

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

EVELYN COURTNEY,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2025-1348

Petition for review of the Merit Systems Protection Board in No. SF-1221-23-0417-W-1.

Decided: October 31, 2025

EVELYN COURTNEY, Fresno, CA, pro se.

KAREY LAUREN HART, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by ALLISON JANE BOYLE, KATHERINE MICHELLE SMITH.

Before TARANTO, STOLL, and CUNNINGHAM, *Circuit Judges.*

PER CURIAM.

Evelyn Courtney petitions for review of a Merit Systems Protection Board (“Board”) final order, which denied her petition for review and affirmed the administrative judge’s initial decision dismissing the appeal for lack of jurisdiction. *Courtney v. Dep’t of the Treasury*, No. SF-1221-23-0417-W-1, 2024 WL 4751396, at *1 (M.S.P.B. Nov. 8, 2024) (“*Final Order*”); *Courtney v. Dep’t of the Treasury*, No. SF-1221-23-0417-W-1, 2023 WL 4999244 (M.S.P.B. Aug. 2, 2023) (S. App’x 8–28) (“*Initial Decision*”).¹ For the reasons discussed below, we *affirm*.

I. BACKGROUND

On March 28, 2022, Ms. Courtney was appointed as a Tax Examining Technician in the United States Department of the Treasury, Internal Revenue Service (“IRS”). *Initial Decision* at 8; S. App’x 64. The appointment was subject to a one-year probationary period beginning on the same date. *Initial Decision* at 8; S. App’x 64.

On March 2, 2023, Ms. Courtney submitted a grievance. *Initial Decision* at 9; S. App’x 82. Ms. Courtney alleged that the “[l]ead worker . . . prepares negative remarks on [her] case messages and provides the most cryptic of advice” and “withholds vital information so that [she] cannot perform [her] job duties properly.” S. App’x 82; *Initial Decision* at 9. Ms. Courtney also described her belief that the lead worker was “deliberately sabotaging [her] work here at the IRS.” S. App’x 82; see *Initial Decision* at 9. As a remedy, Ms. Courtney requested

¹ We refer to the supplemental appendix filed with the government’s informal response brief, ECF No. 18, as “S. App’x” throughout this opinion. Citations in this opinion are to the version included in the government’s appendix. For example, *Initial Decision* at 1 is found at S. App’x 8.

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that the IRS train her and not “allow managers and leads to withhold information that is directly relevant to [her] job duties.” S. App’x 82; see *Initial Decision* at 9.

Ms. Courtney’s department manager terminated her, effective March 24, 2023. *Initial Decision* at 9; S. App’x 61–63. On April 18, 2023, Ms. Courtney appealed to challenge her termination. See *Initial Decision* at 11. While her appeal was pending, she filed a complaint with the Office of Special Counsel (“OSC”), alleging that her termination was in reprisal for filing a grievance on March 2, 2023. *Id.*; S. App’x 70–80. OSC concluded that the IRS did not terminate Ms. Courtney for reprisal. *Initial Decision* at 11–12; S. App’x 79–81. On June 2, 2023, the administrative judge dismissed the appeal challenging Ms. Courtney’s termination based on lack of jurisdiction over a termination occurring during the probationary period. See generally *Courtney v. Dep’t of the Treasury*, No. SF-315H-23-0324-I-1, 2023 WL 3793038 (M.S.P.B. June 2, 2023). However, the administrative judge indicated that Ms. Courtney could file an Individual Right of Action (“IRA”) appeal covering any whistleblowing claim after exhausting her remedies with OSC. *Id.*; see *Initial Decision* at 11.

On June 4, 2023, Ms. Courtney filed an IRA appeal with the Board. S. App’x 98–100. After the IRA appeal was filed, the Board requested additional information to determine whether it had jurisdiction over the appeal. S. App’x 87–96. In response to the “whistleblower jurisdiction order,” *id.*, Ms. Courtney repeated allegations that she previously submitted when she filed her March 2, 2023 grievance. See S. App’x 65–68. Ms. Courtney also made new disclosures of injury, touching, cursing, and other improper conduct from coworkers and supervisors. *Initial Decision* at 10–11; S. App’x 65–68.

On August 2, 2023, the administrative judge dismissed the IRA appeal for lack of jurisdiction. *Initial Decision* at 1.

The administrative judge determined that Ms. Courtney had exhausted her complaint with OSC with respect to the March 2, 2023 grievance, but not with respect to the new disclosures and complaints listed in her jurisdictional statement. *Id.* at 12. Specifically, the administrative judge concluded that Ms. Courtney failed to “exhaust [before OSC] any potential complaints related to her injury or being ‘chased’ by another employee, being touched by a coworker, or that coworkers cursed at work.” *Id.* The administrative judge further found that her March 2, 2023 grievance did not raise protected disclosures or qualify as protected activity to support Board jurisdiction. *Id.* at 12–13. Ms. Courtney petitioned for review of the initial decision to the Board. *Final Order* at *1. On November 8, 2024, the Board denied Ms. Courtney’s petition for review and affirmed the administrative judge’s initial decision dismissing her IRA appeal for lack of jurisdiction. *Id.* at *1.

Ms. Courtney timely petitioned for review in this court. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

II. DISCUSSION

We will set aside any action, findings, or conclusions of the Board that are: “(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); *Brenner v. Dep’t of Veterans Affs.*, 990 F.3d 1313, 1322 (Fed. Cir. 2021) (quoting 5 U.S.C. § 7703(c)). “We review decisions of the Board regarding its own jurisdiction without deference.” *Kahn v. Dep’t of Just.*, 528 F.3d 1336, 1341 (Fed. Cir. 2008).

To establish the Board’s jurisdiction over an IRA appeal, the appellant must “show by preponderant evidence that (1) [she] engaged in whistleblowing activity by making a disclosure protected by 5 U.S.C. § 2302(b)(8); (2) the agency took or threatened to take a ‘personnel action’

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against [her] as defined in 5 U.S.C. § 2302(a)(2)(A); (3) [she] sought corrective action from OSC; and (4) [she] exhausted corrective action proceedings before OSC.” *Serrao v. Merit Sys. Prot. Bd.*, 95 F.3d 1569, 1574 (Fed. Cir. 1996). Furthermore, the Board “lacks jurisdiction when the employee seeks corrective action for a prohibited personnel practice described in section 2302(b)(9)(A)(ii), which concerns ‘the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation . . . other than with regard to remedying a violation of [section 2302(b)(8)].” *Abutalib v. Merit Sys. Prot. Bd.*, 127 F.4th 373, 378 (Fed. Cir. 2025).

A.

Although Ms. Courtney has raised several potential allegations, Appellant’s Br. 1–2,² the Board did not err in finding that she had only exhausted her OSC remedies with respect to her claim that the IRS retaliated against her for filing the March 2, 2023 grievance. *Initial Decision* at 12. “[I]f the personnel action challenged by the employee is not otherwise directly appealable to the Board, the employee must first seek corrective action from the OSC.” *El-lison v. Merit Sys. Prot. Bd.*, 7 F.3d 1031, 1035 (Fed. Cir. 1993) (citing 5 U.S.C. §§ 1214(a)(3), 1221(a), (b)). “The Board’s jurisdiction over an IRA appeal, assuming the employee does not have an independent right to appeal directly to the Board, is thus limited to those issues that have been previously raised with OSC.” *McCarthy v. Merit Sys. Prot. Bd.*, 809 F.3d 1365, 1374 (Fed. Cir. 2016) (internal quotation marks and citation omitted).

Even though Ms. Courtney raised several allegations at the Board, “[t]he appellant’s submissions to OSC, the emails with OSC, and the OSC closeout letter only refer to the grievance.” *Initial Decision* at 12. Accordingly, the

² We cite to the ECF page numbers.

administrative judge concluded that “the appellant proved administrative exhaustion with respect to the grievance but not other complaints.” *Id.* Additionally, although Ms. Courtney now raises a failure to follow proper procedure under the Civil Service Reform Act and the union agreement, neither of these alleged failures were discussed in the grievance. Appellant’s Br. 2; S. App’x 82. *See Young v. Merit Sys. Prot. Bd.*, 961 F.3d 1323, 1328 (Fed. Cir. 2020). We likewise see no reversible error in the Board’s conclusion that administrative exhaustion was limited to the aforementioned grievance.

B.

The Board did not err in finding that Ms. Courtney’s grievance did not raise a protected disclosure and could not be classified as a protected activity over which it had jurisdiction. *Initial Decision* at 12–13. “In order for the Board to have jurisdiction over an IRA appeal” over whistleblowing charges, Ms. Courtney must show by a preponderance of the evidence “that [she] engaged in whistleblower activity by making a disclosure protected under the [statute], i.e., [she] disclosed information that [she] reasonably believed evidenced ‘a violation of law, rule, or regulation,’ 5 U.S.C. § 2302(b)(8)(A)(i), or ‘gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety,’ 5 U.S.C. § 2302(b)(8)(A)(ii).” *Herman v. Dep’t of Just.*, 193 F.3d 1375, 1378 (Fed. Cir. 1999) (emphasis omitted). Ms. Courtney did not raise any protected disclosures in her grievance.

First, Ms. Courtney’s grievance does not contain allegations of a “violation of any law, rule, or regulation.” 5 U.S.C. § 2302(b)(8)(A)(i); S. App’x 82. Second, her statements do not arise to the level of disclosing “gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” 5 U.S.C. § 2302(b)(8)(A)(ii). Ms. Courtney’s

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grievance only contains allegations of insufficient training, which constitute a “[m]ere difference[] of opinion between an employee and [her] agency superiors as to the proper approach to a particular problem or the most appropriate course of action” not arising “to the level of gross mismanagement.” *White v. Dep’t of the Air Force*, 391 F.3d 1377, 1381 (Fed. Cir. 2004); see S. App’x 82. Moreover, Ms. Courtney’s allegations contain disagreements with the method of training and feedback she received from her supervisors. S. App’x 82. In the past, we have adopted definitions of “abuse of authority” as “an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person” or is “inconsistent with the mission of the executive agency concerned.” *Smolinski v. Merit Sys. Prot. Bd.*, 23 F.4th 1345, 1351–52 (Fed. Cir. 2022) (adopting definitions from *Wheeler v. Dep’t of Veterans Affs.*, 88 M.S.P.R. 236, 241 (2001) and 41 U.S.C. § 4712(g)(1)). These disagreements with the method of training and feedback do not amount to an abuse of authority.

Additionally, Ms. Courtney’s act of filing the grievance is not a protected activity. Even though filing a grievance may be protected activity, the Board lacks jurisdiction in IRA appeals concerning grievances unless the grievance “seek[s] to remedy a violation of [5 U.S.C. §] 2302(b)(8).” *Young*, 961 F.3d at 1329; *Abutalib*, 127 F.4th at 378. As discussed earlier, the subject matter of the grievance does not seek to remedy a violation of 5 U.S.C. § 2302(b)(8). Thus, Ms. Courtney’s act of filing the grievance does not establish the Board’s jurisdiction.

III. CONCLUSION

We have considered Ms. Courtney's remaining arguments³ and find them unpersuasive. For the foregoing reasons, we *affirm*.

AFFIRMED

COSTS

No costs.

³ For example, Ms. Courtney argues that the Board did not consider that "the new director had never met [her] prior to terminating [her] employment" and that she had submitted a "zip file containing falsified job evals about [her] to the previous director." Appellant's Br. 2 (cleaned up). However, Ms. Courtney does not explain how consideration of these additional circumstances would establish Board jurisdiction, as none of these issues were specifically discussed in her grievance. S. App'x 82; *see Young*, 961 F.3d at 1328 ("A party cannot establish jurisdiction through general assertions, but must provide substantive details.").

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

EVELYN COURTNEY,
Appellant,

DOCKET NUMBER
SF-1221-23-0417-W-1

v.

DEPARTMENT OF THE TREASURY,
Agency.

DATE: November 8, 2024

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Evelyn Courtney, Fresno, California, pro se.

Mikel C. Deimler, Esquire, San Francisco, California, for the agency.

BEFORE

Cathy A. Harris, Chairman
Raymond A. Limon, Vice Chairman
Henry J. Kerner, Member*

*Member Kerner recused himself and
did not participate in the adjudication of this appeal.

FINAL ORDER

¶1 The appellant has filed a petition for review of the initial decision, which dismissed her individual right of action appeal for lack of jurisdiction. On petition for review, the appellant does not directly dispute the administrative judge's conclusion but instead argues that the agency violated her collective

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).

bargaining rights and did not properly terminate her, that she proved the timing test, and that the agency should rehire her. 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 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 initial decision, which is now the Board's final decision. 5 C.F.R. § 1201.113(b).

NOTICE OF APPEAL RIGHTS²

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

² 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.

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. 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.³ 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).

³ 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 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

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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.

Gina K. Grippando

FOR THE BOARD:

Gina K. Grippando
Clerk of the Board

Washington, D.C.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Service Evelyn Courtney
Served on email address registered with MSPB

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Agency Representative

Electronic Service Mikel Deimler
Served on email address registered with MSPB

11/08/2024

(Date)

John Hayes

John Hayes

**Additional material
from this filing is
available in the
Clerk's Office.**