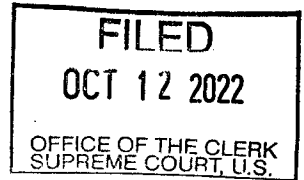


ORIGINAL

Docket No: **22-355**



IN THE
SUPREME COURT OF THE UNITED STATES

Kathy Lynn Carter,
Petitioner,

v.

Department of Defense,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Kathy Carter, Petitioner pro se
15085 Regina Avenue
Brandywine, MD 20613
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**QUESTION(S)
PRESENTED**

Under due process under first Amendment, fourth Amendment and four amendments under the constitution can they reject petitioner procedure affirmative defense of due process in the Merit System Protection Board and the Federal Circuit court procedural argument without official notice of a summons or receipt of affidavit was not filed in District court without?

How can an agency inaccurate charge leave family medical unexcused without pay for failure sign a telework agreement not mutual agree upon being approved?

Inaccurate charge excused leave in time and attendance by remove excused absent and unexcused absent for over fourteen days without a wellness check due of the employee?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Related Proceedings

United States of Appeals for the Federal Circuit
Case No. 22-1305

United States of America Merit Systems Protection
Board Washington Regional Office Docket Number
DC-0752-21-0485-I-1

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RULES**

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DoD 7000.14-R Financial
Management Regulation Volume 8,
Chapter 5 *August 2021 PAGE 5-76
DoDI 1035.01, April 4, 2012
SUBJECT: Telework Policy
The Family Medical Leave Act 1993
(FMLA) Charged
ADMINISTRAT INSTRUCTION NO.
71 OFFICE OF THE SECRETARY OF
DEFENSE Administration
& Management
OPM Governmentwide dismissal and
closure procedures APPX 67-77
Internal Policy Telework -OSD Net
Assessment Memorandum
OFFICE OF PERSONNEL
MANAGEMENT 5 CFR Part 630
RIN 3206-AN49 Weather and Safety
Leave

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the United State court of appeal appears at Appendix A to the petition and is reported is published.

JURISDICTION

The date on which the United States Court of Appeal decide my case was June 14, 2022. Final, Before MOORE, Chief Judge, DYK and CHEN, Circuit Judges A timely petition for rehearing was denied by the United State Court of Appeals on the Following date on July 14, 2022, and a copy of the order denying rehear appears at Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. 1244(1) Appellate jurisdictions.

**CONSTITUTIONAL
AND STATUTORY
PROVISION**

The Constitutional provisions involved are the First Amendment, Fifth Amendment and Fourteenth Amendment to the United States Constitution which are set forth in Appendix B, *infra*, pp. 65–66.

First Amendment of the Constitutions Violated

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Fifth Amendment of the Constitutions Violated

“The Fifth Amendment says to the federal government that no one shall be “deprived of life, liberty or property without due process of law.”

Fourteen Amendment of the Constitution Violated

Section 1 – “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

SUBCHAPTER A. SUPREME COURT Sec. 22.0035.
MODIFICATION OR SUSPENSION OF CERTAIN
PROVISIONS RELATING TO COURT
PROCEEDINGS AFFECTED BY DISASTER. (a) In
this section, "disaster" has the meaning assigned by
Section 418.004. DEFINITIONS. In this chapter: (1)
"Disaster" means the occurrence or imminent threat of
widespread or severe damage, injury, or loss of life or
property resulting from any natural or man-made
cause, including fire, flood, earthquake, wind, storm,
wave action, oil spill or other water contamination,
volcanic activity, epidemic, air contamination, blight,
drought, infestation, explosion, riot, hostile military or
paramilitary action, extreme heat, cybersecurity event,
other public calamity requiring emergency action, or
energy emergency.

The agency Office of Personal Management was not
involved with the removal. No federal Without formal
investigation of misconduct on being absent without
leave.

Devine v. White United States Court of Appeals,
District of Columbia Circuit 697 F.2d 421 (D.C. Cir.
1983)

How can an agency have removed Ms. Carter without proper protocol under Federal Rule of Civilian Procedures?

Removed from Federal government for failure to sign a telework agreement and the agreement with held pay under provision 5 U.S.C § 5511 - Withholding pay; employees removed for cause is not misconduct under the law.

5 CFR 630.1307 Medical Certification FMLA)

from federal Service for failure to report to duties by telework under no agreement. Can an agency legal remove employee from federal service for failure to take training and telework.

Can the Agency be the judge, jury and execution of fabricated misconduct action?

Willful violation Ms. Carter due process and procedural process was violated by non-compliance under Federal Rule of Civil Procedure Rule 4 Summons (1) Affidavit Requirement of receipt of Court order from District Court, reference (m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court District Court on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. See Appendix D

On motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a

specified time.

The agency did not file a complaint of charges of absent without leave for failure to sign a telework agreement. misconduct in the district court, therefore no affidavit was received by Ms. Carter.

Agency mismanaged the office protocol for non-teleworker, violation of laws procedural requirement under Family Medical Leave Act Charge for charging without requesting for

Can an agency choose not to follow guidelines and Office personnel Management

Can agency false charge of being unauthorized absent an employee for failure to follow illegal instructions and no mutual agreement to sign a telework agreement by charging employee without a legal authority for loss of pay.

Can agency legally charge a person on authorized leave to unauthorized absent which cause the employee loss of pay by punishing the employee for failure to voluntary to telework?

The Federal government close due to the pandemic, Ms. Carter was on authorized leave from January authorizes office closures pandemic approved time and attendance information was approve d due to the pandemic started on March 13, 2020 through February 4,2021 No emergency continued operation plan Ms.

Carter submitted her time and attendance information to biweekly to the timekeeper and timekeeper approved by the guidance from Mr. Walters authorized absent of pay over 164,25 hours of leave without pay..

Can a agency change my payroll data without being absent to an employee who did agree to sign a telework agreement and then Does the agency has the authority in payroll system by change employee's work schedule. Stay at home order was authorized by my superior under pandemic.

Due to the pandemic and health issues, weather and safety leave excused

closure to denied under the pandemic for not agreeing to voluntary to signing telework agreement under excused paid leave under weather and safety leave under provision and

authorized weather and safety leave absent due to the pandemic

Under Adverse Action was charged Over fourteen day of absent without leave charged under provision under family leave and removed her from federal service without the correct procedures by file in the court system for misconduct. for unauthorized absences and failure to follow instructions by refusing to perform telework during the novel coronavirus pandemic.

Ms. Carter had affirmative Defense of charge with notice of reassignment to telework on Memo from Director of Net Assessment authorized Col/Mr. Walter

authority to mismanaged internal policy for requesting to telework that was established in December 9, 2020.
Appx

“In March 2020, at the onset of the Coronavirus pandemic, Ms. Tracy Whittlesey who was the Chief of Staff at the time, authorized you

“A preponderance of the evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q) (2019).”

Agree in part of the authorization came from the
and disagree due

Merit System Protection Board Court Decision
INITIAL DECISION

On January 12, 2021, I sent you an email to inform you that you were placed in an AWOL status, reference (i). You did not respond to my email and you did not report for duty until February 4, 2021, (Attachment 3).

BACKGROUND

APPX

Charged ADVERSE ACTIONS

Other - AI 8 Disciplinary and Adverse Actions APPX

32-65

transition

Defense Civilian Pay System (DCPS) The standard DoD civilian pay system approved by the Under Secretary of Defense (Comptroller) Chief Financial Officer to pay employees from appropriated, revolving, or trust funds.

FINANCIAL MANAGEMENT

5 U.S. Code § 5511 - Withholding pay; employees removed for cause (a) Except as provided by subsection (b) of this section, the earned pay of an employee removed for cause may not be withheld or confiscated.

(b) If an employee indebted to the United States is removed for cause, the pay accruing to the employee shall be applied in whole or in part to the satisfaction of any claim or indebtedness due the United States.

i. Emergency Situations k. Time and Attendance. Time spent in a telework status must be accounted for and reported in the same manner as if the employee reported for work at the **regular worksite**.

(1) Supervisors should establish appropriate procedures for documenting hours of work and approved leave for teleworkers to ensure telework hours are appropriately coded as regular and recurring, situational, or medical. DoD Components using the Defense Civilian Pay System shall document these telework hours in the time and attendance system.

DD2946 APPX 165

DoDI 1035.01, April 4, 2012 Relate to
Teleworker

b. Employee Functions

(1) Participate in **telework training prior** to entering into a written telework agreement consistent with the requirements of paragraph 3.l. of this enclosure and Component guidance.

(2) **Complete DD Form 2946** detailing the location of the alternative worksite consistent with the requirements of subparagraphs 3.d.(1) through (6) of this enclosure and Component guidance. If requesting telework at home, designate one area in the home as the official work station for purposes of telework, ensure that the designated area complies **with safety requirements, and complete the self-certification safety checklist**. Report any work-related accident or injury occurring at the alternative worksite and provide the supervisor with medical documentation related to the accident or injury.

(3) Protect all controlled unclassified information (CUI) as defined in DoD Instruction 5200.01 (Reference (n)) including Privacy Act or For Official Use Only data, and classified (where applicable and authorized at a secure alternative location) data and comply with all criteria and guidelines for information and **electronic security**

consistent with subparagraphs 3.f. (1) through (5) of this enclosure and Component guidance.

(4) Safeguard and ensure appropriate use of GFE consistent with subparagraphs 3.g.(1) through (5) of this enclosure and Component guidance.

(5) Work at the regular worksite on scheduled telework days if called for by mission requirements.

Security security consistent with subparagraphs 3.f.(1) through (5) of this enclosure and Component guidance.

Email December 8, subject Government Laptop suspension of your government IT Event receive Sept 3, 2020 . August 18, 2020 APPX 94

Communication

Email December 8, subject No Net Call this morning? APPX 207.

Plan to start telework and use your use/lose leave Sorry for not understanding the new net call phone schedule. Appx 78-79

“Please stop asking about telework. On September 3, 2020, Talk with Col Regan (prior Chief of Staff), My Supervisor and you, I am no longer interest in telework

agreement. **Do not schedule annual leave.**
I am already on weather and safety leave.”
Appx 207-208

DoDI 1035.01, April 4, 2012

d. Telework Agreements

(2) Employees with mission-critical duties and those who may be required to telework in the case of a COOP event, office closure due to adverse or inclement weather, or **pandemic health crisis shall have a DD Form 2946 in place.** Appx 153

Charges of AWOL is not efficiency of service

**TIMEKEEPING INTERNAL AGENCY
POLICIES**

**US OPM, Governmentwide Dismissal and
Closure Procedures**

“APPX 73 Agencies should work with the

administers of their timekeeping properly recorded and reported (55 CFR 630.1607) corresponding internal agency policies should also be updated, as appropriate, to ensure they are consistent with law, OPM regulations, and these procedures.”

§ 630.1607 Records and reporting.

(a) Record of placement on leave. An agency must maintain an accurate record of the placement of an employee on weather and safety leave.

(b) Reporting. In agency data systems (including timekeeping systems) and in data reports submitted to OPM, an agency must record weather and safety leave under section 6329c and this subpart as a category of leave separate from other types of leave.

AI 117, March 31, 2015 APPX PAGE

9. TIME AND ATTENDANCE. Time spent in a telework status must be accounted for and reported in the same manner as if the employee reported for work at the traditional worksite. Employees will use the following codes in accounting for telework: “TW” for routine telework; “TS” for situational telework; or “TM” for telework to accommodate a medical condition.

DODI 1035.01 – ENCLOSURE 3 APPX 159

k. Time and Attendance. Time spent in a telework status must be accounted for and reported

in the same manner as if the employee reported for work at the regular worksite.

(1) Supervisors should establish appropriate procedures for documenting hours of work and approved leave for teleworkers to ensure telework hours are appropriately coded as regular and recurring, situational, or medical. DoD Components using the Defense Civilian Pay System shall document these telework hours in the time and attendance system.

(2) Employees must record dates and times of telework accomplished so Component telework usage can be tracked.

TELEWORK REQUIREMENTS DODI 1035.01 APPX 151

3. TELEWORK REQUIREMENTS

a. Supervisor Functions

(1) Determine employee eligibility for regular and recurring or situational telework consistent with the requirements of

paragraphs 2.a. through h. of this enclosure and Component guidance and collective bargaining agreements, as applicable.

(2) Notify employees of their eligibility to telework.

(3) Participate in telework training prior to approving employees' telework agreements and allow them to telework consistent with the requirements of paragraph 3.l. of this enclosure and Component guidance.

APPX TW SOMMARY

TRANSITION TO TELEWORK NA TW –
131-136

Email dated Friday, July 17, 2020 1:02 PM
subject Summary of telework call SUMMAY
APPX 78-79 – This is a 90 days trail period to determine if we can transition your roles and responsibilities to a telework environment during COVI.D

COOP

COOP PLANING APPX 162

Washington Headquarter Identify
service by the agency name.

Reference December 9, 2029 APPX 119- 120 Par
1

DoDI 1035.01, April 4, 2012

PAR 2

(2) In the event of a pandemic health crisis, employees with COOP responsibilities, Service members, and employees who do not have COOP responsibilities, but are trained and equipped to telework, may be asked to telework to prevent the spread of germs. These employees or Service members should telework on a regular basis to ensure their proficiency and telework's effectiveness in continuing operations. Employees or Service members in positions not typically eligible for telework should telework on a situational basis when feasible. These employees shall have a signed DD Form 2946 in place.

(3) When the regular worksite is closed during adverse or inclement weather conditions (e.g., snow emergencies, floods, hurricanes) or with supervisor approval when OPM announces that Government offices are open with the option for unscheduled telework when severe weather conditions or other circumstances disrupt commuting and compromise employee safety. More information on unscheduled telework options can be found in OPM's Washington D.C. Dismissal and Closure Procedures at <http://www.opm.gov/oca/compmemo/dissmissal.pdf>. While this OPM instruction is intended to apply to situations affecting Federal employees

in the Washington D.C. area, Federal Executive Boards coordinate similar procedures in other metropolitan areas based on this guidance. Components are authorized to implement this guidance when the local Commander makes operation status decisions for weather-related conditions for installations or sites outside of the Washington D.C. area.

DECEMBER 9, 2020 PAR 3 APPX

i. Emergency Situations

(4) When an employee's residence or other approved alternative worksite has been designated as a safe haven during an emergency, such as a pandemic health crisis evacuation, the supervisor may assign any work necessary, as long as the employee has the skills to perform the assigned work, without regard to the employee's grade or pay band level. In cases where a safe haven is designated, a DD Form 2946 does not need to be in place consistent with the guidance in section 550.409 of Reference (m).

1

AI 117, March 31, 2015 PART II. DEFINITIONS
APPX 197

AI 117 PAGE 29 APPX 172-198

medical telework. Used when an employee has a medical condition supported by administratively

acceptable medical documentation that prohibits them from reporting to the regular worksite for any extended period of time. Approved on a case-by-case basis, at the discretion of the supervisor.

SEE 1035 MEDICAL APPX 140-164
TELEWORK VOLUNTARY
164 GLOSSARY
TELEWORK MEANING G

PAR PAGE DECEMBER 9, 2020 PAR 3 APPX
OMMITTED
5 CFR 550.409 - Evacuation payments during a
pandemic health crisis.

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued. Under these circumstances, an agency may designate the employee's home (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments to the employee. An agency must compute the evacuation payments and determine the time period during which such payments will be made in accordance with § 550.404. An evacuated employee at a safe haven may be assigned to perform any work considered necessary or

required to be performed during the period of evacuation without regard to his or her grade, level, or title. The employee must have the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action.

DoDI 1035.01, April 4, 2012

Telework policy

i. Emergency Situations

(1) Employees or Service members who perform mission-critical duties may be required to work from home or an alternative worksite such as a telework center during an emergency situation. Components shall require these employees to complete a DD Form 2946. The telework agreement should address the telework location and work expectations. Supervisors will include a description of emergency duties with the telework agreement if emergency duties are different from the employee's normal duties. During any period that a Component is operating under the COOP plan, that plan shall supersede the

telework policy and the provisions of the telework agreement. Telework agreements are not required for Service members.

(2) In the event of a pandemic health crisis, employees with COOP responsibilities, Service members, and employees who do not have COOP responsibilities, but are trained and equipped to telework, may be asked to telework to prevent the spread of germs. These employees or Service members should telework on a regular basis to ensure their proficiency and telework's effectiveness in continuing operations. Employees or Service members in positions not typically eligible for telework should telework on a situational basis when feasible. These employees shall have a signed DD Form 2946 in place. Appx 157-158

DoDI 1035.01, April 4, 2012

Change 1, 04/07/2020 14 ENCLOSURE 3

(6) Contact the supervisor to request unscheduled telework when Government employees are provided this option consistent with subparagraph 3.i.(3) of this enclosure and

Component guidance.

(7) Maintain a required performance level of at least the fully successful level or equivalent.

(8) Code and report approved telework time in the Component Time and Attendance System

Coop.

1035.01 i. Emergency Situations (3) If the teleworker is unable to communicate with his or her supervisor to be excused from duty and cannot maintain their remote working status, the teleworker should follow the Component's emergency guidance, orders, and procedures (e.g., outlined in COOP and other applicable emergency management plans). Any requirement that a teleworker continue to work during an office closure or early dismissal shall be included in the employee's DD Form 2946.

Transition

DoDI 1035.01, April 4, 2012

d. Periodically (as practice) to prepare for COOP and an efficient transition to telework in the event of an emergency situation.

OPM Governmentwide dismissal and closure procedures

5 cfr§630.1202 Definitions Leave without pay means an approved absence from duty in a nonpay status during an employee's scheduled tour of duty.

5 CFR §630.1202 Definitions Family and medical

leave means an employee's entitlement to 12 administrative workweeks (or 26 administrative workweeks in the case of leave under § 630.1203(j)) of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code

DoDI 1035.01, April 4, 2012

7. HEADS OF THE OSD AND DoD COMPONENTS e. Designate positions to indicate telework eligibility and require documentation in the position record in the Defense Civilian Personnel Data System (DCPDS) or equivalent human resources system. Determine eligibility for all Component employees to telework; require documentation of employee telework eligibility in the employee record in DCPDS. Make telework position determinations when establishing new positions or filling vacant positions that were not previously designated for telework eligibility. Notify all Component employees of their telework eligibility.

Family and medical leave means an employee's entitlement to 12 administrative workweeks (or 26 administrative workweeks in the case of leave under § 630.1203(j)) of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

26 administrative workweeks in the case of leave under §630.1203(j))

§630.1203(j))

630.1202 Definitions. Tour of duty Scheduled tour of duty means the regular work hours in an established full-time or part-time work schedule during which an employee is charged leave or time off when absent. A seasonal employee is not considered to have such a tour during off-season periods when the employee is scheduled to be released from work and placed in full-time nonpay status.

5 CFR § 630.1201 Purpose, applicability, and agency responsibilities. (b) Applicability.

(1) Except as otherwise provided in paragraph (b)(2) of this section, this subpart applies to any employee who –

(b)(1)(ii).

(2) This subpart does not apply to -

(i) An individual employed by the government of the District of Columbia;

(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or

(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103-3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

Telework plan for Kathy Carter APPX 80-93

(b) Eligibility notice.

Ms. Carter did not request FMLA but was removed for excused leave to correcting m time and attendance from AWI

Denied substitution of from AWOL to AL
Leave Appendix

“29 CFR § 825.300 - Employer notice requirements.

(1) When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances.”

§ 1622. National emergencies

(a) Termination methods Any national emergency declared by the President in accordance with this subchapter shall terminate if—

(1) there is enacted into law a joint resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any pow

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Termination review of national emergencies by Congress

Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c) Joint resolution; referral to Congressional committees; conference committee in event of disagreement; filing of report; termination procedure deemed part of rules of House and Senate

(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of

such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and SECTION 1651(B) OF THIS TITLE are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the

procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Automatic termination of national emergency; continuation notice from President to Congress; publication in Federal Register Any national emergency declared by the President in accordance with this subchapter, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

“Ms. Carter request a petition review of the decision removal from federal service by Department of Defense (Net Assessment) agency internal final decision of Merit Systems Protection Board. Ms. Carter filed on June 21, 2022 under docket No. DC-0752-21-0485-I-1 over than 164 days later for a decision due to notice of lack of quorum. This

initial decision will become final on December 2, 2021, unless a petition for review is filed by that date. APPX 20”

“Burden of Proof –The agency bears the burden of proving the charged conduct by a preponderance of the evidence. 5 U.S.C.A. § 7701(c)(1)(B) (West 2007). The agency must further establish the existence of a nexus between the conduct and the efficiency of the service. 5 U.S.C.A. §7513(a) (West 2007); Hayes v. Department of the Navy, 727 F.2d 1535, 1539 (Fed. Cir. 1994). Finally, the agency must demonstrate that the penalty imposed was within the bounds of reasonableness. Douglas v. Veterans Administration, 5 M.S.P.R. 280, 306-07 (1981)- APPX 7.”

DoD 7000.14-R Financial Management Regulation Volume 8, Chapter 5 ***August 2021** - 26.5.2. Time Limit for Submission of the Medical Certification. An employee must provide any required written medical certification to the agency within 15 calendar days after the date requested by the agency. If the agency determines it is not practicable for the employee to provide the requested medical certification within 15 calendar days (despite the employee’s diligent and good faith efforts), the employee may be allowed to provide the medical certification within a

reasonable period of time under the circumstances involved. The medical certification should be provided no later than 30 calendar days after the date the agency requests such documentation. If the employee does not provide the appropriate documentation within the allotted time, the employee is not entitled to use DVL. In such cases, the agency may charge the employee as AWOL or allow the employee to request that the absence be charged to LWOP, sick leave, annual leave, or other forms of paid time off. See 5 CFR 630.1307.

CHARGES

MSPB NOTICE OF LACK OF QUORUM, 5 USC 1201, 5 USC 1200.3(a), (e) 5 USC 1203 "notice of appeal rights" APPX 25

"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

REASON FOR GRANTING THE PETITION

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

Kathy L. Carter s/

Date: October 12, 2022