

NO. \_\_\_\_\_

IN THE

**SUPREME COURT OF THE UNITED STATES**

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In re: **WILLIAM B. JOLLEY**

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William B. Jolley.,

*Petitioner*

v.

Department of Housing and Urban Development

*Respondent*

Federal Circuit Case No. 2015-3187

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Petition for Writ regarding Merit Systems Protection Board

In No. SF-0752-13-0583-I-1, SF-0752-14-0286-I-1

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**PETITION FOR A WRIT OF MANDAMUS**

**AND/OR PROHIBITION**

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**QUESTION PRESENTED**

Do Merit Systems Protection Board (MSPB) decisions of Veteran and Whistleblower appeals fail for lack of "due process" where 5 C.F.R. ¶ 1201.57(d), states "the Board will not consider matters described at 5 U.S.C. ¶ 7701(c)(2) in an appeal covered by this section."?

**PETITION FOR WRIT OF MANDAMUS  
AND/OR PROHIBITION**

William B. Jolley (Petitioner; pro se) applies, pursuant to 28 U.S.C. ¶ 1651 and Supreme Court Rule 21, for writ of mandamus directed to the Court of Appeals for the Federal Circuit; the Merit Systems Protection Board (MSPB); and the Department of Housing and Urban Development (HUD).

“Petitioner’s Motion To Supplement The Informal Reply Brief And Informal Appendix With This Motion And Attached Copy of Petition for Rulemaking” (App.2), was sent to the Federal Circuit for inclusion in 22-1882 (App.1) on 21 April 2023. That motion, as to the issue of *due process*, was not responded to in the 11 August 2023 Federal Circuit decision in 22-1882 (App.1).

5 C.F.R. 1201.57(d), eliminates due process. Petitioner’s motion, (App.2), explains why 5 C.F.R. ¶ 1201.57(d) precludes “*due process*” for Veterans (VEOA and USERRA) in Merit Systems Protection Board “appeal” procedures.

**JURISDICTION**

This Petition is timely filed within 90 days of the August 11, 2023 decision of 22-1882 by the Federal Circuit (App.1). The Merit Systems Protection Board (MSPB) had jurisdiction over this appeal under 5 U.S.C. ¶ 7701(a). (See *Kirkendall v. Department of Army*, 412 F.3d 1273 (Fed. Cir. 2005). (Decision that 5 U.S.C. ¶ 7701 applies to USERRA cases.). The Court of Appeals for the Federal Circuit has exclusive jurisdiction under 28 U.S.C. § 1295(a)(9) of an appeal from a final order or final decision of the Merit Systems Protection Board (MSPB), pursuant to sections

7703(b)(1) and 7703(d) of title 5. The United States Supreme Court has jurisdiction to hear and determine this Petition for Writ Of Mandamus and/or Writ of Prohibition under 28 U.S.C. § 1651(a).

#### **REASON RELIEF IS NOT AVAILABLE IN ANY OTHER COURT**

The case is about a Veteran's USERRA appeal of an employment application to a federal agency. 38 U.S.C. ¶ 4324(b) (the USERRA) provides the matter be referred to the Merit Systems Protection Board (MSPB). The MSPB is required by 38 U.S.C. 4324((c)(1) to adjudicate the issue. 38 U.S.C. 4324(d) requires appeal of an MSPB decision go to the Federal Circuit Court of Appeals. Appeal from the Federal Circuit Court of Appeals can only go to the U.S. Supreme Court.

#### **STATUTORY PROVISIONS INVOLVED**

28 U.S.C. § 1651: (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

USERRA: 38 U.S.C. Chapter 43 – Uniformed Services Employment and Reemployment Rights Act

VEOA: Veterans Employment Opportunities Act of 1998

#### **STATEMENT OF THE CASE**

Petitioner believed the MSPB had committed fraud on the Federal Circuit. Petitioner sent a motion to the Federal Circuit about the fraud. Petitioner was wrong. The Court advised in the 22-1882 (App.1) decision saying “ *... we also deny as baseless Mr. Jolley's outstanding motion to show that the government committed*

*fraud on the court.*" (App.1, Footnote 4 on page 9). Petitioner must assume the Court knew all about 5 C.F.R. ¶ 1201.57(d) since 2015 when it was published.

The Federal Circuit made no mention of "*Petitioner's "Motion To Supplement The Informal Reply Brief And Informal Appendix With This Motion And Attached Copy of Petition for Rulemaking"*" (App.2). That motion at page 2 raises the issue of due process in the face of 5 C.F.R. ¶ 1201.57(d). The Court never mentions the due process issue in 22-1882. The decision concludes "We have considered Mr. Jolley's remaining arguments and find them unpersuasive and/or unsupported.".

The Federal Circuit knew that 5 C.F.R. ¶ 1201.57(d) existed. The Federal Circuit then also knew that the MSPB did not provide due process in appeals in the categories (Veterans [USERRA, VEOA] and Whistleblower appeals) controlled by 5 C.F.R. 1201.57. Knowing that, the Federal Circuit had no authority to "Affirm"..

#### REASONS FOR GRANTING THE PETITION

5 C.F.R. ¶ 1201.57(d) prevented the MSPB from considering facts showing the Agency acted in violation of law, rules and regulations. The MSPB Board, under ¶ 1201.57(d) refused to consider: (1) harmful error in the application of agency's procedures; (2) where the decision did not comply with law; and (3) how the decision violated prohibited personnel practices.

#### THE RELIEF SOUGHT BY PETITIONER IS AS FOLLOWS:

The Supreme Court is asked for a Writ of Mandamus to the Federal Circuit that Petitioner William B. Jolley has prevailed in No. 22-1882 and that the Federal

Circuit must order the Merit Systems Protection Board and the Department of Housing and Urban Development make corrective award, including but not limited to a GS-15, step 10, position, back-pay, damages (equal to back-pay), and costs, to Mr. Jolley per law, rule and regulation.

#### CONCLUSION

Blacks Law Dictionary (Fifth Edition, page 449), states "Due process of law implies the right of the person thereby ... to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any matter of fact or liability be conclusively presumed against him, this is not due process of law."

MSPB procedure as stated in 1201.57(d) provides that the MSPB conclusively presumes against this Petitioner all facts that relate to the following words from 5 U.S.C. ¶ 7701(c)(2): (A) shows harmful error in the application of the agency's procedures in arriving at such decision; (B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or (C) shows that the decision was not in accordance with law. The 22-1882 affirmation reflects MSPB denial of "due process" approved by the Federal Circuit.

Respectfully submitted,

 10-23-23  
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