare declarations and the Agency record in these matters. At this time, the Commission and the plaintiff are discussing settlement.
- The General Counsel also manages the Commission's Freedom of Information Act (FOIA) requests. Although there are typically fewer than two dozen requests each year, due to other legal responsibilities, the Commission has a backlog of outstanding FOIA cases, which resulted in litigation against the Commission last year to compel release of documents. The Commission provided the documents pursuant to the FOIA request, withholding those covered by exemptions. Due to continuous demands on the General Counsel's time and that the General Counsel is the only Agency attorney, this situation could generate more litigation due to delays in responding to FOIA requests.

#### Resource Challenges – Enhancing Oversight

The Commission is transforming the Program's policies, procedures and business practices to strengthen performance, evaluation, accountability, oversight and transparency. This process incorporates recommendations from GAO Report 13-457, "Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed" (2013); the mandates of the Consolidated Appropriations Act, 2016; Commission OIG audits and reports; and, as they develop, the recommendations of the Section 898 Panel.

In FY 2020, the Commission began its most extensive update of compliance policies and procedures in a decade. The Commission rescinded its informal Compliance Manual and replaced it with eight modified or new policies addressing specific regulatory requirements related to AbilityOne-participating NPA qualifications, ongoing compliance, regulatory reviews

ATTACHMENT A2

**Zafor Ullah [ZUllah@abilityone.gov]**

---

**From:** Zafor Ullah [ZUllah@abilityone.gov]  
**Sent:** Tuesday, January 18, 2022 7:34 PM  
**To:** Kel Wood; Marlin D. Paschal  
**Cc:** jeffrey.koses@gsa.gov; Chai Feldblum  
**Subject:** RE: OMB Releases New Memorandum Encouraging Federal Agency Cooperation with Inspectors General

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	Kel Wood	Delivered: 1/18/2022 7:34 PM
	Marlin D. Paschal	Delivered: 1/18/2022 7:34 PM
	jeffrey.koses@gsa.gov	
	Chai Feldblum	Delivered: 1/18/2022 7:34 PM

Mr. Wood,

You can send this response to the OMB.

I'm sorry, but this statement is not forthcoming based on my tenure at the Commission the implementation of the Ability one, Office or the Inspector General Office (AIOIG) of 2016.

I was interviewed for the position because of my background with State and Federal Inspector General offices. However, during the interview process, when asked if I would turn a blind eye when improprieties developed and I stated "NO". It was Ms. Amy Jensen who asked the question, then Deputy Director, Compliance. During the time there was an ongoing federal investigation. In which I was the key witness, and cooperating with the Department of Justice (DOJ), I declined the offer, and expressed to Jensen that it is not how the OIG works. See Ms. Jensen refused to cooperate with the same investigation, as she was in the room with the Assistant United States Attorney (AUSA), and Jensen walked out during the interview. In fact paperwork already was being processed for my transfer to the OIG office. I immediately reported the offer to the AUSA sensing the action as a bribe by the Commission. After the offer and my continued cooperation with DOJ, Jensen began to make it a hostile work environment for me (Witness Tampering).

In further, Jensen conspired with Mr. Kermit Jones then Chief of Staff, Eugene Quinn then Deputy Director Compliance and Mr. Speight. General Services Administration, Human Resources (GSAHR), in a Prohibited Personnel Practice (PPP), and all but Jensen ended their tenure.

Subsequently, Jensen was reassigned to Operations. Ms. Jensen then was implicated in another PPP, conspiracy along with then Mike Rodgers, Chief of Staff and GSAHR with another A1 employee. Again those involved ended their tenure except for Jensen.

In another cover up I reported was Mr. Michael T. Mack then Compliance Director, A1, for his part in an intimidation tactic with another NPA. Mack and the NPA were intimidating another NPA in an attempt to steer a contract away from one to another this was also reported to the OIG (Pozzi-Porter, Thaddeus Gotfelty to include John Han (Associate of Gotfelty and Pozzi-Porter and not employed with AI). Because I reported Mack, Mack first attempted to bribe me with cash and promotions, I simply declined the offer. This is when he began with making it a hostile environment for me with harassing emails and visited my residence to stalk me. When I caught Mack stalking me at my residence Mack immediately sped away. Mind you Mack hired as a contractor along with two other contractors hired in a strategic plot to oust me because I was still a witness in two pending federal cases. One of those cases was adjudicated in June of 2019, Memphis Goodwill v. United States, AUSA Office in Tennessee.

1  
ATTACHMENT B1 C5

It was later found that Ms. Earnestine Ballard, Executive Director, A1 was part of the plot. This information was shared with me by the other two contractors hired with Mack. The contractor (LC3 Ms. Kimmie Edwards) was hired by Ms. Ballard. Both Ballard and Edwards are friends. I explained to the two contractors to obtain a Private Investigator License because it's the Virginia State law, since they advise me they were hired to watch me and provide investigative reports. After this was told to the two contractors they both ended their tenure with A1. This information was approved by Ms. Shelly Hammond, Contracting Officer, A1. Mind you this contract was worth \$1.8 Million as records indicate.

In another cover up which I reported was the communication with a foreign government (Bogota, Columbia), which implicated another A1 employee and NPA which was reported to the Commission and OIG.

In a most recent event in the Federal Circuit Court in a pending case to where I am a key witness, I am receiving retaliation, and a hostile work environment. This federal case has been delayed by the Commission because of the defendants in the case. (Witness Tampering).

In further, I recently reported a Federal False Claims Act, against an NPA. This retaliation is coming from Mr. John Konst, Compliance Director, A1, who instructed me to cease contact with this Nonprofit agency (NPA), in an attempt to cover up the violation by accusing of calling the NPA and acting unprofessionally, when actually it was the NPA that contacted me and continues to contact me through social media. The communication was cordial with the NPA as I was returning a voicemail. Konst made a false statement about this NPA's communication. Subsequently, Konst instructed me that Ms. Wakita Wilson is now my supervisor, and will be my contact person for work issues. In further, information collected later, implicates Konst and another A1 employee to include employee of the NPA to cover up The Federal False Claims Act violation, and violations of State of Virginia Law by this NPA and several of its employees.

My question as to the integrity of the A1OIG begins with several reports to Ms. Stefania Pozzi-Porter, Acting IG), which created chaos when reported. In addition conversation Chairman Koses, and that of Mr. Steven Burke Investigator, A1OIG, after a short conversation with Burke he informed me he reports to Pozzi-Porter. Therefore, the problem in the A1OIG exists.

The Commission cannot convince me that they, nor the OIG are no longer compromised, to include the several attempts on my life for reporting improprieties/criminal activity throughout my tenure here. I have been in law enforcement for over 38 years. Since day one, when DOJ suggested witness protection I declined. Remember, I only speak facts. No one can protect me, but me.

Zafar Ullah  
Senior Inspector  
Office of Oversight and Compliance  
U.S. AbilityOne Commission  
1401 S. Clark Street  
Suite 715  
Arlington, VA 22202  
703-899-2906 cell  
[zullah@abilityone.gov](mailto:zullah@abilityone.gov)



This message contains information that may be privileged or confidential and is the property of the U.S. AbilityOne Commission, an agency of the Federal Government. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized to read, print, retain, copy, disseminate, distribute, or use this message or any part thereof. If you receive this message in error, please notify the sender immediately and delete all copies of this message.

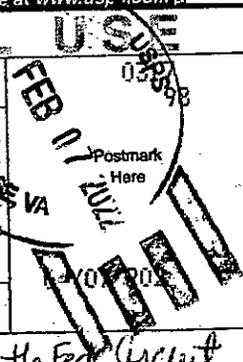
2  
ATTACHMENT B2 C6

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

Washington DC 20439

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.36
Total Postage and Fees	\$5.11



Sent To: *US Courts of Appeals for the Fed Circuit*  
 Street and Apt. No., or P.O. Box No.: *717 Madison Place, NW*  
 City, State, ZIP+4: *Washington, DC 20439*

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Total	\$5.11
Grand Total	\$5.11
Debit Card Remitted	\$5.11
Card Name: MasterCard	
Account #: XXXXXXXXXXXX6466	
Approval #	
Transaction #: 472	
Receipt #: 028365	
Debit Card Purchase: \$5.11	
AID: A0000000042203	Chip
AL: DEBIT	
PIN: Verified	DEBIT

*Delivered  
 Accepted  
 2-7-22  
 at 13:06pm*

\*\*\*\*\*  
 USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.  
 \*\*\*\*\*

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit [www.usps.com](http://www.usps.com) USPS Tracking or call 1-800-222-1811.

Preview your Mail  
 Track your Packages  
 Sign up for FREE @  
<https://informedelivery.usps.com>

All sales final on stamps and postage. Refunds for guaranteed services only. Thank you for your business.

Tell us about your experience. Go to: <https://postalexperience.com/Pos> or scan this code with your mobile device.



**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**FED. CIR. R. 15(c) STATEMENT CONCERNING DISCRIMINATION**

Case Number: DC-3443-21-0448-I-1

Short Case Caption: Loretta Atford vs. Committee for Purchase from  
people who are blind or disabled

Name of Petitioner: Loretta Atford

**Purpose:** This form is to help determine the proper forum for judicial review of a decision of the Merit Systems Protection Board (MSPB) or an Arbitrator, and in particular, those cases in which the federal employee has attributed the adverse employment action, in whole or in part, to bias based on race, color, religion, sex, age, national origin, or handicapping condition, in violation of federal antidiscrimination laws.

This court, while empowered to review MSPB and Arbitrator decisions dealing solely with civil-service claims, lacks authority to decide matters in which claims arising under federal discrimination laws have been asserted and not abandoned. Rather, the proper forum for judicial review of such matters is a federal district court. This form will assist the court in determining whether it needs to transfer a matter to a district court.

**Instructions:** Complete Section A. Complete Sections B and C only as directed by your answer to Section A.

**Section A**

Before the MSPB or the Arbitrator, did you argue that the adverse employment action (1) was attributable to discrimination on the basis of race, color, religion, sex, age, national origin, or handicapping condition or (2) was retaliation for pursuing Equal Employment Opportunity activity?

Yes (complete Sections B and C)

No (ignore Sections B and C)

**Section B**

Complete this section only if you answered "Yes" to the question in Section A.  
If you answered "No" to the question in Section A, skip this section.

1. Identify the discrimination claim(s) you raised before the MSPB or Arbitrator.

My claim was retaliation for submitting a whistleblower's complaint to Congress (Government Oversight Committee)

2. Have you filed a discrimination case in a United States district court from the MSPB's or Arbitrator's decision?

Yes  No

If yes, please identify the case name(s) and number(s) and the status of the case(s) in the box below.

3. Have you filed a discrimination case with the Equal Employment Opportunity Commission from the MSPB's or Arbitrator's decision?

Yes  No

If yes, please identify the case name(s) and number(s) and the status of the case(s) in the box below.

**Section C**

Complete this section only if you answered "Yes" to the question in Section A.

If you answered "No" to the question in Section A, skip this section.

Check only one of the boxes below.

- Although I did claim that I was discriminated against before the MPSB or the Arbitrator, I wish to abandon those discrimination claims and only pursue civil-service claims in the Federal Circuit rather than pursuing discrimination claims and civil-service claims in district court. I understand that this means I will not be able to raise the discrimination claims at any later point.
- I did claim that I was discriminated against before the MPSB or the Arbitrator and I do not wish to abandon my discrimination claims.

**CERTIFICATION**

I certify the above information and any attached sheets (as necessary) are accurate and complete to the best of my knowledge.

Date: July 8, 2021

Signature: Loretta Alford

Name: Loretta Alford

 CID

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**INFORMAL BRIEF OF PETITIONER/APPELLANT**

Case Number: DC-3443-21-0448-I-7

Short Case Caption: Loretta Alford vs. Committee for purchase from People  
who are Blind or disabled

Name of Petitioner: Loretta Alford

**Instructions:** Read the Guide for Unrepresented Parties before completing this form. Answer the questions as best as you can. Attach additional pages as needed to answer the questions. This form and continuation pages may not exceed 30 pages.

Attach a copy of the initial and final decision/order of the Merit Systems Protection Board or arbitrator. You may also attach other record material as an appendix. Any attached material should be referenced in answer to the below questions. Please redact (erase, cover, or otherwise make unreadable) social security numbers or comparable private personal identifiers that appear in any attachments you submit.

1. Have you ever had another case before this court?  Yes  No
- In a United States district court?  Yes  No
- Before the Equal Employment Opportunity Commission?  Yes  No

If yes, identify the title and number of each case.

Agency Case No. GSA-14-AID-3  
EEBC Case No. 570-2015-00364X

2. Did the MSPB or arbitrator incorrectly decide or fail to take into account any facts?  Yes  No

If yes, what facts?

EEO process was based on conflicts of Interest. The Committee for purchase made no good faith effort to resolve the issue, and failed to provide an investigation ~~even~~ even thou I had a witness. Committee for purchase General Counsel received <sup>both EEO</sup> appeal but do not Act.

3. Did the MSPB or arbitrator apply the wrong law?  Yes  No

If yes, what law should be applied?

All EEO laws and regulations were violated with NO resolutions. This constituted a violation of my civil rights of due process. Discrimination was in fact Violation of the American with Disabilities Act (ADA violation)

4. Did the MSPB or arbitrator fail to consider important grounds for relief?

Yes  No

If yes, what grounds?

EEO case has been ignored since 2014. I recently submitting an inquiry to my Congressman, AS to why this EEO issue has not been resolved.

5. Are there other reasons why the MSPB's or arbitrator's decision was wrong?

Yes  No

If yes, what reasons?

There was never an investigation and no one ever contacted my witness Zafar Ullah who is still employed at the Committee for Purchase, as a Compliance Specialist.

6. What action do you want this court to take in this case?

1) I'm requesting that the Executive STAFF be terminated and receive a letter for a claim for money owed for leave that was actually for a laptop that was returned, like they did me;  
2) Requesting equal pay as a GS15 non-supervisory position retroactive April 24, 2014 and reassigned back to the agency with full benefits -

Date: July 8, 2021

Signature: Loretta Alford

Name: Loretta Alford



Loretta Alford &lt;ljalford60@gmail.com&gt;

**Case 21-2151**

1 message

Loretta Alford &lt;ljalford60@gmail.com&gt;

Thu, Nov 18, 2021 at 2:03 PM

To: "Schroeder, Richard (CIV)" &lt;Richard.Schroeder@usdoj.gov&gt;, Thee.matthews@usdoj.gov

Good Afternoon:

Please see attached FY22 Budget Justification Report for the Committee for Purchase operating as the Abilityone Commission. A copy has already been sent to the US Courts of the Appeals for the Federal Circuit.

This Justification report indicates that on page 14:

-The Commission is also involved in a civil complaint against the Agency under the Equal Opportunity Act by a former employee. The Commission engages assistance from GSA counsel to represent the Agency in employment litigation matters. The General Counselor coordinates with GSA counsel to prepare declarations and the Agency record in these matters. At this time, the Commission and the plaintiff are discussing settlement."

- 1) It has already been established in my EEO case against the Committee for Purchase operating as the Abilityone Commission that the GSA's involvement established a conflict of interest; and
- 2) There has never been any discussions of settlement by anyone to include the GSA or the Committee for Purchase operating as the Abilityone Commission nor the Equal Employment Opportunity at anytime. This information is false and constitutes a violation of Section 1001 of Title 18 of the United States Code, "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations is considered perjury and a person can face up to five years in prison.

Therefore, I am requesting a status from the Department of Justice regarding this settlement that has not occurred.

Thank You in Advance!

 **fy22 budget justification report to congress by abilityone.pdf**  
8040K

C14

CASE 21-2151

SUBJ:

RESPONSE FROM CONGRESSMAN GERRY CONNOLLY'S OFFICE

FOLLOW-UP FROM EMAIL SUBMITTED TO US COURTS OF APPEALS DATED  
NOVEMBER 18, 2021

C15

I certify that I served a copy of the foregoing filing on December 15, 2021 as follows:

Certified Mail: US Courts of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439

Email: Richard Schroeder  
P.O. Box 480  
Ben Franklin Station  
Washington, DC 20044  
Richard.Schroeder@usdoj.gov

Email: Robert E. Kirschman  
c/o Thee Matthews  
US DOJ  
1100 L Street, NW, Room 9503  
Washington, DC 20005  
Thee.Matthews@USDOJ.GOV

I certify under penalty of perjury that the submitted information is true and accurate.

Yvette Alford  
Signature

12-16-21  
Date

C14



Loretta Alford <alfordloretta27@gmail.com>

---

## Congressional Inquiry

4 messages

---

**Dubuisson, Marlon** <Marlon.Dubuisson@mail.house.gov>  
To: "Alfordloretta27@gmail.com" <Alfordloretta27@gmail.com>

Mon, Jul 19, 2021 at 10:38 AM

Good Morning Ms. Alford,

I have sent your inquiry regarding your EEO claim in and will let you know when I hear back with an update. Thank you.

Best,

**Marlon W. Dubuisson**

District Director  
Office of Congressman Gerald E. Connolly, VA-11  
FX office: (703) 256-3071  
PW office: (571) 408-4407

Mobile: (202) 860-6075

---

**Loretta Alford** <alfordloretta27@gmail.com>  
To: "Dubuisson, Marlon" <Marlon.Dubuisson@mail.house.gov>

Mon, Jul 19, 2021 at 6:48 PM

Hello

Thank you for responding!

[Quoted text hidden]

---

**Dubuisson, Marlon** <Marlon.Dubuisson@mail.house.gov>  
To: Loretta Alford <alfordloretta27@gmail.com>

Wed, Dec 15, 2021 at 10:42 AM

Hi Ms. Alford,

Hope you're doing well. After a few months of no response, I finally received one from GSA. They stated that your case is still under review, but, they should have this finalized by early January.

Best,

**Marlon W. Dubuisson**

District Director  
Office of Congressman Gerald E. Connolly, VA-11  
FX office: (703) 256-3071  
PW office: (571) 408-4407

Mobile: (202) 860-6075

C17

[Quoted text hidden]

**Loretta Alford** <alfordloretta27@gmail.com>  
to: "Dubuisson, Marlon" <Marlon.Dubuisson@mail.house.gov>

Thu, Dec 16, 2021 at 11:40 AM

Hello:

Thank you for responding. It has already been indicated in the Committee for Purchase from People Who Are Blind or Severely Disabled operating as the Abilityone Commission's FY 22 Budget Justification to Congress page 14 that "AT this time, the Commission and the plaintiff are discussing settlement". At no time has anyone contacted me regarding the previous EEO claim that was originally filed in 2014. Again, the Committee for Purchase operating as the Abilityone continues to lie to Congress to get funding.

The GSA has had 7 years to review this eeo claim. So what is the General Services Administration reviewing. This report was written on May 28, 2021. Your office is saying one thing and the budget justification report is saying something totally the opposite.

Please advise.

Thanks!

[Quoted text hidden]

---

 **abilityone fy 22 budget justification.pdf**  
8040K

C18

Compose

Inbox 2,676

Starred

Snoozed

Sent

Drafts 19

More

Meet

New meeting

Join a meeting

Hangouts

L Loretta +

No recent chats  
Start a new one

### Case 21-2151



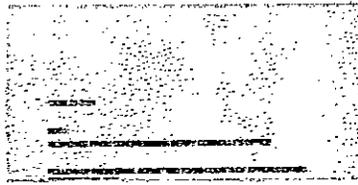
**Loretta Alford** <ljalford60@gmail.com>

to Richard, Thee.matthews

Good Afternoon:

Please see attached response from Congressman Gerry Connolly's Offi

Thanks!



📎 scan0001.pdf

Reply

Reply all

Forward

**U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**OFFICIAL USE**

Certified Mail Fee	\$0.00
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.78
Total Postage and Fees	\$0.53

Postmark  
Here

12/17/2021

Sent to US Courts of Appeals for the Federal Circuit  
 Street and Apt. No., or PO Box No. 117 Madison Place, NW  
 City, State, ZIP+4® Washington, DC 20439

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

*Delivered  
12/30 at 6:11*



PRINCE WILLIAM  
3360 POST OFFICE RD  
WOODBRIDGE, VA 22193-9996  
(800)275-8777

12/17/2021 01:30 PM

Product	Qty	Unit Price	Price
First-Class Mail® Letter	1		\$0.78
Washington, DC 20439 Weight: 0 lb 1.10 oz Estimated Delivery Date Mon 12/20/2021			
Certified Mail®			\$3.75
Tracking #:			70212720000000756986
<b>Total</b>			<b>\$4.53</b>
<b>Grand Total:</b>			<b>\$4.53</b>
Cash			\$5.00
Change			-\$0.47

\*\*\*\*\*  
 USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.  
 \*\*\*\*\*

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit [www.usps.com](http://www.usps.com) USPS Tracking or call 1-800-222-1811.

Preview your Mail  
Track your Packages

*c 20*

21-2151

Loretta Jean Alford  
15190 Brickwood Drive  
#103  
Dale City, VA 22193

DI

NOTE: This disposition is nonprecedential.

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

---

**LORETTA JEAN ALFORD,**  
*Petitioner*

v.

**MERIT SYSTEMS PROTECTION BOARD,**  
*Respondent*

---

2021-2151

---

Petition for review of the Merit Systems Protection Board in No. DC-3443-21-0448-I-1.

---

Decided: March 11, 2022

---

LORETTA JEAN ALFORD, Dale City, VA, pro se.

ELIZABETH WARD FLETCHER, 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, SCHALL, and TARANTO, *Circuit Judges*.

## PER CURIAM.

Loretta Jean Alford petitions for review of a final decision of the Merit Systems Protection Board ("MSPB" or "Board"). The Board dismissed Ms. Alford's appeal of her non-selection for a position with the Committee for Purchase from People who are Blind and Severely Handicapped ("AbilityOne Commission") for lack of jurisdiction. *We affirm.*

## BACKGROUND

In February 2021, Ms. Alford applied for the position of Oversight and Compliance Specialist with the AbilityOne Commission. Ms. Alford had previously worked in the position before being removed for misconduct in July 2014. Although Ms. Alford initially received an automated response notifying her that she was "tentatively eligible" for the position, she was never selected for an interview. S.A. 2.<sup>1</sup> In May 2021, she was advised that she had not been selected for the position.

Ms. Alford appealed her non-selection to the MSPB, arguing that it had jurisdiction over her appeal because her non-selection was an act of whistleblower reprisal for various disclosures Ms. Alford had made to the U.S. House of Representatives Committee on Oversight and Reform and other government agencies between 2012 and May 2021. Ms. Alford also asserted the MSPB had jurisdiction over her appeal as an employment practices claim. In an initial decision issued on June 30, 2021, an Administrative Judge ("AJ") dismissed Ms. Alford's appeal for lack of jurisdiction.

With respect to Ms. Alford's employment practices claim, the AJ found that Ms. Alford had "not asserted that

---

<sup>1</sup> References to the Supplemental Appendix ("S.A.") are to the appendix filed with the MSPB's Informal Brief, ECF No. 18.

any specific [Office of Personnel Management ("OPM")] examination, qualification standard, test or measurement instrument resulted in, or was connected to, her nonselection," nor had she otherwise identified any "basic requirement" that was missing from a standard that OPM had used in determining not to select her. S.A. 7. Regarding her whistleblower reprisal claim, the AJ explained that the Board could exercise jurisdiction over that claim only if Ms. Alford had exhausted her administrative remedies before the Office of Special Council ("OSC"). See S.A. 8; 5 U.S.C. § 1214(a)(3). The AJ concluded that Ms. Alford had "provide[d] no indication that she ha[d] filed a complaint with OSC alleging whistleblower retaliation with respect to her nonselection, or any other action." S.A. 9.

Because neither party filed a petition for review with the full Board, the AJ's initial decision became the final decision of the MSPB on August 4, 2021. Ms. Alford petitions for review to this court. We have jurisdiction to review a final Board decision pursuant to 28 U.S.C. § 1295(a)(9).

#### DISCUSSION

Whether the MSPB has jurisdiction over an appeal is a question of law that we review de novo. See *Bryant v. Merit Sys. Prot. Bd.*, 878 F.3d 1320, 1325 (Fed. Cir. 2017). The MSPB may exercise jurisdiction over administrative appeals only when authorized by a "law, rule, or regulation." 5 U.S.C. § 7701(a). We agree with the AJ that Ms. Alford has failed to establish that the Board has jurisdiction over her appeal.

Ms. Alford argues that her non-selection for employment by OPM was the result of improper "employment practices." We have held that "an unsuccessful candidate for a federal civil service position generally has no right to appeal his or her non-selection to the [B]oard." *Ricci v. Merit Sys. Prot. Bd.*, 953 F.3d 753, 757 (Fed. Cir. 2020). An exception to that rule exists when an applicant believes that OPM applied an improper "employment practice."

*Prewitt v. Merit Sys. Prot. Bd.*, 133 F.3d 885, 887 (Fed. Cir. 1998); 5 C.F.R. § 300.104(a). An employment practice is defined by regulation as any practice that affects "the recruitment, measurement, ranking, and selection of individuals for initial appointment and competitive promotion in the competitive service." 5 C.F.R. § 300.101. Although "employment practice" is . . . construed broadly," it does not encompass "an individual agency action or decision that is not made pursuant to a rule or practice," such as an irregularity in the selection process. *Prewitt*, 133 F.3d at 887.

Here, Ms. Alford has not alleged any improper employment practice that OPM allegedly applied to her application. Although her appeal to the Board cited to basic requirements for federal employment practices, see 5 C.F.R. § 300.103, she failed to identify which of the basic requirements OPM allegedly violated by not selecting her for employment.

Ms. Alford's whistleblower reprisal argument is similarly flawed. The Board has jurisdiction over an individual-right-of-action appeal under the Whistleblower Protection Act, 5 U.S.C. § 1221, only "if the appellant has exhausted her administrative remedies before the OSC." *Hessami v. Merit Sys. Prot. Bd.*, 979 F.3d 1362, 1367 (Fed. Cir. 2020) (citations omitted). An appellant may establish that she exhausted administrative remedies by showing that she filed a request for corrective action with OSC and that OSC has either notified her that it has terminated the investigation into her request or that 120 days have passed without notice from OSC of termination of its investigation. 5 U.S.C. § 1214(a)(3)(A)(i), (B). Here, Ms. Alford has made no showing that she filed a request for corrective action with OSC, much less that she has satisfied the requirements for administrative exhaustion.

We therefore conclude that the AJ's dismissal of Ms. Alford's appeal for lack of jurisdiction was proper. We have

considered Ms. Alford's other arguments, but they are not relevant to the issue of jurisdiction.

**AFFIRMED**

**COSTS**

No costs.

DL

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

---

**LORETTA JEAN ALFORD,**  
*Petitioner*

v.

**MERIT SYSTEMS PROTECTION BOARD,**  
*Respondent*

---

2021-2151

---

Petition for review of the Merit Systems Protection  
Board in No. DC-3443-21-0448-I-1.

---

**JUDGMENT**

---

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

**AFFIRMED**

FOR THE COURT

March 11, 2022  
Date

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



**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

717 MADISON PLACE, N.W.  
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER  
CLERK OF COURT

CLERK'S OFFICE  
202-275-8000

**Information Sheet**

**Filing a Petition for a Writ of Certiorari**

There is no automatic right of appeal to the Supreme Court of the United States from judgments of the Federal Circuit. Instead, a party must file a petition for a writ of certiorari which the Supreme Court will grant only when there are compelling reasons. *See* Supreme Court Rule 10.

**Time.** The petition must be filed in the Supreme Court of the United States within 90 days of the entry of judgment in this Court or within 90 days of the denial of a timely petition for rehearing. The judgment is entered on the day the Federal Circuit issues a final decision in your case. The time does not run from the issuance of the mandate. *See* Supreme Court Rule 13.

**Fees.** Either the \$300 docketing fee or a motion for leave to proceed in forma pauperis with an affidavit in support thereof must accompany the petition. *See* Supreme Court Rules 38 and 39.

**Authorized Filer.** The petition must be filed by a member of the bar of the Supreme Court of the United States or by the petitioner as a self-represented individual.

**Format of a Petition.** The Supreme Court's Rules are very specific about the content and formatting of petitions. *See* Supreme Court Rules 14, 33, 34. Additional information is available at [https://www.supremecourt.gov/filingandrules/rules\\_guidance.aspx](https://www.supremecourt.gov/filingandrules/rules_guidance.aspx).

**Number of Copies.** Forty copies of a petition must be filed unless the petitioner is proceeding in forma pauperis, in which case an original and ten copies of both the petition for writ of certiorari and the motion for leave to proceed in forma pauperis must be filed. *See* Supreme Court Rule 12.

**Filing.** Petitions are filed in paper at *Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543.*

Effective November 13, 2017, electronic filing is also required for filings submitted by parties represented by counsel. *See* Supreme Court Rule 29.7. **Additional information about electronic filing at the Supreme Court is available at** <https://www.supremecourt.gov/filingandrules/electronicfiling.aspx>.

No documents are filed at the Federal Circuit and the Federal Circuit provides no information to the Supreme Court unless the Supreme Court asks for the information.



**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

717 MADISON PLACE, N.W.  
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER  
CLERK OF COURT

CLERK'S OFFICE  
202-275-8000

**Information Sheet**

**Petitions for Rehearing and Petitions for Hearing and Rehearing En Banc**

**1. When is a petition for rehearing appropriate?**

The Federal Circuit grants few petitions for rehearing each year. These petitions for rehearing are rarely successful because they typically fail to articulate sufficient grounds upon which to grant them. Of note, petitions for rehearing should not be used to reargue issues previously presented that were not accepted by the merits panel during initial consideration of the appeal. This is especially so when the court has entered a judgment of affirmance without opinion under Fed. Cir. R. 36. Such dispositions are entered if the court determines the judgment of the trial court is based on findings that are not clearly erroneous, the evidence supporting the jury verdict is sufficient, the record supports the trial court's ruling, the decision of the administrative agency warrants affirmance under the appropriate standard of review, or the judgment or decision is without an error of law.

**2. When is a petition for hearing/rehearing en banc appropriate?**

En banc consideration is rare. Each three-judge merits panel is charged with deciding individual appeals under existing Federal Circuit law as established in precedential opinions. Because each merits panel may enter precedential opinions, a party seeking en banc consideration must typically show that either the merits panel has (1) failed to follow existing decisions of the U.S. Supreme Court or Federal Circuit precedent or (2) followed Federal Circuit precedent that the petitioning party now seeks to have overruled by the court en banc. Federal Circuit Internal Operating Procedure #13 identifies several reasons when the Federal Circuit may opt to hear a matter en banc.

**3. Is it necessary to file either of these petitions before filing a petition for a writ certiorari in the U.S. Supreme Court?**

No. A petition for a writ of certiorari may be filed once the court has issued a final judgment in a case.

**For additional information and filing requirements, please refer to Fed. Cir. R. 40 (Petitions for Rehearing) and Fed. Cir. R. 35 (Petitions for Hearing or Rehearing En Banc).**



# MERIT SYSTEMS PROTECTION BOARD

## Appeal Form--Appellant and Agency Information

Please type or print legibly.

OMB No. 3124-0009

1. Name (last, first, middle initial)

Alford, Loretta, J.

2. Present Address (number and street, city, state, and zip code)

Address: 15190 Brickwood Dr., #103

City, State, Zip Code: Woodbridge, Virginia, 22193, United States of America

3. Telephone numbers (include area code) and E-Mail Address

You must notify the Board in writing of any change in your telephone number(s) or e-mail address while your appeal is pending.

Home:

Work:

Fax:

Cell: (703) 867-0411

E-mail Address: ljalford60@gmail.com

Other Phone Type: Mobile

4. Do you wish to designate an individual or organization to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.)

Yes

No

5. Name, address, and telephone number of the agency that took the action or made the decisions you are appealing (include bureau or division, street address, city, State and Zip code)

Agency Name: COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND and SEVERE

Bureau: COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND and SEVERE

Address: 1401 S. Clark Street

City, State, Zip code: Arlington, Virginia, 22193, United States of America

Agency Phone: 703-603-2100/703-328-2909

6. Your Federal employment status at the time of the decision or action you are appealing:

- Temporary     Permanent     Applicant
- Term     Retired     Seasonal
- None

7. Type of appointment (if applicable):

NOT APPLICABLE

8. Your occupational series, position title, grade, and duty station at the time of the decision or action you are appealing (if applicable):

NOT APPLICABLE

9. Are you entitled to veteran's preference? See 5 U.S.C. 2108.

Yes

No

10. Length of Government Service (if applicable):

12 Years    Months

11. Were you serving a probationary, trial, or initial service period at the time of the action or decision you are appealing?

EI

NOT APPLICABLE



# MERIT SYSTEMS PROTECTION BOARD

## Appeal Form--Appellant and Agency Information

Please type or print legibly.

**HEARING:** You may have a right to a hearing before an administrative judge. If you elect not to have a hearing, the administrative judge will make a decision on the basis of the submissions of the parties. Do you want a hearing?

12. Do you want a hearing?  Yes  No

**E-Filing:** Registration as an e-filer enables you to file any or all of your pleadings with the Board in electronic form. Registration also means you consent to accept service of all pleadings filed by other registered e-filers and all documents issued by the Board in electronic form. You will receive these as PDF documents at the e-mail address you provided the Board. If registered as an e-filer, you may file any pleading, or portion of a pleading, by non-electronic means. You can withdraw your registration as an e-filer at any time.

13. Do you wish to register as an E-Filer in this appeal?

I elect to E-File  I decline to E-File

14. I certify that all of the statements made in this form and all attached forms are true, complete, and correct to the best of my knowledge and belief.

Loretta Jean Alford, Appellant

Date:

E2

Appeal Number: 202102269

Submission Date: 5/28/2021 4:17:20 PM

MSPB Form 185-1, Page 2 (5/13/2011)  
5 CFR Parts 1201, 1208, and 1209

## e-Appeal Attachment Transmittal

**Appeal Number:** 202102269  
**Appellant Name:** Ms Loretta Jean Alford  
**Agency Name:** COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND and SEVERE HANDICAPED

Please check the box for each document included with this transmittal.

<input type="checkbox"/>	Name of Attachment	Attachment Processing Status	File Name/Delivery Method
<input checked="" type="checkbox"/>	Drafted Appeal File	Upload with e-Appeal	mspb 2021 new complaint.pdf

2 copies must be submitted of all documents submitted in hardcopy.

Send documents to be submitted in paper form to:

Washington DC Regional Office  
1901 S. Bell Street, Suite 950  
Arlington, Virginia 22202  
United States of America

Phone: (703) 756-6250

Fax: (703) 756-7112

E3

**STATEMENT TO THE MERIT SYTEMS PROTECTION AGENCY BOARD**

**MSPB CLAIM#: 202102269**

Loretta Alford vs Committee for Purchase

I applied for the position of Compliance Specialist at the Committee for Purchase on February 13, 2021 and was referred for this position. At no time did I receive an interview on this position. I then telephoned an employee at the Committee for Purchase who is still employed as a Compliance Specialist Zafor Ullah. I questioned Mr. Ullah about this position and he indicated to me that the agency claims that they were going to re-announce this position as a full-time telework position which makes no sense considering that I was never contacted by the agency for an interview after I made the cert.

I am requesting that Zafor Ullah, Compliance Specialist be subpoena to court as my witness in this case. His direct email is as follows: Zsecurity@comcast.net

The retaliation continued on August 14, 2019 when the Abilityone Commission's Inspector General's Office claiming to perform an investigation that was illegal which was being held by a person who claimed to be a treasury agent who left a voice message on my cell phone which led to a complaint to both the US Treasury office and the US Securities Commission with an employee impersonating an treasury agent. Zafor Ullah is also a witness in this event.

I also believe that I was not selected and that the retaliation continues due to the exposure to the Government Oversight Committee on both November 23, 2020 and January 28, 2021 that I submitted.

Thank You

*Loretta Alford*

Loretta Alford

15190 Brickwood Dr., #103

Woodbridge, VA 22193

Email: ljalford60@gmail.com

B4

# Committee For Purchase From Blind / Disabled

## Application Progress

### Position Title

Oversight and Compliance Specialist

### Agency

Committee for Purchase from People Who Are Blind or Severely Disabled

### Announcement Number

ST-11028236-21-RS (<https://www.usajobs.gov/GetJob/ViewDetails/592016800>)

### Open Period

Friday, February 12, 2021 to Friday, February 26, 2021

Application Package Status: Application Submitted

Thank you. Your application is being processed.

 [View / Print Application \(/Application/GetApplicationPDF/276274488\)](/Application/GetApplicationPDF/276274488)

## Return to USAJOBS

[Terms of Use](#)

[FOIA \(//www.opm.gov/information-management/freedom-of-information-act/\)](https://www.opm.gov/information-management/freedom-of-information-act/)

[Privacy & Cookies](#)

 [USAJOBS.gov \(//www.usajobs.gov\)](https://www.usajobs.gov)

[OPM \(//www.opm.gov\)](https://www.opm.gov)

[USA.gov \(http://www.usa.gov\)](http://www.usa.gov)

1  
6 E5

**Land & base management**

Certain current or former term or temporary federal employees of a land or base management agency.

**Peace Corps & AmeriCorps Vista****Veterans****Clarification from the agency**

Status Candidates (Merit Promotion, Land Management, and VEOA Eligibles) and Non-Competitive Authority Eligibles

**Announcement number**

ST-11028236-21-RS

**Control number**

592016800

**Duties****Summary**

The mission is to create employment opportunities for people who are blind or have other significant disabilities. It is the Commission's responsibility to determine what products and services required by the Federal Government are suitable for provision by Non Profit Agencies. It then leverages the Federal procurement system to facilitate the award of contracts for those products and services to NPAs designated by the Commission to provide them.

**Responsibilities****Duties include but are not limited to the following:**

- Conducts inspections of Central Nonprofit Agencies, (CNAs) Nonprofit Agencies, (NPAs) to ensure compliance with the Javits-Wagner-O'Day Act and Commission regulations, policies, and procedures.
- Makes recommendations and determinations about CNA/NPA compliance which requires in-depth analysis of CNA/NPA operations, data reported and ambiguities therein.
- Reviews, validates, and confirms the implementation and completion of corrective action plans initiated to remedy findings of non-compliance with Program requirements.
- Supports, adheres to, and assists with administering cooperative agreements and other prescribed/formalized arrangements
- Provides staff support to Commission members participating in subcommittee or other activities of the Commission.
- Develops rationale and makes recommendations to the Commission about the extent of labor operations (compliance with statutory overall agency and project-specific direct labor hour ratio requirements, recruiting, staffing, training, and safety plans, phase-in schedules and plans) and CNA/NPA initial and continuing qualifications.
- Reviews, validates, analyzes and reports on data received via annual NPA representation and certifications, inspection reports, and regulatory review reports.
- Prepares requests to the Office of the General Counsel for investigations by the Office of Inspector General.
- Receives, conducts inquiries, and makes recommendations/decisions about complaints received from NPA employees through the Commission complaint process.
- Conducts complex technical assistance and analysis on issues related to the areas of oversight and compliance.

E7

## NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) <b>ALFORD, LORETTA J.</b>	2. Social Security Number <del>XXXXXXXXXX</del>	3. Date of Birth <del>MM/DD/YYYY</del>	4. Effective Date <b>01-12-2014</b>
--	--	---	--

FIRST ACTION		SECOND ACTION	
5-A. Code <b>894</b>	5-B. Nature of Action <b>Gen Adj</b>	6-A. Code	6-B. Nature of Action
5-C. Code <b>QWM</b>	5-D. Legal Authority <b>Reg 531.207</b>	6-C. Code	6-D. Legal Authority
5-E. Code <b>ZLM</b>	5-F. Legal Authority <b>E.O. 13655, Dated 23-DEC-2013</b>	6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number <b>Compliance Specialist 3LBP198 - 2</b>	15. TO: Position Title and Number <b>Compliance Specialist 3LBP198 - 2</b>										
8. Pay Plan <b>GS</b>	9. Occ. Code <b>1801</b>	10. Grade/Level <b>11</b>	11. Step/Rate <b>07</b>	12. Total Salary <b>\$74,958.00</b>	13. Pay Basis <b>PA</b>	16. Pay Plan <b>GS</b>	17. Occ. Code <b>1801</b>	18. Grade/Level <b>11</b>	19. Step/Rate <b>07</b>	20. Total Salary/Award <b>\$75,710.00</b>	21. Pay Basis <b>PA</b>
12A. Basic Pay <b>\$60,343.00</b>	12B. Locality Adj. <b>\$14,615.00</b>	12C. Adj. Basic Pay <b>\$74,958.00</b>	12D. Other Pay <b>\$0</b>	20A. Basic Pay <b>\$60,948.00</b>	20B. Locality Adj. <b>\$14,762.00</b>	20C. Adj. Basic Pay <b>\$75,710.00</b>	20D. Other Pay <b>\$0</b>				
14. Name and Location of Position's Organization <b>Committee for Purchase from People who are Blind or Severely Disabled Arlington, VA</b>						22. Name and Location of Position's Organization <b>Committee for Purchase from People who are Blind or Severely Disabled Arlington, VA</b>					

**EMPLOYEE DATA**

23. Veterans Preference				24. Tenure		25. Agency Use		26. Veterans Preference for RIF	
<b>1</b>	1 - None 2 - 5-Point	3 - 10-Point/Disability 4 - 10-Point/Compensable	5 - 10-Point/Other 6 - 10-Point/Compensable/50%	<b>1</b>	0 - None 1 - Permanent	2 - Conditional 3 - Indefinite	<b>YES X NO</b>		
27. FEGLI <b>S Basic + Option B (5x) + Option A + Option C (5x)</b>				28. Annuitant Indicator <b>9 Not Applicable</b>		29. Pay Rate Determinant <b>0</b>			
30. Retirement Plan <b>K K - FERS and FICA</b>			31. Service Comp. Date (Leave) <b>02-21-2002</b>		32. Work Schedule <b>F Full-Time</b>		33. Part-Time Hours Per Biweekly Pay Period		

**POSITION DATA**

34. Position Occupied <b>1</b>		35. FLSA Category <b>E</b>		36. Appropriation Code <b>837.T1198310.00.11.000.A01  </b>		37. Bargaining Unit Status <b>8888</b>	
38. Duty Station Code <b>510100013</b>		39. Duty Station (City - County - State or Overseas Location) <b>ARLINGTON / ARLINGTON / VIRGINIA</b>					
40. Agency Data <b>HB</b>		41. <b>HB831</b>	42. <b>0000</b>	43. <b>24.22</b>	44. <b>Nonsensitive (NS) National Security Risk</b>		
45. Remarks							

*EB*

46. Employing Department or Agency <b>Cmte for Purch Who Are Blind/Severely Disabled</b>			50. Signature/Authentication and Title of Approving Official <b>Electronically Signed by: E. Ballard Executive Director</b>		
47. Agency Code <b>HB00</b>	48. Personnel Office ID <b>4008</b>	49. Approval Date <b>01-11-2014</b>			



Loretta Alford <alfordloretta27@gmail.com>

---

## Application Status for ST-11028236-21-RS

1 message

---

**usastaffingoffice@opm.gov** <usastaffingoffice@opm.gov>  
Reply-To: philadelphia@opm.gov  
To: alfordloretta27@gmail.com

Wed, Apr 21, 2021 at 7:41 AM

Dear loretta alford:

This refers to the application you recently submitted to this office for the position below:  
ST-11028236-21-RS  
US Ability One Commission  
Oversight and Compliance Specialist  
GS180111  
Washington, District of Columbia and Tacoma, Washington

Your rating is:

Eligible for the following position or positions:

- GS-1801-11; You are tentatively eligible for this series/grade combination based on your self-rating of your qualifications.

The following is your referral status for the position or positions to which you applied:

- You have been referred to the hiring manager for position GS-1801-11 in Washington, District of Columbia

Please Note: If you are eligible and your application was not referred, it is because your responses to the assessment questionnaire did not place you among the most highly qualified candidates. Your rating is based solely on your own self-assessment at this point in time. If additional names should be required, your application would be reviewed further at that time and referred if appropriate.

Thank you for your interest in this position. If you have any questions, please contact philadelphia@opm.gov

EG  
202

5/27/2021

Gmail - Final Disposition Letter



Loretta Alford <alfordloretta27@gmail.com>

---

## Final Disposition Letter

1 message

---

**usastaffingoffice@opm.gov** <usastaffingoffice@opm.gov>  
Reply-To: philadelphia@opm.gov  
To: alfordloretta27@gmail.com

Mon, May 24, 2021 at 1:11 PM

Dear loretta alford,

Thank you for your interest in the Oversight and Compliance Specialist position, Job Announcement Number ST-11028236-21-RS.

We regret to inform you that you were not selected for the position of:

- GS-1801-11 in Washington, District of Columbia

We encourage you to visit USAJOBS.

E10,  
~~10~~ ~~23~~



linkedin.com



LinkedIn

Join now

Sign in

Timi Nickerson Kenealy



### Timi Nickerson Kenealy

General Counsel at U.S. AbilityOne  
Commission

US Environmental Protection Agency  
(EPA) American University Washington  
College of Law

Washington District of Columbia United  
States 194 connections

Join to connect



ELL  
~~XXXXXXXXXX~~



**Assistant General Counsel,  
OGC/CRFLO/PLPG**

US Environmental Protection  
Agency (EPA)

Nov 2021 - Present · 6 months

Washington, DC



**General Counsel**

U.S. AbilityOne Commission

Feb 2015 - Present · 7 years 3  
months

Arlington, VA



**Associate General Counsel**

The Peace Corps

Dec 2009 - Feb 2015 · 5 years 3