No. _____

In The

Supreme Court of the United States

VERONICA MARQUAND,

Applicant

v.

DEPARTMENT OF DEFENSE,

Respondent

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Veronica Marquand
PO Box 185672
Hamden, CT 06518
860-514-1437
vmarquand@earthlink.net

July 17, 2025

APPLICATION

To the Honorable John G. Roberts, Jr., Chief Justice and Circuit Justice for the Federal Circuit:

Pursuant to Supreme Court Rule 13(5), the Applicant, respectfully requests an extension of time of sixty (60) days, to and including October 03, 2025, within which to file a petition for a writ of certiorari to review the judgement of the United States of Appeals for the Federal Circuit. Unless extended, the time to file a petition for a writ of certiorari will expire on or about August 04, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). It should be noted that the Counsel for the respondent, government, Reginald "Reggie" Blades, has consented to this request.

In 2014, the Applicant sought administrative review via the Merit System Protection Board ("MSPB"). Attached to this Application are copies of the MSPB's written remand order dated July 11, 2016, and final written decision dated December 14, 2023. Marked as Appendix A and B, respectively.

In 2024, the Applicant sought judicial review via the United States Court of Appeals for the Federal Circuit. Attached to this Application are copies of the panel opinion dated December 18, 2024, and the denial of the timely sought combined petition for rehearing dated May 06, 2025. Marked as Appendix C and D, respectively.

In support of this request, the Applicant states the following:

1. This case concerns the government proceedings that led to the termination of the Applicant; however, the government proceedings suffer from both constitutional and statutory defects. These defects are particularly evident in light of the precedents set by this Court in *Heiner v. Donnan*, 285 U.S. 312, 329 (1932); *Greene v. McElroy*, 360 U.S. 474 (1959); *Arnett v. Kennedy*, 416 U.S. 134 (1974); and *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985); (U.S. CONST. AM. 5). The Petitioner anticipates filing a petition for certiorari asking the Court to correct these constitutional and statutory defects.

2. The inconsistency and unpredictability of adjudication of the constitutional question presented in this case threatens the entire purpose of due process which is enshrined in the Constitution. In the wake of the dense patchwork of lower Court and MSPB decisions adopting conflicting views on how and when to apply the three-part due process analysis as set forth in *Stone v. FDIC*, 179 F.3d 1368, 1376 (Fed. Cir. 1999) ("Stone Factors") and/or the three-part due process analysis set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), Federal Workers, like the Applicant, have been left with no reliable way to predict whether they will obtain the constitutional protection for their private interest in continued employment.

3. The problem with the Federal Circuit's opinion is that it divorces its own precedent in *Stone* and this Court's precedent in *Mathews* for evaluating constitutional challenges. This undermines the uniformity of federal law. This Court is in the unique position to enforce uniformity and resolve the clear conflict demonstrated here.

4. Further, this case is directly tied to the Defense Acquisition Workforce Improvement Act (DAWIA) which was enacted as part of the National Defense Authorization Act[1] under Title XII: Defense Acquisition Workforce. Specifically, this case concerns the statutory interpretations of 10 U.S. Code Subtitle A Chapter 87 Part II - Defense Acquisition Workforce §1724(b)(1) and §1748. DAWIA and an incorrect statutory interpretation was utilized to justify the deprivation of employment. Congress could not have intended that result when it enacted the Defense Acquisition Workforce Improvement Act (DAWIA) or the complementary provisions of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 1101 et seq. This case presents a golden opportunity for this

[1] The Defense Acquisition Workforce Improvement Act was originally introduced on 06/28/1990 under H.R. 5211 (https://www.congress.gov/bill/101st-congress/house-bill/5211). It was later included in the National Defense Authorization Act for Fiscal Year 1991 on 10/23/1990 under H.R. 4739 Public Law No: 101-510, dated 11/05/1990. (https://www.congress.gov/bill/101st-congress/house-bill/4739).

Court to evaluate the legislative intent of the Act and the associated statutes in the first instance.

5. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Considering the important questions presented, the Applicant thus requests a modest extension to prepare a petition that fully addresses the important issues raised and that frames those issues in a manner that will be most helpful to the Court. In order to do so successfully, additional time is required to become familiar with this Court's unique procedures. Additional time is required to analyze this Court's current decisions and their impact on these proceedings. An extension may also permit the Applicant time to attempt to secure *amicus* support for its forthcoming petition, which will further illustrate the importance and impact of the Federal Circuit's decision.

WHEREFORE, for the foregoing reasons, the Applicant requests that an extension of time to and including October 03, 2025, be granted within which the Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

Veronica Marquand
PO Box 185672
Hamden, CT 06518
860-514-1437
vmarquand@earthlink.net

July 17, 2025

APPENDICES

Appendix A

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
NEW YORK FIELD OFFICE

VERONICA MARQUAND,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
PH-0752-14-0636-B-1

DATE: July 11, 2016

ACKNOWLEDGMENT ORDER

This appeal has been received by this office in accordance with the Board's decision dated **July 7, 2016**. This appeal is hereby reopened for further adjudication. A status conference is hereby scheduled to convene on **July 26, 2016,** at **10:30 a.m.** To participate in the status conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **58102593**.

Limited Issues: Disparate Penalty and Due Process

As the parties are aware, the Board's July 7, 2016 found that the only issues for consideration on remand will be:

1) Whether the appellant was treated disparately from other comparator employees as to the penalty the agency chose?
2) Whether her due process rights were violated when the deciding official considered factors enumerated in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1980), as aggravating factors even though the notice of proposed removal does not reference any of the *Douglas* factors?

Order to Agency

In accordance with the Board's remand order, the appellant is entitled to:

1) disciplinary records of DCMA AT&L employees charged with "the same or similar offenses within the 5-year period preceding [the appellant's removal"
2) records showing how many employees were outside their "grace period" for obtaining certification and how many waiver and fulfillment requests the agency granted during the 5 years preceding the appellant's removal
3) responses to interrogatories regarding what disciplinary actions, if any, were taken against employees whom agency officials identified as "outside the grace period allotted for certification"; whether the agency treated the appellant differently from those employees; and the reasons for any difference in treatment.

The agency is ORDERED to provide the above documentation and/or responses to the appellant's interrogatories by **July 25, 2016**.

Order to Appellant

The appellant is ORDERED to advise me, in writing, by **July 21, 2016**, whether she is requesting a hearing. In the event she does not request a hearing by **July 21, 2016**, she will be deemed to have waived her right to one, in which case she and the agency will be given an opportunity to make written submissions before the record on these limited issues closes.

FOR THE BOARD: _____/S/_____

Maria M. Dominguez
Administrative Judge
New York Field Office
26 Federal Plaza, Room 3137A
New York, NY 10278
Phone: (212) 264-9372
Fax: (212) 264-1417
V/TDD (800) 877-8339

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.

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

Veronica Marquand
PO Box 18567
Hamden, CT 06514

Agency Representative

Electronic Mail

Labor and Employee Relations Division
Department of Defense
Defense Contract Management Agency
ATTN: DCMA-HCL
3901 A Avenue, Building 10500
Fort Lee, VA 23801

Electronic Mail

Robert Stolzman
Department of Defense
Office of Counsel
130 Darlin Street
East Hartford, CT 06108

July 11, 2016
(Date)

/S/
Malachi Robinson
Paralegal Specialist

Appendix B

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

VERONICA MARQUAND,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
PH-0752-14-0636-B-1

DATE: December 14, 2023

THIS FINAL ORDER IS NONPRECEDENTIAL[1]

Veronica Marquand, Hamden, Connecticut, pro se.

Norman Thompson, Esquire, Baltimore, Maryland, for the agency.

Mark E. Stopa, Esquire, and Adam Janeczek, Esquire, East Hartford, Connecticut, for the agency.

BEFORE

Cathy A. Harris, Vice Chairman
Raymond A. Limon, Member

FINAL ORDER

¶1 The appellant has filed a petition for review of the remand initial decision, which sustained her removal. Generally, we grant petitions such as this one only in the following circumstances: the initial decision contains erroneous findings of material fact; the initial decision is based on an erroneous interpretation of statute

[1] A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. *See* 5 C.F.R. § 1201.117(c).

or regulation or the erroneous application of the law to the facts of the case; the administrative 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; or new and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115). After fully considering the filings in this appeal, we conclude that the petitioner has not established any basis under section 1201.115 for granting the petition for review. Therefore, we DENY the petition for review and AFFIRM the remand initial decision, which is now the Board's final decision. 5 C.F.R. § 1201.113(b).

BACKGROUND

¶2 On September 27, 2010, the agency appointed the appellant to a GS-12 Contract Price/Cost Analyst position with the Defense Contract Management Agency (DCMA), Sikorsky Aircraft, in Stratford, Connecticut. *Marquand v. Department of Defense*, MSPB Docket No. PH-0752-14-0636-I-1, Initial Appeal File (IAF), Tab 57 at 56. This position falls within the DCMA's Acquisition, Technology, and Logistics (AT&L) Workforce. IAF, Tab 58 at 8. Effective March 28, 2014, the agency removed the appellant for failing to meet a condition of employment, namely, achieving Defense Acquisition Workforce Improvement Act (DAWIA) Level II Certification within 40 months of her entrance on duty. *Id.* at 25-36, 50-54.

¶3 The appellant filed a Board appeal, contesting the merits of her removal and raising affirmative defenses of harmful procedural error and violation of due process. IAF, Tabs 1, 14. She waived her right to a hearing. IAF, Tab 42. The administrative judge issued an initial decision sustaining the appellant's removal. IAF, Tab 65, Initial Decision (ID) at 2, 52. She found that the agency proved its

charge, the appellant failed to prove her affirmative defenses, and the appellant's removal promoted the efficiency of the service. ID at 4-52.

¶4 The appellant filed a petition for review, Petition for Review File, Tab 7, which the Board granted, *Marquand v. Department of Defense*, MSPB Docket No. PH-0752-14-0636-I-1, Remand Order (July 7, 2016). The Board agreed with the administrative judge that the agency proved its charge and affirmed that portion of the initial decision as modified. Remand Order, ¶ 1 n.2, ¶¶ 15-3. However, the Board disagreed with one of the administrative judge's discovery rulings, so it remanded the appeal for further adjudication, to include permitting the appellant additional discovery about the agency's treatment of other employees who failed to meet a condition of employment. Remand Order, ¶¶ 31-41.

¶5 After further proceedings on remand, the administrative judge issued a new initial decision again sustaining the appellant's removal. *Marquand v. Department of Defense*, MSPB Docket No. PH-0752-14-0636-B-1, Remand Appeal File (RAF), Tab 52, Remand Initial Decision (RID). She found that the agency did not unjustifiably treat the appellant any differently than any similarly situated employees and that removal was a reasonable penalty. RID at 7-11. The administrative judge further found that the appellant failed to prove a due process violation in connection with the comparator evidence submitted on remand. RID at 11-13.

¶6 The appellant has filed a petition for review of the remand initial decision and a supplemental petition for review. *Marquand v. Department of Defense*, MSPB Docket No. PH-0752-14-0636-B-1, Remand Petition for Review (RPFR) File, Tabs 6, 10. The agency has filed a response in opposition to the petition for review, and the appellant has filed a reply to the agency's response. RPFR File, Tabs 12-13.

ANALYSIS

The appellant's motion for leave to submit additional briefing is denied.

¶7 After the close of the record on review, the appellant requested "leave to reference and apply" precedent that has been issued by the Board and the U.S. Court of Appeals for the Federal Circuit during the pendency of the petition for review. RPFR File, Tab 28. We have considered the appellant's pleading, but we find that the decisions that she cites would be immaterial to the outcome of this appeal. We therefore deny the appellant's motion. *See* 5 C.F.R. § 1201.114(k). Notwithstanding this ruling, in arriving at our decision, to the extent that there have been relevant developments in the case law after the remand initial decision was issued, we have considered them in arriving at our decision.

The scope of the issues before the Board on remand was limited to the issues discussed in the Remand Order.

¶8 On review, the appellant asserts that she is renewing all of the arguments she has made throughout her appeal. RPFR File, Tab 6 at 4. Pursuant to the Board's Remand Order, however, the issues before the Board on remand were limited to the penalty analysis and a related due process issue. Remand Order, ¶ 40. We therefore do not address the appellant's arguments regarding issues that are beyond the scope of the Board's Remand Order. *See Zelenka v. Office of Personnel Management*, 110 M.S.P.R. 205, ¶ 15 n.3 (2008) (declining to address the appellant's arguments because they exceeded the scope of the issues to be addressed on remand), *rev'd on other grounds*, 361 F. App'x 138 (Fed. Cir. 2010).

The agency did not violate the appellant's right to due process.

¶9 On review, the appellant argues that the agency violated her due process rights when the deciding official considered aggravating penalty factors that were not contained in the proposal notice. RPFR File, Tab 6 at 5-7. For a tenured public employee facing removal from her position, minimum due process requires prior notice and an opportunity to respond. *Cleveland Board of Education v.*

Loudermill, 470 U.S. 532, 546 (1985). An agency violates an employee's due process rights when the deciding official relies upon new and material ex parte information as a basis for his decision. *Ward v. U.S. Postal Service*, 634 F.3d 1274, 1279-80 (Fed. Cir. 2011); *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368, 1376-77 (Fed. Cir. 1999). In *Ward*, the court held that, if an employee has not been given "notice of any aggravating factors supporting an enhanced penalty," an ex parte communication with the deciding official regarding such factors may constitute a due process violation. *Ward*, 634 F.3d at 1280. Consistent with *Ward*, the Board has held that, when a deciding official considers aggravating factors that were not included in the proposal notice, the appellant is no longer on notice of portions of the evidence relied upon by the agency in imposing the penalty, resulting in a possible violation of her right to due process. *See Lopes v. Department of the Navy*, 116 M.S.P.R. 470, ¶ 8 (2011).

¶10 Nevertheless, not all ex parte communications rise to the level of due process violations; rather, only ex parte communications that introduce new and material information to the deciding official will violate the due process guarantee of notice. *Ward*, 634 F.3d at 1279; *Stone*, 179 F.3d at 1376-77; *Solis v. Department of Justice*, 117 M.S.P.R. 458, ¶ 8 (2012). Ultimately, the inquiry is whether the ex parte communication is so substantial and so likely to cause prejudice that no employee can fairly be required to be subjected to a deprivation of property under such circumstances. *Ward*, 634 F.3d at 1279; *Stone*, 179 F.3d at 1377; *Solis*, 117 M.S.P.R. 458, ¶ 8.

¶11 In analyzing the penalty factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-06 (1981), the deciding official referred to "the need for employees similarly situated to meet the condition of employment." IAF, Tab 57 at 35. In its Remand Order, the Board directed the administrative judge to address the appellant's due process claim related to these "similarly situated" but unidentified employees. Remand Order, ¶ 39. The Board found that further discovery regarding potential comparators might yield relevant evidence

regarding that claim. *Id.* On remand, the agency submitted a declaration from the deciding official, in which he stated that he "did not consider any other specific employee but considered that allowing an employee not to meet a condition of employment in the manner that occurred here would prospectively cause other employees to believe they did not have to meet the condition of employment." RAF, Tab 45 at 65. In light of this unrebutted evidence, the administrative judge found that the appellant did not prove a due process violation. RID at 13 (citing *Norris v. Securities and Exchange Commission*, 675 F.3d 1349, 1353-54 (Fed. Cir. 2012) (finding no due process violation when the deciding official testified that the information in question played no role in her consideration of the *Douglas* factors or her ultimate decision to remove the appellant)). We agree with the administrative judge's analysis.

The appellant is not entitled to additional discovery.

¶12 On remand, the chief issue in terms of penalty was whether the agency treated the appellant more harshly than it treated other similarly situated employees. Remand Order, ¶ 40. As directed by the Board, the administrative judge permitted the appellant's discovery request for the disciplinary records of all DCMA AT&L employees who were charged with the same or similar offenses for the 5-year period preceding her removal. Remand Order, ¶ 40; RAF, Tab 2 at 2. The agency provided the appellant this information, but only from July 8, 2012, onward (approximately 21 months prior to the appellant's removal). The agency explained that employee disciplinary records predating July 8, 2012, had been destroyed pursuant to its records retention schedule. RAF, Tab 22 at 18-20. The appellant filed a motion to compel, but the administrative judge denied it, finding that the agency had already provided all of the responsive information within its possession.[2] RAF, Tab 21 at 4, Tab 23, Tab 26 at 2-3.

[2] The appellant's motion extended to other information that the agency destroyed pursuant to its records retention schedule, and the administrative judge denied those portions of the appellant's motion for the same reason. RAF, Tab 2 at 2, Tabs 23, 26.

¶13 On review, the appellant argues that, by denying her motion to compel, the administrative judge effectively limited discovery about comparators to a 2-year period, rather than the 5-year period specified by the Board. RPFR File, Tab 6 at 17-19. However, we agree with the administrative judge's decision not to order the agency to produce information that was no longer in its possession.[3] RAF, Tabs 23, 26. As the administrative judge explained, pursuant to the DCMA records retention schedule, employee disciplinary records are not permanent records and must be destroyed between 4 and 7 years after they are created. RAF, Tab 22 at 53, 108, Tab 26 at 2-3. Furthermore, the agency submitted unrebutted evidence to show that the records in question were actually destroyed after 4 years. RAF, Tab 22 at 132-34; *cf. Abbott v. U.S. Postal Service*, 27 M.S.P.R. 442, 445 n.3 ("The agency has not specifically alleged that records beyond three years have been destroyed pursuant to its record retention guidelines.").

¶14 We see nothing improper with the agency's records retention schedule and no indication that the agency destroyed the records knowing that they would be subject to discovery in the instant appeal. *See Jandreau v. Nicholson*, 492 F.3d 1372, 1375 (Fed. Cir. 2007) (holding that an adverse inference for spoliation of evidence requires proof that evidence was destroyed "with a culpable state of mind" and that it was "relevant to the party's claim or defense"). Therefore, to the extent that the appellant is seeking an adverse inference or other sanction against the agency, we find that no sanction is warranted.

¶15 The appellant also appears to contest the Board's prior ruling that she should be able to discover the disciplinary records of similarly situated DCMA

---

[3] On November 27, 2018, the appellant filed a motion requesting leave to issue subpoenas to obtain evidence that she claims was "wrongly denied" during discovery. RPFR File, Tab 18 at 4. In support of her motion, the appellant argues that the requested subpoenas are necessary because the administrative judge abused her discretion in denying the appellant's motion to compel. For the reasons discussed above, however, we find that the administrative judge did not abuse her discretion regarding discovery. Therefore, we deny the appellant's motion.

AT&L employees; she argues that the Board should have expanded the scope of discovery to the entire Department of Defense acquisition workforce. RPFR File, Tab 6 at 17-19. However, the Board will not reconsider issues that have already been decided in an appeal unless there is new and material evidence, controlling authority has made a contrary decision of law, or the prior decision was clearly erroneous and would work a manifest injustice. *O'Connell v. Department of the Navy*, 73 M.S.P.R. 235, 240 (1997). We find that none of these circumstances are present here, and we therefore decline to revisit the Board's previous ruling on the scope of discovery. This is particularly so in light of the Board's intervening decision in *Singh v. U.S. Postal Service*, 2022 MSPB 15, ¶ 13, in which it held that the universe of potential comparators may, depending on the circumstances, be limited to other employees in the same work unit as the appellant.[4]

The administrative judge correctly found that removal is a reasonable penalty.

¶16 When the agency's charge is sustained, as in this case, the Board will review an agency-imposed penalty only to determine if the agency considered all the relevant factors and exercised management discretion within tolerable limits of reasonableness. *Penland v. Department of the Interior*, 115 M.S.P.R. 474, ¶ 7 (2010). In making this determination, the Board must give due weight to the agency's primary discretion in maintaining employee discipline and efficiency, recognizing that the Board's function is not to displace management's responsibility, but to ensure that managerial judgment has been properly exercised. *Id.* The Board will modify or mitigate a penalty only when it finds that the agency failed to weigh the relevant factors or that the penalty clearly exceeds the bounds of reasonableness. *Id.* The deciding official need not show that he considered all the mitigating factors, and the Board will independently weigh the relevant factors only if the deciding official failed to demonstrate that

[4] To the extent that the appellant argues that the administrative judge should have certified some discovery issues for interlocutory review, RPFR File, Tab 6 at 24 n.14, we find that the issue is now moot. *See Herman v. Department of Justice*, 119 M.S.P.R. 642, ¶ 11 n.3 (2013).

he considered any specific, relevant mitigating factors before deciding on a penalty. *Batara v. Department of the Navy*, 123 M.S.P.R. 278, ¶ 5 (2016).

¶17 The Board has held that, in an adverse action resulting from an employee's failure to maintain a condition of employment, the most relevant *Douglas* factors generally are (1) the nature of the offense; (2) its effect on an appellant's performance of the job; and (3) the availability and effect of alternative sanctions. *Penland*, 115 M.S.P.R. 474, ¶ 8. Regarding the first two factors, the deciding official considered that the appellant was required to achieve Level II Certification in Contracting because she occupied an acquisition position and that her failure to do so disqualified her from membership in the Acquisition Corps. IAF, Tab 46 at 17-18. He also considered that the appellant's failure to achieve Level II Certification resulted in a lack of professional development that diminished her ability to serve in an acquisition position. IAF, Tab 57 at 34.

¶18 As for the availability and effectiveness of alternative sanctions, the record indicates that the deciding official did not seek a waiver of the deadline for obtaining the required certification due to the appellant twice cancelling courses she was scheduled to take and her lack of cooperation when the agency attempted to ensure her compliance with the certification requirement. *Id.* at 33-34. Further, the deciding official sought to place the appellant in a non-acquisition position as an alternative to removal; however, no such positions were available at Sikorsky. IAF, Tab 46 at 21, Tab 57 at 36.

¶19 As explained above, the parties in this case also filed extensive evidence and argument concerning the consistency of the penalty with those previously imposed on other employees for the same or similar offenses. In her initial decision, the administrative judge considered evidence pertaining to 11 other DCMA AT&L employees who failed to attain a required DAWIA certification, but she found that none of them were similarly situated to the appellant for purposes of the penalty analysis. RID at 9-10. She further found that, even if the agency had treated the appellant more harshly than another similarly situated

employee, considering the *Douglas* factors as a whole, removal was still a reasonable penalty. RID at 10 n.8.

¶20 On petition for review, the appellant argues that, regarding this *Douglas* factor, the administrative judge incorrectly placed the burden of proof on her. RPFR File, Tab 6 at 9-11. However, we find that, regardless of the language that the administrative judge used to describe her analysis of this issue, the record is fully developed, and the appellant's substantive rights have not been prejudiced. *See Panter v. Department of the Air Force*, 22 M.S.P.R. 281, 282 (1984). The record shows that, of the 11 DCMA AT&L employees who failed to attain a required DAWIA certification, 3 of them were removed, 2 retired or resigned before receiving a final decision on a proposed removal, 3 were downgraded to vacant positions that did not require DAWIA Certification, and 3 received proposed downgrades to such positions. RID at 9; RAF, Tab 22 at 133. We find that this evidence shows that the agency's treatment of the appellant was consistent with its treatment of other employees who failed to attain a DAWIA certification. Removal is the standard penalty in such cases when, as here, there are no non-acquisition positions available to which the employee could be demoted or reassigned.

¶21 For these reasons, we agree with the administrative judge that the deciding official properly considered the relevant *Douglas* factors and that removal did not exceed the bounds of reasonableness. RID at 10-11; ID at 52.

The appellant has not shown that the administrative judge was biased.

¶22 Finally, the appellant raises a claim of adjudicatory bias on review. RPFR File, Tab 6 at 13-14, 23 n.3. She alleges that, throughout the appeal, the administrative judge has "spoken on behalf of" and demonstrated a bias for the agency, and has not acted reasonably. *Id.* at 13. In making a claim of bias or prejudice against an administrative judge, a party must overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *Oliver v. Department of Transportation*, 1 M.S.P.R. 382, 386 (1980). An administrative

judge's conduct during the course of a Board proceeding warrants a new adjudication only if her comments or actions evidence "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Bieber v. Department of the Army*, 287 F.3d 1358, 1362-63 (Fed. Cir. 2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)); *Smets v. Department of the Navy*, 117 M.S.P.R. 164, ¶ 15 (2011), *aff'd*, 498 F. App'x 1 (Fed. Cir. 2012). The appellant's allegations on review, which do not relate to any extrajudicial conduct by the administrative judge, do not rise to this level.

NOTICE OF APPEAL RIGHTS[5]

You may obtain review of this final decision. 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 final decision, 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.

[5] Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(A).

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. 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 you receive this decision. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). If you have a representative in this case,

and your representative receives this decision before you do, then you must file with the district court no later than **30 calendar days** after your representative receives this decision. 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.

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 you receive this decision. 5 U.S.C. § 7702(b)(1). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the EEOC no later than **30 calendar days** after your representative receives this decision.

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 either with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction.[6] The court of appeals must receive your petition for review within **60 days** of the date of issuance of this decision. 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. 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.

---

[6] The original statutory provision that provided for judicial review of certain whistleblower claims by any court of appeals of competent jurisdiction expired on December 27, 2017. The All Circuit Review Act, signed into law by the President on July 7, 2018, permanently allows appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any other circuit court of appeals of competent jurisdiction. The All Circuit Review Act is retroactive to November 26, 2017. Pub. L. No. 115-195, 132 Stat. 1510.

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.

FOR THE BOARD:

Jennifer Everling

Jennifer Everling
Acting Clerk of the Board

Washington, D.C.

Appendix C

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

VERONICA MARQUAND,
Petitioner

v.

DEPARTMENT OF DEFENSE,
Respondent

2024-1474

Petition for review of the Merit Systems Protection Board in Nos. PH-0752-14-0636-B-1, PH-0752-14-0636-I-1.

Decided: December 18, 2024

VERONICA MARQUAND, Hamden, CT, pro se.

STEVEN C. HOUGH, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent. Also represented by REGINALD THOMAS BLADES, JR., BRIAN M. BOYNTON, PATRICIA M. MCCARTHY.

Before HUGHES, STARK, *Circuit Judges*, and SCHROEDER, *District Judge*.[1]

PER CURIAM.

Veronica Marquand appeals the final decision of the Merit Systems Protection Board sustaining her removal from her position at the Defense Contract Management Agency. Because the Merit Systems Protection Board's decision was in accordance with the law and supported by substantial evidence, we affirm.

I

On January 21, 2014, the agency issued a notice to Ms. Marquand, which proposed her removal from employment as a GS-12 Contract Price/Cost Analyst at the Defense Contract Management Agency. S.A. 125–28.[2] The proposal was based on her "failure to meet a condition of employment, specifically, Defense Acquisition Workforce Improvement Act (DAWIA) Level II Certification." S.A. 125. Ms. Marquand had not completed two of the core training courses needed to achieve Level II Certification before the requisite deadline. S.A. 125–26. On March 25, 2014, the deciding official, Mark Saldon, found that removal was warranted. S.A. 100–02. Ms. Marquand's removal became effective on March 28, 2014. S.A. 102.

Ms. Marquand appealed her removal to the Board. The administrative judge rejected Ms. Marquand's claim that Level II Certification was not a condition of her employment and affirmed the agency's removal action. *Marquand v. Dep't of Def.*, PH-0752-14-0636-I-1, 2015 WL

---

[1] The Honorable Robert W. Schroeder III, District Judge, United States District Court for the Eastern District of Texas, sitting by designation.

[2] Citations to "S.A." refer to the Supplemental Appendix submitted by the respondent with its briefing.

669205 (M.S.P.B. Feb. 9, 2015); S.A. 48–99 (Initial Decision). The administrative judge also rejected Ms. Marquand's claims of harmful procedural error due process violations. S.A. 71–99.

Ms. Marquand subsequently petitioned for full Board review. The Board sustained the administrative judge's finding that Ms. Marquand had failed to meet a condition of employment but found that the administrative judge abused her discretion by denying Ms. Marquand's motion to compel discovery related to disciplinary actions imposed on employees for similar failures to complete certification. *Marquand v. Dep't of Def.*, No. PH-0752-14-0636-I-1, 2016 WL 3648373 (M.S.P.B. July 7, 2016); S.A. 27–47 (Remand Order). Because such information could be relevant to Ms. Marquand's affirmative defense, the Board remanded the case to require the administrative judge to permit discovery regarding the discipline of similarly positioned DCMA employees in the five years preceding Ms. Marquand's removal. S.A. 46.

Following supplementary discovery, the administrative judge again sustained Ms. Marquand's removal. *Marquand v. Dep't of Def.*, No. PH-0752-14-0636-B-1, 2017 WL 2835958 (M.S.P.B. June 29, 2017); S.A. 13–26 (Initial Decision on Remand). The administrative judge found that "removal was the most common action taken" in similar situations. S.A. 22. The administrative judge also rejected Ms. Marquand's due process argument that the deciding official had engaged in ex parte communications regarding similarly situated employees to form his decision to remove her. S.A. 25–26.

Ms. Marquand again sought review by the Board. The Board denied her petition and adopted the Initial Decision on Remand as the Board's final decision. *Marquand v. Dep't of Def.*, No. PH-0752-14-0636-B-1, 2023 WL 8672722 (M.S.P.B. Dec. 14, 2023); S.A. 1–12 (Final Decision).

Ms. Marquand timely petitioned for review of the Board's Final Order in this court. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(9).

II

The scope of our review in an appeal from the Board is limited. We must affirm the Board's decision unless it is: "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c); *Higgins v. Dep't of Veterans Affs.*, 955 F.3d 1347, 1353 (Fed. Cir. 2020). "We review the Board's factual findings . . . for substantial evidence." *Rueter v. Dep't of Com.*, 63 F.4th 1357, 1364 (Fed. Cir. 2023). "The Board's decision is supported by substantial evidence 'if it is supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Warren v. U.S. Postal Serv.*, 497 F. App'x 22, 24 (Fed. Cir. 2012) (quoting *Brewer v. U. S. Postal Serv.*, 647 F.2d 1093, 1096 (Ct. Cl. 1981)). For "[p]rocedural matters relative to discovery and evidentiary issues" we "will not overturn the [B]oard on such matters unless an abuse of discretion is clear and is harmful." *Curtin v. Off. of Pers. Mgmt.*, 846 F.2d 1373, 1378 (Fed. Cir. 1988).

III

On appeal, Ms. Marquand repeats her assertion that Level II Certification "was never a condition of employment." Pet. Inf. Br. at 1. Substantial evidence unequivocally supports the Board's finding that Level II Certification was required, and that Ms. Marquand was on notice of this requirement. The agency had the authority to require Ms. Marquand to complete Level II Certification based on the Defense Acquisition Workforce Improvement Act, codified in 10 U.S.C. § 1723, and agency directives including DoD Directive 5000.52, DoD Instruction 5000.66, and the DoD Desk Guide. S.A. 51–58. And Ms. Marquand

was given adequate notice of the requirement by the announcement for her position, S.A. 136, and by both her tentative and final job offers. S.A. 133, S.A. 132 ("DAWIA Level II certification is required").

Ms. Marquand also alleges that the agency violated her due process rights because the deciding official issued a defective notice that did not inform her of his reasoning for removal, engaged in ex parte communications, and failed to consider alternatives to removal. Pet. Inf. Br. at 7–8. The Board's findings that Ms. Marquand failed to prove the factual components of these affirmative defenses is supported by substantial evidence.

As to the allegedly defective notice, the Board carefully considered whether the agency had satisfied its obligations to notify Ms. Marquand of the specific reasons for the proposed removal and of her right to review the materials that the agency relied upon and found that it had. S.A. 86–90. The notice of proposed removal laid out the factual basis regarding Ms. Marquand's failure to complete certification, informed her of her right to reply, and advised her that the action was being taken pursuant to 5 C.F.R. § 752, which enumerates the right to request underlying materials. S.A. 125–28. Even though the notice did not specifically mention the right to request materials, the administrative judge found that Ms. Marquand had failed to 1) allege how the agency's failure to specifically advise her of this right violated her due process rights, S.A. 91, 2) "ask[] anyone to review any of the material relied upon in support of the agency's action", S.A. 90, and 3) demonstrate that the agency prejudiced her rights by failing to provide her with a copy of the deciding official's *Douglas* factor analysis prepared in support of the notice of proposed removal. S.A. 93–94.

Substantial evidence also supports the Board's findings that the deciding official (1) did not engage in ex parte communications by discussing her removal with other

agency personnel and (2) that the agency considered alternatives to removal. The deciding official testified that he conversed with agency advisors, the proposing officer, and a labor and employee relations specialist only to evaluate the legal arguments raised in Ms. Marquand's own written response, S.A. 25, and that, although he was not required to do so, he searched for suitable vacancies and explicitly informed Ms. Marquand of the lack of alternative positions in the notice of proposed removal. S.A. 98; *see also* notice of proposed removal at S.A. 101 ("DCMA Sikorsky does not currently have any vacant non-acquisition positions to place you as an alternative to removal from Federal service.").

Finally, Ms. Marquand argues that the Board and the agency committed a great variety of other harmful errors in the handling of her appeal. But she has not established reversible error. For example, she alleges that the Board erred by not giving her additional discovery, but those decisions lie within the sound discretion of the Board, and we find no abuse of such discretion. She also claims that the agency committed a harmful procedural error in failing to either waive her certification requirement or process her course fulfillment request (based on work experience). But the Board properly found that the agency was not required to approve her requests for fulfillment or waiver. S.A. 79–86.

We have considered Ms. Marquand's remaining arguments and find them unpersuasive.

IV

Because the Board's decision was supported by substantial evidence and otherwise in accordance with law, we affirm.

AFFIRMED

COSTS

No costs.

Appendix D

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

VERONICA MARQUAND,
Petitioner

v.

DEPARTMENT OF DEFENSE,
Respondent

2024-1474

Petition for review of the Merit Systems Protection Board in Nos. PH-0752-14-0636-B-1, PH-0752-14-0636-I-1.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*, and SCHROEDER, *District Judge*.[1]

---

[1] The Honorable Robert W. Schroeder III, District Judge, United States District Court for the Eastern District of Texas, sitting by designation.

PER CURIAM. [2]

ORDER

On April 1, 2025, Veronica Marquand filed a combined petition for panel rehearing and rehearing en banc [ECF No. 51]. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

May 6, 2025
Date

Jarrett B. Perlow
Clerk of Court

---

[2] Circuit Judge Newman did not participate.

No. _____

In The

Supreme Court of the United States

VERONICA MARQUAND,

Applicant

v.

DEPARTMENT OF DEFENSE,

Respondent

COMBINED CERTIFICATE OF COMPLIANCE AND SERVICE FOR THE APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

Veronica Marquand
PO Box 185672
Hamden, CT 06518
860-514-1437
vmarquand@earthlink.net

July 17, 2025

CERTIFICATE OF COMPLIANCE

Pursuant to the Court's rules and procedures, the Applicant certifies that the foregoing Application complies with the Court's type-volume limitation rules. Relying on the count feature of the word processing program used to prepare this application, the Applicant certifies that it contains no more than 1000 words including sections that may be exempted.

CERTIFICATE OF SERVICE

Pursuant to the Court's rules and procedures, the Applicant certifies that the original and two (2) copies of this application were submitted for filing by the Clerk, at Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543 via first-class mail, postage prepaid and one copy of this application was served upon the Solicitor General of the United States at Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001, via first-class mail, postage prepaid, and also by email to: *SupremeCtBriefs@USDOJ.gov*.

Respectfully submitted,

Veronica Marquand
PO Box 185672
Hamden, CT 06518
860-514-1437
vmarquand@earthlink.net