

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: **WILLIAM B. JOLLEY**

WILLIAM B. JOLLEY,

Petitioner,

v.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
MERIT SYSTEMS PROTECTION BOARD,

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT,

Respondents,

Federal Circuit Case No. 2022-2303

Petition for Writ regarding Merit Systems Protection Board appeal
and Federal Circuit Court of Appeals

In No. AT-3330-18-0138-B-1

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

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QUESTIONS PRESENTED

I

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."?

II

Did the ultra vires act of two individual MSPB Board members creating the so called "Ratification Order" stating, "we today approve these appointments as our own under Article II of the Constitution," satisfy the Supreme Court requirements for administrative judges as set forth by the Supreme Court in *Lucia v. SEC*, et. seq. (App.7)

III

Should 38 U.S.C. ¶ 4324 (App.3) be declared unconstitutional because it creates unequal protection of laws for Veterans from that which is provided by 38 U.S.C. ¶ 4323. (App.4)

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

William B. Jolley (pro se), the Petitioner, applies, pursuant to Section 1651, Title 28, United States Code, and Rule 20 of the Supreme Court Rules, for writs of mandamus and/or for writs of prohibition, 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 22-2302 on 24 April 2023.

The motion, as to the issue of *due process*, was not responded to in the 7 December 2023 Federal Circuit decision in 22-2302 (App.1). Petitioner’s motion, (App.2), explains why MSPB rule 5 C.F.R. ¶ 1201.57(d) precludes “*due process*” for Veterans in Merit Systems Protection Board “appeal” procedures.

Due Process suffers in that MSPB Administrative Judges (App.1 at page 7) are not constitutionally qualified “according to the criteria in *Lucia v. SEC*, [138 S. Ct. 2044 (2018)],”.

Due Process: The USERRA provides grossly unequal treatment for litigating and resolving employment disputes. Compare: 38 U.S. Code ¶ 4324 (App.3) - Enforcement with respect to Federal executive agencies vs. 38 U.S. Code ¶ 4323 (App.4) - Enforcement with respect to the State or private employers. The 5th Amendment due process

clause requires the U.S. Government to practice equal protection. USERRA ¶ 4324 denies equal protection for veterans. ¶ 4324 requires appeals to MSPB. MSPB does not use the Federal Rules of Civil Procedure or the Federal Rules of Evidence. The MSPB, under ¶ 4324, lacks constitutionally qualified judges and protections available through courts of law under ¶ 4323.

JURISDICTION

This Petition is timely filed within 90 days of the 7 December 2023 decision of 22-2302 by the Federal Circuit. The Merit Systems Protection Board (MSPB) had jurisdiction over this appeal under 5 U.S.C. ¶ 7701(a). 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 section 7703(b)(1) of title 5. The United States Supreme Court has jurisdiction to hear and determine this Petition under 28 U.S.C. § 1651(a).

REASON RELIEF IS NOT AVAILABLE IN ANY OTHER COURT

The case is a Veteran's appeal to the Merit Systems Protection Board of an employment application to a federal agency. 5 U.S.C. ¶ 7701(a) provides the matter be referred to the Merit Systems Protection Board (MSPB). 5 U.S.C. 7703 (b)(1)(A) provides 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.

STATEMENT OF THE CASE

The facts necessary to an understanding of the issues are best provided in the Appendix (App.2) and by reference to 5 C.F.R. ¶ 1201.57 (App.5); 5 U.S.C. ¶ 7701 (App.6); and the information below.

It appeared an MSPB rule (App.2) had mislead the Federal Circuit. Petitioner was wrong. The Court knew about 5 C.F.R. 1201.57(d). Inquiries in the 22-1882 case revealed the same. This litigant was gobstruck. A panel of three appellate judges agrees with the MSPB and denies this Veteran, and all other similarly situated Veterans, due process for nine years (2015-2024).

If MSPB was without due process ... then CAFC affirmation is void for failure of due process. CAFC must act under 5 U.S.C. 7703(c) and set aside any Agency action, findings or conclusions obtained without procedures required by law, rule, or regulation having been followed. Failure, with respect to due process, is a violation of the Constitution (law); Court of Appeals for the Federal Circuit (CAFC) should find, under 5 U.S.C. ¶ 7703(c)(2), that Petitioner (this Veteran) prevails because "... the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be – (2) obtained without procedures required by law, rule, or regulation having been followed; ..." (¶ 7703(c)(2)).

REASONS FOR GRANTING THE PETITION

5 C.F.R. ¶ 1201.57(d) deprived the Petitioner from presenting important facts that would show that the Agency acted in violation of various sections of law, rules and regulations. (1) The MSPB Board refused to consider (under ¶ 1201.57(d)): harmful error in the application of the agency's procedures; (2) Where the decision did not comply with law; and (3) How the decision violated Prohibited Personnel Practices (5 U.S.C. ¶ 2302).

THE RELIEF SOUGHT BY PETITIONER IS AS FOLLOWS

1. The Supreme Court is asked to Order the Federal Circuit, MSPB and HUD that **appeals** made during the effective period of 5 C.F.R. ¶ 1201.57(d) require a decision acknowledging failure of due process.
2. The Supreme Court is asked to Order the Federal Circuit to correct No. 2022-2303 from “Affirmed” to “Petitioner Prevails” per 5 U.S.C. ¶ 7703(c)(2); Agency failed to comply with “... procedures required by law...”. The Federal Circuit must Order MSPB and HUD that Petitioner will receive corrective award including a GS-15, Step 10, HUD Field Office Director position with back-pay plus an amount equal to the back-pay as damages. (See: App.1 @ pg 3 under II).
3. The Supreme Court is asked to Order that MSPB administrative judges are not constitutionally qualified per *Lucia v. SEC*; and that the MSPB “Ratification Order” is void as an ultra vires act of two individual Board members. (App.7)
4. The MSPB is not qualified to render decisions on Veteran appeals where for nine years its judges have ignored the failure of due process inherent with 5 C.F.R. ¶ 1201.57(d). Veterans,

with rights to enforcement of employment actions of federal executive agencies (38 U.S.C. 4324) do not have equal rights as veterans enforcing employment rights of private business and state jobs (38 U.S.C. 4323). The Supreme Court is asked to declare 38 U.S.C. 4324 unconstitutional.

CONCLUSION

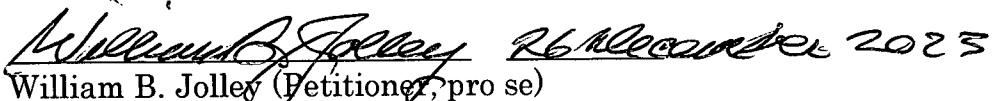
Blacks Law Dictionary (5th Ed. p-449), states "Due process of law implies the right of the person thereby ... to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any matter of fact or liability be conclusively presumed against him, this is not due process of law."

5 C.F.R. ¶ 1201.57(d) provides the MSPB conclusively presumes against this Petitioner all facts that relate to the following: ¹.

- (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.

Instant case represents a denial of "due process of law".

Respectfully submitted,


William B. Jolley 26 November 2023
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¹ "... the Board will not consider matters described at 5 U.S.C. ¶ 7701(c)(2) in an appeal covered by this section."