

JUN 20 2022

No. 22-5122

In The
Supreme Court of the United States

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FAYE RENNELL HOBSON,

Petitioner,

v.

RETIRED GENERAL LLOYD AUSTIN,

Secretary Department of Defense,
Respondent,

-----*-----
ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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PETITION FOR WRIT OF CERTIORARI
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June 18, 2022

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

This Petition arises from the per curiam, without-opinion affirmance by the United States Court of Appeals for the Federal Circuit of a Final Order of the United States Merit Systems Protection Board (“MSPB”) that missed a federal applicants challenge to an adverse employment action. MSPB dismissed the Petitioners Individual Right of Action Appeal under the Whistleblower Protection Act and Whistleblower Protection Enhancement Act for Lack of Jurisdiction. The Board stated reason is the Petitioners failure to make a non-frivolous allegation that her protected activity was a contributing factor to personnel (retaliatory) action taken against her

On March 21, 2022, the United States Court of Appeals for the Federal Circuit entered its Notice of Entry of Judgment Without Opinion, the Clerk of Court stating: “This Cause having been considered, it is ORDEREDED and AJUDGED: AFFIRMED. The Court affirmed the judgment or decision that was appealed. None of the release sought in the appeal was granted. No opinion accompanied the judgment.” Notice of Entry of Judgment without Opinion in 21-1693 HOBSON vs. MSPB Merit Systems Protection Board, Case No. CH-1221-20-0604-W-I (March 21, 2022).

This Federal Circuit decision directly conflicts with earlier Holdings of the Federal Circuit itself-the only circuit ordinarily With jurisdiction over appeals challenging the U.S. Merit System Protection Board and the Supreme Court of the United States. Accordingly, Petitioner Hobson (who is a 59-year old Former Department of Defense Education Activity (DoDEA) Veteran Educator by way of Department of Defense (DoD)) who spent six (6) Consecutive years in South Korea and one who has served in Germany, Guam, Fort Campbell and Fort Knox files this Petition For Writ of Certiorari to the U. S. Supreme Court. Five reasons or presented:

11/16/2022

- I. Whether the U. S. Court of Appeals for the Federal Circuit erred in dismissing the Petitioners Whistleblower By Proxy Case, when she was non-selected for a teaching position at Mahaffey Middle School, a (DoDEA) school, within months after she testified in a MSPB Hearing by way of Subpoena, for another known (DoDEA) Whistleblower?
- II. Whether the U. S. Court of Appeals for the Federal Circuit erred in dismissing the Petitioners Whistleblower by Proxy case, when the Board prematurely dismissed her appeal for lack of jurisdiction based on the Boards misinterpretation of the Petitioner's filings?
- III. Whether the U.S. Court of Appeals for the Federal Circuit erred in affirming the dismissal of the Petitioners Whistleblower By Proxy case, when the Board made erroneous statements about the Petitioners awareness of the selection officials knowledge of her prior EEO protected activity?
- IV. Whether the U. S. Court of Appeals for the Federal Circuit erred in affirming the dismissal of the Petitioners Whistleblower By Proxy case, when the Board misinterpreted the Petitioners current case with a previously adjudicated case?
- V. Whether the U. S. Court of Appeals for the Federal Circuit erred in affirming the dismissal of the Petitioners Whistleblower By Proxy case, when the Board made erroneous statements that the Petitioner failed to make a non-frivolous allegation?

LIST OF PARTIES

The parties below are listed in the caption.
There were no additional parties joined in
the action.

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IV. Whether the U. S. Court of Appeals for the Federal Circuit erred in affirming the dismissal of the Petitioners Whistle-blower By Proxy case, when the Board misinterpreted the Petitioners current case with a previously adjudicated case (Abuse of Authority)?

V. Whether the U. S. Court of Appeals for the Federal Circuit erred in affirming the dismissal of the Petitioners Whistle-blower By Proxy case, when the Board made erroneous statements that the Petitioner failed to make a non-frivolous allegation?

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OPINION BELOW

The Initial Decision of the Administrative Judge (MSPB) on December 10, 2020 states “The Appellant has requested a hearing, but it is apparent from the documentary record that the Board lacks jurisdiction over this appeal. Accordingly, the appeal is DISMISSED for lack of jurisdiction.

The judgment of the United States Court of Appeals for the Federal Circuit is unreported, per curiam, and without opinion. On March 21, 2022 the Federal Circuit entered its Notice of Entry of Judgment Without Opinion, the Clerk of Court stated “This Cause having been considered, it is ORDERED AND ADJUDGED AFFIRMED.”

STATEMENT OF JURISDICTION

On March 21, 2020, the Federal Circuit affirmed the MSPB’s Initial Decision of December 10, 2020. This Court has jurisdiction pursuant to 28 USC 1254 (1).

Jurisdiction and Venue

The Supreme Court is the highest court in the United States, and it is the only federal court expressly referred to in the U.S. Constitution. The Supreme Court is the final arbiter of law in this country, and it ensures that all American citizens receive equal justice under the law. The Supreme Court is the next Court for an appeal from a Circuit Court. Any party wishing to appeal a Circuit Court decision has the option to file a petition with the Supreme Court for a Writ of Certiorari. For the Supreme Court to agree to hear a case, four of the nine Justices must vote to do so.

Knowledge is power and action is strength. I Petitioner Hobson need four (4) Justices to hear ‘My Cry’.

**CONSTITUTIONAL AND STATUTORY
PROVISION INVOLVED**

Amendment V, U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, U.S. Constitution

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.

Article I, Section 7, Clauses 2 and 3, U.S. Constitution (the Presentment Clause)

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that

House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sunday excepted) after it shall have been presented to him, the Same [Volume 2, Page 388] shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Title, United States Code, Section the Whistleblower Protection. U. S. Code. (a) No manufacturer private labeler, distributor, or retailer, (1) may discharge an employer or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's imitative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee).

STATEMENT OF THE CASE

Petitioner Faye Rennell Hobson ("Hobson" or "Appellant") is a former employee and applicant of the U. S. Department of Defense (DoD) by way of the Department of Defense Education Activity (DoDEA) Agency in Fort Campbell, Kentucky, where the Petitioner once served as a Special Education teacher. On August 5, 2020, the Appellant filed her Initial Whistleblower By Proxy (Anti-Retaliation) Appeal to the Merit Systems Protection Board ("MSPB") seeking corrective action concerning denials of positions to her by the Agency, DoDEA by way of DoD. The Petitioner claims she is being non-selected for positions at Fort Campbell Army Base DoDEA schools due to her participation in Prohibited Personnel Practices which granted her whistleblower statues. And for the Agency's continuous PPP violations (Refusal to Hire), as well as filing of Complaints to Members of Congress, Office of Special Counsel (OSC), the President of the United States and more. In addition, on February 27, 2019, I Appellant Hobson received a Subpoena from a MSPB Judge, to testify in an MSPB Hearing at Fort Campbell Army Base/DoDEA District Office on March 6, 2019. I Appellant Hobson testified on March 6, 2019 as Ordered by an MSPB Judge. On July 12, 2019, I Appellant Hobson was non-selected for an English teaching position in which I Appellant Hobson is highly qualified and certified to teach. In addition, I Appellant Hobson was also qualified for VEOA preference, due to my Military Retired Disabled Spouse being 100% disabled.

The MSPB Administrative Judge stated the Appellant did not state the selecting official had knowledge of her protective activity. However the selecting official had first-hand knowledge of the Appellants PPP because she has been named in several previous MSPB cases filed by the Appellant. In *Blount v. The Department of Defense*, The MSPB Administrative Judge stated "The appellant did not specifically allege that the acting agency official had knowledge of her being subpoenaed to testify. Still, because the agency had knowledge, I find it sufficient to meet the appellant's non-frivolous allegation burden of proof for the knowledge portion of the knowledge/timing test. Further, the alleged action took place within a very short time of the agency learning the appellant would testify in the Hobson trial. Thus I find the appellant has made a non-frivolous allegation of a causal connection between her assistance in the Hobson matter and her reassignment. Based on the foregoing, I find the Board has jurisdiction over this appeal."

On December 10, 2020, Administrative Judge Daniel R. Fine DISMISSED the Appellants Appeal for lack of jurisdiction and the Appellant filed a timely Appeal with the United States Circuit Court of Federal Appeals on February 6, 2021 vs. filing a Petition for Review which would have added an additional case to the Appellant's already three (3) sitting duck MSPB Petition for Review cases.

The non-selection timing factor is within a four (4) month period from participating in an MSPB Hearing vi Subpoena and the non-selection. As a matter of Fact, I Appellant Hobson was non-selected for five (5) positions at Mahaffey Middle School during the month of July 2019.

In *Blount v. the Department of Defense (DoD) MSPB (2018)* the AJ stated "One way of establishing that a protected disclosure and/or protected activity was a contributing factor in the agency's decision to take a covered personnel action is through the knowledge/timing test. *Mason v. Department of Homeland Security*, 116 M.S.P.R. 135, 26 (2011). The knowledge/timing test provides for finding a contributing factor if the appellant is able to show that the acting agency official had knowledge of her protected disclosure and /or activity and the timing of the action is such that a reasonable person could conclude that the disclosure was a contributing factor. The Board has held that a personnel action taken within approximately 1 or 2 years of the appellant's disclosures satisfies the timing

component of the knowledge/timing test. Schnell v. Department of the Army, 114 M. S.P.R. 83, 22 (2010). Hobson v. The Department of Defense is a very similar case. In this case, the Agency notified both Hobson and Agency officials of the Subpoena with details of the location as early as February 27, 2019. Hearing held on March 6, 2019.

REASONS FOR ALLOWANCE OF THE WRIT

The MSPB Administrative Judge Daniel Fine Abused his Authority when he chose not to properly adjudicate the Appellant's Whistleblower By Proxy case and instead took it upon himself to DISMISS a case in which the Board had jurisdiction. Could it possibly be because the A. J. did not want to grant the Appellant to victories in a single year. For the record during the time stated case was before the A.J., the very same A.J. was also assigned to the Appellants VEOA case, a case in which he ruled in the Appellant's favor, but failed to grant immediate relief allowing the Appellant's VEOA to erroneously placed in the Petition for Review holding cell.

This case is unique in that the Appellant chose to file a civil case with the Federal Circuit Court of Appeals v. A Petition for Review with the Board. And once the Appellant filed with the Federal Circuit Court, the Department of Justice attorneys became attorneys of record for the Department of Defense (DoD) and then suddenly, the case was right back where it started, it was in the hands of the Merit Systems Protection Board. As such, it is the Appellants strong believe that her Per Curiam is a result of such injustice and the very same individuals that DISMISSED her Initial MSPB for lack of jurisdiction, repeated the same (Katrina Lederer) Attorney advisor and Tristan L. Leavitt, current Petition for Review Board Member.

The United States Federal Circuit Court of Appeals has jurisdiction over the Appellants stated case. Jurisdiction of this Honorable Court is invoked pursuant to Whistleblower cases. "The Court of Appeals for the Federal Circuit was established under Article III of the Constitution on October 1, 1982. It is the only court empowered to hear appeals of whistleblower cases decided by the merit board." However, from the onset the Appellant was hesitant about submitting stated case to the Federal Circuit Court due to statements made by members of Congress. Members of Congress have criticized the Federal Court for its misinterpreting whistleblower laws and setting a precedent that is hostile to claimants. Further research shows the Court has ruled more in favor against the whistleblower than for the whistleblower and to the Appellant's

ears and eyes such is a concern.

The Petitioner is bringing stated case before this Court for the very same reasons she took it before the Federal Court of Appeals and that's to receive justice, not injustice. Let the record show, the Petitioner should not have had to bring this case to this Court or the Federal Circuit Court, because the Merit Systems Protection Board had jurisdiction to hear and to make a ruling as related to this Federal Whistleblower By Proxy case. Administrative Daniel Fine missed several deadlines as related to this stated case and a cover up was to DISMISS with hopes that the Appellant will drop the case. The Federal Circuit as well as the United States Supreme Court has previously recognized the need to set forth due process standards in similar cases, carefully applying the Fifth Amendment in a trio of preference cases and whistleblower cases involving preference illegal applicants and whistleblower applicants and employees. However in Hobsons case the Federal Circuit refused such and the Petitioner is counting on this highest court of the land, to do the right thing. In this instant judicial case, the Petitioner is seeking review of the denial of a hearing by both the Federal Circuit and the Board, which in either case both have the authority to decide Hobson's case on the merits if this case is remanded, on due process grounds.

The Federal Circuit should have remanded the case back to MSPB, but if the Federal Circuit decision makers were MSPB a non-demander would make sense.

The Fifth Amendment guarantees that "no person shall....be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests... [The Supreme Court] consistently has held that some form of hearing is required before an individual is finally deprived of a property interest....The fundamental requirement of due process is the opportunity to be heard at a meaningful manner. Procedural due process thus determines both whether the litigant has a protected property interest and, if so, what process is due. And the process due is DUE PROCESS.

I. REVIEW IS WARRANTED TO RESOLVE THE ISSUE OF WHETHER THE US COURT OF APPEALS FOR THE FEDERAL CIRCUIT ERRED IN DISMISSING THE PETITIONERS WHISTLEBLOWER BY PROXY CASE, WHEN SHE WAS NON-SELECTED FOR TEACHING POSITIONS AT MAHAFFEY

MIDDLE SCHOOL, A DODEA/DOD SCHOOL, AN WITHIN MONTHS OF TESTIFYING IN A MSPB HEARING BY WAY OF SUBPOENA, FOR ANOTHER FEDERAL WHISTLEBLOWER ?

In this Whistleblower by proxy case, the Petitioner was non-selected for several positions within four (4) months of testifying in favor of a DoDEA/DoD Federal Whistleblower. The Petitioner testified in a March 6, 2019 MSBP Hearing and in July 2019, she was non-selected for a position in which she is certified and highly qualified to teach. In addition at the time, the Petitioner had employment preferences The Appellant was non-selected for five (5) position during the year of 2019 by the same selecting official. As such, the following violations were committed; 5 U.S.C. 1214(a) (3) and 1221, Retaliation for Whistleblowing activity 2302 (b)(8) or (b) (9)(A)(i), (B), (C), or (D), and Prohibited Personnel Practice 5 U.S.C. 2302(b)(1)(4)(6)(8)(9).

II. REVIEW IS WARRANTED TO RESOLVE THE ISSUE OF WHETHER THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT ERRED IN DISMISSING THE PETITIONERS WHISTLEBLOWER BY PROXY CASE, WHEN THE BOARD PREMATURELY DISMISSED HER APPEAL FOR LACK OF JURISDICTION BASED ON THE BOARDS MISINTERPRETATION OF THE PETITIONERS FILINGS?

In this Whistleblower by proxy case, the Administrative judge handling of stated case from the onset was a demonstration of judicial bias. The AJ. created a special document that indicated he held a status conference as related to this Whistleblower by proxy case, when indeed such is untrue. During a Hearing for the Agency's violation of the Petitioners VEOA, the A.J. talked more about the Whistleblower case than the Appellants VEOA (federal law) violation case. It was not until the Appellant requested a default and sanctions against the Agency DoDEA/DoD that the A J. determined he needed to Dismiss the Appellants case.

III. REVIEW IS WARRANTED TO RESOLVE THE ISSUE OF WHETHER THE U. S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT ERRED IN AFFIRMING THE DISMISSAL OF THE PETITIONERS WHISTLEBLOWER BY PROXY CASE, WHEN THE BOARD MADE ERRONEOUS STATEMENTS ABOUT THE PETITIONERS AWARENESS OF THE SELECTION OFFICIALS KNOWLEDGE OF HER PRIOR EEO PROTECTED ACTIVITY?

In this Whistleblower by proxy case, the Appellant did not specifically allege that the acting agency official had knowledge of her being Subpoenaed to testify However in Blount v. The Department of Defense, the Board stated because the agency had knowledge, she found it sufficient to meet the appellant's non-frivolous allegation burden of proof for the knowledge portion of the knowledge/timing test.

IV. REVIEW IS WARRANTED TO RESOLVE THE ISSUE OF WHETHER THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT ERRED IN AFFIRMING THE DISMISSAL OF THE PETITIONERS WHISTLEBLOWER BY PROXY CASE, WHEN THE BOARD MISINTERPRETED THE PETITIONERS CURRENT CASE WITH A PREVIOUSLY ADJUDICATED CASE?

In this Whistleblower by proxy case, the Administrative judge erred when he used the Petitioners submission as an exhibit and claimed it as the Petitioners case submission to dismiss. Such an err caused a Board Dismissal and Conformation of such my the Federal Circuit Court of Appeals The Petitioner strongly believes the A.J. purposely misinterpreted her case filings, that potentially lead to a miscarriage of justice. The A.J. confused the Petitioners 2016 MSPB Hearing with her current 2021 claim of Whistleblower Reprisal non-selections.

V. REVIEW IS WARRANTED TO RESOLVE THE ISSUE OF WHETHER THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT ERRED IN AFFIRMING THE DISMISSAL OF THE PETITIONERS WHISTLEBLOWER BY PROXY CASE, WHEN THE BOARD MADE ERRONEOUS STATEMENTS THAT THE PETITIONER FAILED TO MAKE A NON-FRIVOLOUS ALLEGATION?

In This Whistleblower by proxy case, the MSPB Administrative Judge claim that the Petitioner did not make a non-frivolous claim was a quick way to DISMISS the Appellants claims to cover-up his mishaps of late responses to on time submissions.

CONCLUSION

Thus, certiorari is warranted to resolve the due process issue of the Federal Circuit as well as the board not providing the Appellant a due process hearing, a hearing in which she is entitled and the affirmance of the Board by the Federal Circuit. Courts have ruled against trickery. Administrative judges are not empowered to decide the constitutionality of bureaucratic actions because administrative judges are themselves employed in the executive branch of government. No judge, attorney or person is above the law of this land. The Petitioner is entitled to due process that she has not yet been granted for reasons other than the lack of jurisdiction.

The Petitioner requested Oral Arguments to present such to the Court and Oral Argument was DENIED. Even though such was denied, the Petitioner had the right to sit before the panel of judges on the day a decision was made in her case and such was DENIED. The Petitioner showed up for stated hearing and upon arrival to the Court; there was no Courtroom assigned for a hearing with the Petitioners name and as such; the Petitioner believes no hearing occurred. Such will be presented within the Petitioners EXHIBITS.

The Petitioners TABLE Of AUTHORITIES include case files of three other Department of Defense Education Activity (DoDEA) by way of Department of Defense (DoD) current and former employees. Ashmore v. Department of Defense (2021); Benton-Flores v. Department of Defense (2014); and Blount v. Department of Defense (2019) are all cases before the Merit Systems Protection Board and several are currently awaiting review of the newly appointed Board members. All other TABLE Of AUTHORITIES as listed are cases within stated cases or similar MSPB cases where justice prevailed such as Brock v. MSPB (2021); Conyers v. DOD (2010); Downing v. DoD (2004); Korb v. MSPB (2016); Marana v. MSPB, (Jan. 2022); Mason v. Department of Homeland Security (2011); Mudd v. Department of Veterans Affairs (2013); Schnell v. Department of the Army (2010); Smith v. General Services Administration (July 2019) and Webb v. Department of Interior (2015). Statues and Regulations apply to all cases and all appeared to have made some type of disclosure that fails within the Whistleblower Protection Act and

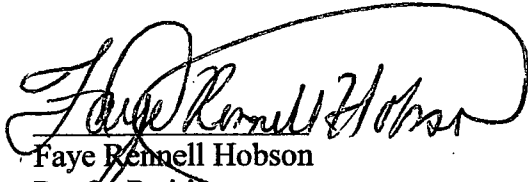
Enhancement Act of (2012).

The Petitioner request that this Court review the following MSPB cases, all in which are cases filed by the Petitioner as a Pro Se Litigant

- Petition for Review Docket No. CH-0752-17-0229-I-1
- VEOA...Petition Review placed in holding cell by Agency officials and A. J. Fine Docket No. CH-3330-20-0418-I-1
- Petition for Review Docket No. CH-1221-17-0203-W-1
- Petition for Review Docket No. CH-1221-15-0470-W-1
MSPB Judge concealed evidence.

In closing, the Petitioner respectfully requests that the Supreme Court grant review of the Federal Circuit's judgment.

Respectfully Submitted on this 19th day of June, 2022



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APPENDIX