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Appendix N contains MSPB Clerk form letters that are identical in substance except for dates and docket references. A representative letter dated July 16, 2020, is reproduced; the remaining letters use the same form and are dated July 17, 2020; July 22, 2020; August 6, 2020; August 12, 2020; November 4, 2020; June 21, 2021; January 28, 2022; April 13, 2022; and July 5, 2022.

APPENDIX A:

FEDERAL CIRCUIT OPINION (SEPT. 11, 2025)

NOTE: This disposition is nonprecedential.

United States Court of Appeals
for the Federal Circuit

ANDREW DALE FARIS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-2004, 2024-2005

Petitions for review of the Merit Systems Protection Board in Nos. CH-0353-20-0494-I-1, CH-0752-20-0205-I-1.

Decided: September 11, 2025

ANDREW DALE FARIS, Indianapolis, IN, pro se.

KELLY WINSHIP, 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 CHEN, LINN, and HUGHES, Circuit Judges.

PER CURIAM.

BACKGROUND

Andrew Faris petitions for review of two final orders from the Merit Systems Protection Board (Board), which dismissed his two appeals for lack of jurisdiction. *Faris v. United States Postal Serv.*, No. CH-0752-20-0205-I-1, 2024 WL 1855117 (M.S.P.B. Apr. 26, 2024) (Final Order I); *Faris v. United States Postal Serv.*, No. CH-0752-20-0205-I-1, 2020 WL 1678108 (Apr. 3, 2020) (Initial Decision I); *Faris v. United States Postal Serv.*, No. CH-0353-20-0494-I-1, 2024 WL 1911387 (M.S.P.B.

Apr. 30, 2024) (Final Order II); *Faris v. United States Postal Serv.*, No. CH-0353-20-0494-I-1, 2021 WL 779667 (Feb. 23, 2021) (Initial Decision II). We affirm.

Mr. Faris worked as a Laborer Custodial for the United States Postal Service (USPS). In 2018, he received a warning letter based on several instances of unscheduled leave and going absent without leave (AWOL). Despite receiving this warning letter, Mr. Faris kept taking unscheduled absences. In light of these repeated infractions, the USPS issued him a Notice of Proposed Removal.

On November 19, 2019, Mr. Faris, through the help of his union representative, entered into a Last Chance Agreement (LCA), which presented a "final opportunity for [Mr. Faris] to salvage his career with the [United States] Postal Service." Initial Decision I, 2020 WL 1678108, at 3 (citation omitted). The LCA provided specific terms concerning attendance requirements: Mr. Faris could have (1) no more than three unscheduled absences during any six month period, and (2) no instances of going AWOL—any violation of these terms would result in removal. *Id.* Per the LCA, Mr. Faris also waived his right to appeal to the Board. *Id.*

The USPS reported Mr. Faris as AWOL on November 20, 2019 for over 3 hours. Accordingly, on December 2, 2019, the USPS proposed Mr. Faris's removal.

While that proposal was pending, however, he sustained injuries in an off-duty car accident on December 14, 2019. And because these injuries prevented Mr. Faris from carrying out his normal job functions, his first-line supervisor, Ms. Jenkins, sent over a light duty request form. She advised him to have his physician complete the form.

On January 3, 2020, Mr. Faris emailed Ms. Jenkins and Mr. Vaughn, the District Maintenance Manager, claiming to have attached the filled-out light duty request form. He also spoke to Ms. Jenkins on the phone later that day and claimed that during the call "she told him he was fired." Initial Decision II, 2021 WL 779667, at 2. On February 3, 2020, Mr. Vaughn issued a decision to remove Mr. Faris effective February 14, 2020. *Id.*

Mr. Faris filed two appeals to the Board. In his first appeal, he contested his removal. See Initial Decision I, 2020 WL 1678108, at 1. The Board dismissed his appeal for lack of jurisdiction, explaining that Mr. Faris waived his appeal rights in the LCA.

In his second appeal, Mr. Faris focused on the period of time between January 3, 2020—when he supposedly heard over the phone that he was fired—and February

14, 2020—his actual termination date. The Board construed Mr. Faris's argument as raising two distinct challenges: (1) a restoration-to-duty claim, see 5 U.S.C. § 8151, and (2) a constructive suspension claim. The Board dismissed both claims for lack of jurisdiction, explaining that he failed to establish, with preponderant evidence, at least one element of each claim. See Initial Decision II, 2021 WL 779667, at 4–14.

The full Board denied both of Mr. Faris's petitions for review. See Final Order I, 2024 WL 1855117, at *2; Final Order II, 2024 WL 1911387, at *2. He now petitions for our review, and we granted Mr. Faris's motion to consolidate both appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

DISCUSSION

We review *de novo* the Board's determinations concerning jurisdiction but review for substantial evidence factual findings that underlie the Board's jurisdictional analysis. *Younies v. MSPB*, 662 F.3d 1215, 1218 (Fed. Cir. 2011). We first address Mr. Faris's challenges to his removal, before addressing Mr. Faris's constructive suspension claim.

I. Removal

"It is settled that an employee can waive the right to appeal in a last-chance agreement." *Gibson v. Dep't of Veterans Affs.*, 160 F.3d 722, 725 (Fed. Cir. 1998). That said, an employee can still overcome a waiver if he (1) proves compliance with the last-chance agreement, (2) proves the agency breached the agreement, or otherwise (3) proves he did not knowingly and voluntarily enter into the agreement. *Buchanan v. Dep't of Energy*, 247 F.3d 1333, 1338 (Fed. Cir. 2001).

Mr. Faris, on appeal, first claims to have entered into the LCA unknowingly and involuntarily. See Pet'r's Informal Br. 12. We are not persuaded.

For one, Mr. Faris never raised this argument to the Board. See Initial Decision, 2020 WL 1678108, at 6. And we decline to consider it in the first instance on appeal. See *Bosley v. MSPB*, 162 F.3d 665, 668 (Fed. Cir. 1998) ("A party in an MSPB proceeding must raise an issue before the administrative judge if the issue is to be preserved for review in this court. Thus, if the party fails to raise an issue in the administrative proceeding or raises an issue for the first time in a petition for review by the full Board, this court will not consider the issue.").

Moreover, Mr. Faris offers no evidence—let alone preponderant evidence—supporting his lack of knowledge or involuntariness in entering into the LCA.

Instead, he explains that he "did not think the postal service was serious" in enforcing the LCA because of "a past practice of non-enforcement." Pet'r's Informal Br. 12. But if anything, believing that the USPS would not enforce certain terms of the LCA presupposes an awareness of those terms in the first place.

Mr. Faris next alleges that he never went AWOL, and therefore, fully complied with the LCA. Id. at 15–17. He contends that, although the USPS reported him as AWOL for 3.51 hours, the USPS's time conversion table enumerates only 0.50 or 0.52 as options for calculating hours—0.51 does not exist. So because one cannot go AWOL for 3.51 hours, Mr. Faris argues, he could not have gone AWOL at all. But again, he never raised this argument to the Board, so we decline to consider it on appeal. See *Bosley*, 162 F.3d at 668. In any event, we find Mr. Faris's position unpersuasive because, among other issues, he never explains why the USPS must always follow the referenced timetable's precision when computing time.

II. Constructive Suspension

Aside from challenging his ultimate removal, Mr. Faris also contended, before the Board, that the USPS prevented him from working between January 3, 2020 and February 14, 2020. The Board construed this argument as a constructive suspension claim.

"[C]onstructive suspensions' are within the jurisdiction of the MSPB." *Perez v. MSPB*, 931 F.2d 853, 855 (Fed. Cir. 1991). But to establish jurisdiction over a constructive suspension claim, the employee must prove, by preponderant evidence, that (1) he lacked a meaningful choice in the matter and (2) the agency's wrongful actions deprived him of that choice. See *Rosario-Fabregas v. MSPB*, 833 F.3d 1342, 1346 (Fed. Cir. 2016).

Mr. Faris, on appeal, has not identified any wrongful actions undertaken by the USPS. To the extent Mr. Faris points to Ms. Jenkins' statements during their phone call on January

3, 2020 as a premature termination, and thus, a wrongful action, we disagree. The Board found it unlikely that Ms. Jenkins, on that phone call, actually terminated Mr. Faris, or that she otherwise pressured Mr. Faris into believing that he was "fired. And to reach that finding, the Board relied on a credibility determination. See Initial Decision II, 2021 WL 779667, at 10 ("As an initial matter, I find that Appellant's testimony that Ms. Jenkins told him he was fired on January 3, 2020 lacks credibility."). "[C]redibility determinations by the [B]oard are 'virtually

unreviewable." Wright v. U.S. Postal Serv., 183 F.3d 1328, 1334 (Fed. Cir. 1999)
(citation omitted).

CONCLUSION

We have considered Mr. Faris's remaining arguments and find them unpersuasive.
We therefore affirm.

AFFIRMED

COSTS

No costs.

FEDERAL CIRCUIT JUDGEMENT (SEPT. 11, 2025)

JUDGMENT

United States Court of Appeals
for the Federal Circuit

ANDREW DALE FARIS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-2004, 2024-2005

Petitions for review of the Merit Systems Protection Board in Nos. CH-0353-20-
0494-I-1, CH-0752-20-0205-I-1.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

APPENDIX B:

FEDERAL CIRCUIT REHEARING DENIAL (DEC. 8, 2025)

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

ANDREW DALE FARIS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024–2004, 2024–2005

Petitions for review of the Merit Systems Protection Board in Nos. CH–0353–20–
0494–I–1, CH–0752–20–0205–I–1.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, Chief Judge, LOURIE, LINN, DYK, PROST, REYNA, TARANTO,
CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, Circuit Judges.

PER CURIAM.

On October 26, 2025, Andrew Dale Faris filed a combined petition for panel rehearing and rehearing en banc [ECF No. 42]. 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.

December 8, 2025

**APPENDIX C:
MSPB FINAL ORDERS**

DOCKET NO. CH-0752-20-0205-I-1 (APR. 26, 2024)

FINAL ORDER

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

THIS FINAL ORDER IS NONPRECEDENTIAL

Andrew D. Faris, Indianapolis, Indiana, pro se.

Alison D. Alvarez, Esquire, Chicago, Illinois, for the agency.

BEFORE

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

FINAL ORDER

The appellant has filed a petition for review of the initial decision, which dismissed his appeal of an agency action removing him for violating a last chance agreement (LCA) for lack of jurisdiction. On petition for review, the appellant argues that the LCA is a one-sided unconscionable contract, that he was denied due process by the agency's removal decision, and that his supervisors removed him in retaliation for his union activity. Petition for Review (PFR) File, Tab 1 at 4. The appellant also challenges the merits of the agency's November 20, 2019 absence without leave (AWOL) determination. *Id.* Finally, the appellant asserts that his last day worked was January 3, 2020, not February 3, 2020, and he provides copies of a number of earnings statements for the period from March 2019 through September 2019, along with a copy of a 14-day suspension dated February 27, 2019. *Id.* at 4-36.

However, the appellant has not challenged the administrative judge's findings that the Board lacks jurisdiction over this appeal because the appellant waived his Board appeal rights in the LCA, and that waiver of appeal rights was valid and enforceable. See Initial Appeal File, Tab 9, Initial Decision (ID) at 8.

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.

Regarding the appellant's argument, raised for the first time on review, that the LCA was unconscionable and one-sided, as the administrative judge noted below, the appellant received consideration from the agency in the form of the opportunity to remedy his attendance issues and retain his position in lieu of removal. ID at 7; see *Tetrault v. U.S. Postal Service*, 71 M.S.P.R. 376, 380 (1996) (noting that consideration for an appellant's waiver of his appeal rights can include an agency's agreement to reduce a removal to a suspension, or its holding of a removal in abeyance for a period of time); *Romano v. U.S. Postal Service*, 49 M.S.P.R. 319, 322 (1991) (finding valid consideration for waiver of the appellant's Board appeal right in the agency's agreement to reduce the earlier removal action to a suspension).

With respect to the earnings statements for the period from March 2019 through September 2019 and the copy of a 14-day suspension dated February 27, 2019 that the appellant submitted with his petition for review, the Board generally will not consider evidence submitted for the first time on review absent a showing that: (1) the documents and the information contained in the documents were unavailable before the record closed despite due diligence; and (2) the evidence is of sufficient weight to warrant an outcome different from that of the initial decision. All of the submitted documents predate the appellant's February 1, 2020 appeal and thus are not new.

Regarding the appellant's arguments that he was denied due process and that agency officials retaliated against him based on his union activity, because the Board lacks jurisdiction over the appellant's appeal of his removal due to the valid waiver of appeal rights in the LCA, it has no authority to consider the merits of any potential affirmative defenses raised by the appellant, such as his due process and retaliation claims. See *Martin v. Department of Defense*, 70 M.S.P.R. 653, 657 (1996); *Wren v. Department of the Army*, 2 M.S.P.R. 1, 2 (1980), *aff'd*, 681 F.2d 867, 871-73 (D.C. Cir. 1982).

Finally, the appellant contends that he was sick on the day he was charged with AWOL and alleges that, although he provided a doctor's note, it was denied by his supervisor and he was charged with AWOL instead of being marked tardy. PFR

File, Tab 1 at 4. The appellant did not raise this argument below and thus we need not consider it.

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).

DOCKET NO. CH-0353-20-0494-I-1 (APR. 30, 2024)

FINAL ORDER

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

THIS FINAL ORDER IS NONPRECEDENTIAL

Andrew D. Faris, Indianapolis, Indiana, pro se.

Alison D. Alvarez, Esquire, Chicago, Illinois, for the agency.

BEFORE

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

FINAL ORDER

The appellant has filed a petition for review of the initial decision, which dismissed his constructive suspension appeal for lack of jurisdiction. On petition for review, the appellant makes the following arguments: the administrative judge was not impartial and was biased against him; the agency discriminated against him on the basis of his race in connection with his alleged constructive suspension; the agency retaliated against him due to his union activity; and the administrative judge made erroneous factual determinations and credibility findings. The appellant also provides additional evidence in the form of employee assignment work sheets that he alleges reflect safety violations by the agency.

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.

Regarding the appellant's specific challenges to the administrative judge's factual findings and credibility determinations, the appellant restates his claims that he provided a copy of his light duty request form to his supervisors by U.S. postal mail, and that one of his supervisors verbally informed him that he was removed as of January 3, 2020, both of which the administrative judge considered and rejected below. The administrative judge based her decision to credit the supervisors' testimony on her demeanor-based credibility determination of each witness's testimony. The appellant's arguments on review are not sufficient to disturb the administrative judge's finding. See *Haebe v. Department of Justice*, 288 F.3d 1288, 1301 (Fed. Cir. 2002) (observing that the Board generally must give deference to an administrative judge's credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing).

With respect to the appellant's allegation that the administrative judge was not impartial and was biased against him, it is well established that conclusory claims of bias which do not involve extrajudicial conduct do not overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *Simpkins v. Office of Personnel Management*, 113 M.S.P.R. 411, ¶ 5 (2010).

Regarding the appellant's argument that the agency discriminated against him and treated him differently on the basis of his race, the administrative judge provided the appellant with the opportunity to object to the summary in writing, which the appellant failed to do, and he did not raise a race discrimination claim at any point thereafter until his petition for review filing. Accordingly, to whatever extent the appellant is now attempting to raise a race discrimination claim, he effectively waived his right to raise such a claim.

Similarly, regarding the appellant's claim that agency officials retaliated against him due to his union activity, the appellant did not raise this argument below, so we need not consider it.

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).

APPENDIX D:

MSPB INITIAL DECISIONS

DOCKET NO. CH-0752-20-0205-I-1 (APR. 3, 2020)

INITIAL DECISION

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

ANDREW D. FARIS,
Appellant,

v.

UNITED STATES POSTAL SERVICE,
Agency.

DOCKET NUMBER
CH-0752-20-0205-I-1

DATE: April 3, 2020

Andrew D. Faris, Indianapolis, Indiana, pro se.

Alison D. Alvarez, Chicago, Illinois, for the agency.

BEFORE

Dorothy L. Moran
Administrative Judge

INITIAL DECISION

INTRODUCTION

Andrew Faris asks the Board to review his removal from the U.S. Postal Service employment, effective February 3, 2020, for violation of a Last Chance Agreement

(LCA). He was a Laborer Custodian at the agency's Processing and Distribution Center in Indianapolis, Indiana. Appeal File (AF) Tab 1. Although the appellant requested a hearing, he is not entitled to one because he failed to allege facts that could, if true, establish Board jurisdiction over his appeal. See *Hardy v. Merit Systems Protection Board*, 13 F.3d 1571, 1575 (Fed. Cir.), cert. denied, 512 U.S. 1235 (1994). The appeal is adjudicated on the written record.

The appeal is DISMISSED for lack of jurisdiction.

ANALYSIS AND FINDINGS

Background

The appellant is a preference-eligible who began working for the Postal Service on January 21, 2017. See Appeal File, Tab 8 at 19 (Ex. 2). On July 2, 2018, he received a Letter of Warning for unsatisfactory attendance, based on unscheduled leave and AWOL on six occasions between October 2017 and June 2018. See *id.* at 25 (Ex. 4A).

After the Postal Service warned the appellant about his attendance, it suspended him three times for subsequent unscheduled absences. On August 22, 2018, the appellant was suspended seven days for having been absent or tardy three times in June, July and August, 2018. See *id.* at 28 (Ex. 4B). On February 27, 2019, the Postal Service suspended him fourteen days, for nine unscheduled absences between November 2018 and February 2019. See *id.* at 25 (Ex. 4C). On July 10, 2019, the Postal Service issued the appellant an additional fourteen-day suspension for unsatisfactory attendance, based in part on 37 hours of AWOL in June 2019 when the appellant was absent or late for work. See *id.* at 34 (Ex. 4D).

The appellant continued incurring unscheduled absences after his suspensions and on October 29, 2019, the Postal Service issued him a Notice of Proposed Removal for "The Use of Unscheduled Leave Resulting in Failure to Maintain a Regular Schedule." See *id.* at 37 (Ex. 4E). This proposal relied on ten dates between August 2019 and September 2019 on which he incurred unscheduled absences for having been late and absent, including those for which he was marked 16.71 hours of AWOL. See *id.*

The appellant grieved the NOPR and, on November 19, 2019, the parties, including the appellant and his union representative, entered into a LCA reducing the proposed removal to a third fourteen-day suspension. See *id.* at 40-42 (Ex. 5). The parties agreed that the appellant's attendance record was "unacceptable" and that the LCA was a "final opportunity for the [appellant] to salvage his career with the

Postal Service." Id. at 41. The LCA specifies that the appellant "waives the right to proceed further on the matters grieved and/or complaints of by the processing of . . . MSPB Appeals," and that "violation of any one or all of the terms and conditions will constitute just cause for removal." Id. at 41-42.

The LCA included specific terms concerning the appellant's attendance requirements during the 18-month agreement period. The appellant agreed that he would maintain satisfactory attendance, which was defined as "no more than three (3) unscheduled absences during any six (6) month period of this agreement and no instances of AWOL." Id. at 41.

On December 2, 2019, the agency proposed to remove the appellant for violating the LCA. Id. at 55 (Ex. 7). According to the proposal, the agency marked the appellant AWOL on November 20, 2019 – the day after he signed the LCA – because he failed to provide acceptable documentation for an unscheduled absence of 3.41 hours.

On February 3, 2020, Maintenance Manager Wayne Vaughn sustained the charge and removed the appellant, effective February 14, 2020. Id. at 67 (Ex. 9). The appellant filed this Board appeal on February 1, 2020. See Appeal File, Tab 1.

Jurisdiction

The Board does not have jurisdiction to address all matters that are alleged to be incorrect or unfair. *Miller v. Department of Homeland Security*, 111 M.S.P.R. 325, ¶ 14 (2009), *aff'd*, 361 F. App'x 134 (Fed. Cir. 2010). Its jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. 5 U.S.C. § 7701(a); *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1327 (Fed. Cir. 2006) (*en banc*).

The Board lacks jurisdiction over an action taken pursuant to an LCA in which the appellant waives his Board appeal rights. *Bruhn v. Department of Agriculture*, 124 M.S.P.R. 1, ¶ 9 (2016). A LCA reached in good faith is enforceable by the Board. See *Montoya v. U.S. Postal Service*, 40 M.S.P.R. 314, 317 (1989).

The record establishes that the appellant knowingly and voluntarily waived his Board appeal rights when he entered into the LCA. The appellant was represented by a union representative when he signed the LCA. The terms of the agreement are clear and unambiguous. The appellant has not alleged that he was coerced or that the agreement was procured through fraud or misrepresentation.

Accordingly, I find that the appellant validly waived his Board appeal rights when he signed the LCA, and the Board lacks jurisdiction over this removal appeal.

DECISION

The appeal is DISMISSED for lack of jurisdiction.

DOCKET NO. CH-0353-20-0494-I-1 (FEB. 23, 2021)

INITIAL DECISION

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

ANDREW D. FARIS,
Appellant,

v.

UNITED STATES POSTAL SERVICE,
Agency.

DOCKET NUMBER
CH-0353-20-0494-I-1

DATE: February 23, 2021

Andrew D. Faris, Indianapolis, Indiana, pro se.

Alison D. Alvarez, Chicago, Illinois, for the agency.

BEFORE

Mary L. Senoo
Administrative Judge

INITIAL DECISION

INTRODUCTION

On July 18, 2020, Appellant Andrew D. Faris filed an appeal to the Board alleging that the United States Postal Service (USPS) improperly failed to allow him to return to light duty work after he was absent due to injuries sustained in an automobile accident. Initial Appeal File (IAF), Tab 1. As set forth below, Appellant has failed to demonstrate that the Board has jurisdiction over his appeal, and therefore, it must be DISMISSED.

BACKGROUND

Appellant is a former Laborer Custodial at the USPS's Indianapolis Processing and Distribution Center, and held that position until he was removed effective February 14, 2020. IAF, Tab 1 at 5-7, Tab 30 at 36-39, Tab 40 at 1.

On December 2, 2019, the USPS proposed Appellant's removal from his position as a Laborer Custodial for failure to comply with a last chance agreement (LCA). On December 14, 2019, while the proposal was pending, Appellant was involved in an off-duty automobile accident. IAF, Tab 6 at 12, Tab 40 at 3. His injuries included several broken bones, and although he attempted to report to duty on December 17, 2019, he was sent home because he could not work with the level of injuries he sustained. IAF, Tab 24 at 13. Appellant's first line supervisor, Tori L. Jenkins, then sent him a light duty request form and advised him to have his physician complete the form indicating his restrictions. IAF, Tab 23 at 7, Tab 38 at 13-15.

On January 3, 2020 Appellant emailed Ms. Jenkins and District Maintenance Manager Wayne Vaughn, indicating that he was returning the light duty request form. IAF, Tab 24 at 15. However, he did not attach the form to the email message. *Id.* at 16. Appellant also spoke with Ms. Jenkins on the telephone that day, and alleged that she told him he was fired. *Id.* at 13. Appellant did not return to work thereafter.

On February 3, 2020, Mr. Vaughn issued a decision to remove Appellant effective February 14, 2020. IAF, Tab 1 at 5-7. Appellant filed the instant appeal on July 18, 2020. *Id.*

On February 1, 2020, Appellant filed an appeal with the Board, challenging his removal. *See Andrew D. Faris v. U.S. Postal Service*, M.S.P.B. Docket No. CH-0752-20-0205-I-1 (April 3, 2020). On April 3, 2020, Administrative Judge Dorothy Moran dismissed the appeal for lack of jurisdiction. *Id.* That decision is currently pending a petition for review by the Board. *Id.* To the extent Appellant seeks to challenge those claims in this appeal. *See McNeil v. Department of Defense*, 100 M.S.P.R. 146, ¶ 11 (2005) ("When an appellant files an appeal that is identical to claims raised in an earlier appeal after the initial decision in the earlier appeal was issued, but before the full Board has acted on the appellant's petition for review, it is appropriate to dismiss the subsequent appeal on the grounds of adjudicatory efficiency"); *see also, e.g., Zgonc v. Department of Defense*, 103 M.S.P.R. 666, ¶ 6 (2006). Therefore, any such claims are dismissed for adjudicative efficiency.

On January 26, 2021, I held a hearing to consider Appellant's claim of constructive suspension. IAF, Tab 41 (Hearing Speakersheet), Tab 42 (Hearing Compact Disc).

JURISDICTION

The Board does not have jurisdiction to address all matters that are alleged to be incorrect or unfair. *Miller v. Department of Homeland Security*, 111 M.S.P.R. 325, 332-33 (2009). Rather, the Board adjudicates only those actions for which a right of appeal is granted by law, rule, or regulation. See 5 U.S.C.A. § 7701(a); 5 C.F.R. § 1201.3(a).

Constructive Suspension

To establish Board jurisdiction over a constructive suspension appeal, the appellant must prove by preponderant evidence that: (1) his absence from work was involuntary, (2) the agency's actions were wrongful, and (3) there is a nexus between the wrongful action and the involuntary absence. See *Rosario-Fabregas v. Merit Systems Protection Board*, 833 F.3d 1342, 1346 (Fed. Cir. 2016).

As an initial matter, I find that Appellant's testimony that Ms. Jenkins told him he was fired on January 3, 2020 lacks credibility. The weight of the evidence refutes Appellant's allegations that Ms. Jenkins told him he was fired on January 3, 2020.

Appellant has not shown that he ever provided the completed light duty form to the USPS at any time prior to filing this appeal. Thus, without such documentation, Ms. Jenkins did not have any basis for providing Appellant a light duty assignment.

Under the circumstances present here, I find that Appellant has not demonstrated by preponderant evidence that his absence from work between January 3, 2020 and February 14, 2020 was due to the wrongful actions of the USPS. Therefore, the Board lacks jurisdiction over this appeal.

DECISION

The appeal is DISMISSED.

APPENDIX E:

NOTICE OF PROPOSED REMOVAL (OCT 29, 2019)

UNITED STATES POSTAL SERVICE

DATE: October 29, 2019

SUBJECT: Notice of Proposed Removal

TO: Andrew Faris Custodian EIN: [REDACTED] Pay Location: 523/Indianapolis P&DC

This is advance written notice that it is proposed to remove you from the Postal Service no sooner than 30 days from the date of your receipt of this letter. 12/6/19.

This action is based on the following reasons:

You are charged with **The Use of Unscheduled Leave Resulting in Failure to Maintain a Regular Schedule.**

Since August 6, 2019, you have been absent from duty on the following occasions:

Date Leave Type / Hours

August 6 – 12, 2019 24.00 Hours AL; 03.71 Hours AWOL; 08.00 Hours SL

August 14, 2019 01.37 Hours SL

August 30, 2019 01.12 Hours AL Late

September 13, 2019 01.40 Hours AL Late

September 20 – 21, 2019 13.00 Hours AWOL

During the investigative interview you said you understand that maintaining a regular schedule is a condition of your employment and failure to do so could result in appropriate corrective action being taken. In addition, you admitted postal management has made you aware of the attendance regulations.

Your actions are in violation of the following Postal Rules and Regulations:

Employee and Labor Relations Manual

511.4 Unscheduled Absence: Unscheduled absences are any absences from work that are not requested and approved in advance.

511.43 Employee Responsibilities: Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences.

665.41 Requirement for Attendance: Employees are required to be regular in attendance.

In addition, the following elements of your record have been considered in arriving at this decision:

You were issued disciplinary action February 27, 2019, charging you with Unsatisfactory Attendance. You received a 7-Day Suspension.

You were issued a 14-Day Suspension dated July 15, 2019, charging you with Unsatisfactory Attendance.

Your use of unscheduled leave resulting in failure to maintain a regular schedule demonstrates your unreliability as an employee and warrants your removal from the Postal Service.

Your removal will promote the efficiency of the service.

You and/or your representative may review the material relied on to support the reasons for this notice at the Indianapolis Processing and Distribution Center. If you do not understand the reasons for this notice, contact Ms. Tori Jenkins for further explanation.

You and/or your representative may answer this proposal within 10 days from your receipt of this letter, either in person or in writing or both, before Wayne Vaughn, 125 W South St, Indianapolis, IN between 9:00 a.m. and 4:00 p.m. You may also furnish affidavits or other written material to Mr. Vaughn within 10 days from your receipt of this letter. You will be afforded a reasonable amount of official time for the above purpose if you are otherwise in a duty status. After the expiration of the 10-day time limit for reply, all the facts in the case, including any reply you submit will be given full consideration before a decision is rendered. You will receive a written decision from Mr. Vaughn.

You have the right to file a grievance under the Grievance/Arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

Signature of Brian G. Sherfald Signature of Supervisor

Brian G. Sherfald Name of Supervisor (Printed)

Signature of Wayne Vaughn Approved by Installation Head or Designee

I HAVE RECEIVED THE ORIGINAL OF THIS LETTER ON 10-31-2019

SIGNATURE Signature of Andrew Faris TIME: 1421



DATE: November 19, 2019
SUBJECT: Notice of Removal
TO: Andrew Faris
Labor Custodian
EIN: [REDACTED]
Pay Location: 523/Indianapolis P&DC

LAST CHANCE SETTLEMENT AGREEMENT

In complete and final settlement of any pending or future appeals and/or grievances on behalf of Andrew Faris regarding the Notice of Proposed Removal, dated October 29, 2019 and without prejudice to the position of the Postal Service in this or any other case, and with the understanding that this settlement shall not be cited in any other proceeding or any other forum, the following resolution has been entered into by the parties:

1. All parties agree that it is in the best interests of the parties to keep confidential the terms and conditions of this Settlement. Grievant, as a term and condition of the Settlement, agrees to keep confidential the information within and not to disclose said information to any third party other than legal counsel.
2. It is understood between the parties that the settlement agreement is not precedent setting and may not be cited for any reason, including comparison, in any other proceeding in any forum including grievance/arbitration, MSPB and EEO. However, it may be cited in a subsequent action involving Grievant.
3. By entry into this Settlement Agreement, the United States Postal Service, its officers, agents, and/or employees in no way admit to any wrongdoing, liability to or discrimination against Grievant, and Grievant agrees that this agreement shall not be construed as an admission of wrongdoing, liability or discrimination by the United States Postal Service, its officers, agents and/or employees in this or any other proceeding or litigation.
4. It is understood by the undersigned that this Agreement is in full and complete settlement of all outstanding administrative grievances, MSPB appeals or EEO complaints or appeals, in this or any other forum, filed by the below named Grievant or on his behalf relating to any matters that occurred prior to the execution of this Settlement Agreement. Grievant agrees to voluntarily withdraw any outstanding administrative complaint or appeal, and to request that any grievance be withdrawn. It is understood that settlement is contingent upon those complaints, appeals, or grievances being withdrawn. Further, it is understood that in withdrawing all appeals or complaints,

Grievant waives his right to an oral hearing or further appeal on the matters raised. It is further stipulated that the withdrawals are made without any threat, coercion, intimidation, promise, or inducement other than the terms set forth in the agreement.

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Andrew Faris

5. Management will modify the removal action against Mr. Faris to a 14-Day Last Chance Suspension with no back pay.

In making this modification, management requires the Grievant to make appropriate changes in order to fulfill his attendance obligations. The parties agree that the attendance record of Mr. Faris is unacceptable. This modification is a final opportunity for the Grievant to salvage his career with the Postal Service. The Grievant must establish a satisfactory attendance record, which is a requirement of his position "Satisfactory attendance" for the purpose of this agreement is defined as "no more than three (3) unscheduled absences during any six (6) month period of this agreement and no instances of AWOL". "Unscheduled absences" are defined for the purposes of this agreement as "any absence not scheduled and approved in advance of Grievant's scheduled reporting time" and includes, but is not limited to, tardiness, emergency leave (such as emergency annual leave or sick leave), leave without pay (LWOP), and failure to report/remain as scheduled for overtime or holiday work. Grievant agrees that she will furnish acceptable medical documentation for any sick leave taken, including LWOP and/or annual leave in lieu of sick leave, during the eighteen month term of this agreement to his supervisor immediately upon his return to work. The Grievant is required to provide "Acceptable medical documentation" and such medical statements as "under my care" or "received treatment" are NOT acceptable evidence of incapacitation to perform his duties. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his normal duties for the period of absence. Such documentation should be furnished by the employee's attending physician or other practitioner. The Grievant will also be required to provide acceptable evidence for the necessity of any unscheduled absence that she has or the leave requested will be disapproved and charged to AWOL.

The Grievant must submit to a mandatory EAP counseling/evaluation session as provided by the Public Health Service through an interagency agreement with the Postal Service. Grievant shall contact the EAP counselor within five (5) days of the signing of this agreement. The employee/counselor will determine if participation in a structured program is necessary. The Postal Service encourages participation if recommended by the counselor. Participation will be voluntary however this offer of treatment constitutes a *firm choice* offer between treatment and removal should a claim arise on behalf of the Grievant in the future. Failure to contact the EAP counselor within five (5) days of signing this agreement will constitute a violation of the agreement.

Grievant agrees to meet all terms and conditions listed in this Agreement for a period of eighteen (18) months from the date of the signing of this Agreement.

This settlement shall become a permanent part of the Grievant's Official Personnel File. It shall be removed only after eighteen (18) months of active employment with the Postal Service, provided no further discipline is issued for attendance during the eighteen (18) month period.

It is agreed by all parties to this agreement that any violation of the terms or conditions of this agreement by Grievant will result in removal.

The above settlement is with a clear and express proviso that the Grievant is being given a last chance, a final opportunity to continue his employment with the U. S. Postal Service. The Grievant accepts the terms set forth above and waives the right to proceed further on the matters

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grieved and/or complaints of by the processing of EEO Complaints, MSPB Appeals, Grievances, Court Actions, or any other such action.

6. It is understood and agreed that except as otherwise provided in this Settlement Agreement, Grievant is otherwise subject to usual terms and conditions of postal employment as provided by applicable regulations and statutes and the applicable collective bargaining agreement.

7. It is understood and agreed that neither party will seek to set aside this Settlement Agreement on account of any dispute which arises over the implementation of the terms of this Agreement. Any dispute unrelated to this agreement concerning future discipline, future step increases, nature of future work assignments and any other term or condition of Grievant's employment are new and independent matters which may only be addressed through the usual channels of administrative, collective bargaining, or judicial redress and not through an action to enforce this Settlement Agreement.

8. This Last Chance/Firm Choice Agreement is specifically meant as a "Last Chance" for Mr. Faris to meet the terms and conditions contained in this agreement and a violation of any one or all of the terms and conditions will constitute just cause for his removal.

9. It is understood that Grievant shall not litigate or relitigate in any forum, judicial or administrative, any claims arising from the actions involved in this appeal. It is understood and agreed that neither Grievant nor his representative shall seek or accept any other benefits, fees, or costs with regard to the instant appeals or settlement of the underlying matters therein, including back pay and attorney fees from the United States Postal Service.

10. The parties agree that Mr. Faris will be applying for Family Medical Leave Act (FMLA). If Mr. Faris gets approved by January 31, 2020, the eighteen (18) month pull date will be come twelve (12) months.

I, Andrew Faris, have read and fully understand the conditions and restrictions set forth in the above agreement. I am mentally and physically fit so as to be able to understand this agreement in its entirety. I freely sign this agreement without reservation, duress, or coercion on the part of anyone. I agree to abide by the terms of this agreement.

Andrew Faris
Grievant

Nov-19-19
Date

[Signature]
Grievant's Representative

11/19/19
Date

Kathie Cowan
USPS Representative

11-19-2019
Date



DATE: December 2, 2019

SUBJECT: Notice of Proposed Removal

TO: Andrew Faris
Labor Custodian
EIN: [REDACTED]
Pay Location: 523/Indianapolis P&DC

This is advance written notice that it is proposed to remove you from the Postal Service no sooner than 30 days from the date of your receipt of this letter. 1-3-20

This action is based on the following reasons:

You are charged with: **Violation of Last Chance Settlement Agreement**

On November 19, 2019, you entered into a last chance settlement agreement with management. This last chance was a complete and final settlement of the Notice of Removal, dated October 29, 2019, charging you with unsatisfactory attendance. The agreement set forth nine (9) specifications. In item #5 you agreed to the following, which states in relevant part:

"5. Management will modify the removal action against Mr. Faris to a 14-Day Last Chance Suspension with no back pay.

In making this modification, management requires the Grievant to make appropriate changes in order to fulfill his attendance obligations. The parties agree that the attendance record of Mr. Faris is unacceptable. This modification is a final opportunity for the Grievant to salvage his career with the Postal Service. The Grievant must establish a satisfactory attendance record, which is a requirement of his position. "Satisfactory attendance for the purpose of this agreement is defined as "no more than four (4) unscheduled absences during the eighteen month term of this agreement and no instances of AWOL". "Unscheduled absences are defined for the purposes of this agreement as "any absence not requested and approved in advance of the Grievant's scheduled reporting time" and includes, but is not limited to, tardiness, emergency leave (such as emergency annual or sick leave), leave without pay (LWOP), and failure to report/remain as scheduled for overtime or holiday work. Grievant agrees that he will furnish acceptable medical documentation on any sick leave taken during the eighteen month term of this agreement to his supervisor immediately upon his return to work. "Acceptable medical documentation" is defined for the purposes of this agreement as "stating a diagnosis, a prognosis, and that the Grievant was incapacitated for work". The Grievant will also be required to provide acceptable evidence for the necessity of any unscheduled absence that he has or the leave requested will be disapproved and charged to AWOL."

Grievant agrees to meet all terms and conditions listed in this Agreement for a period of eighteen (18) months from the date of the signing of this Agreement.

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Andrew Faris
Notice of Proposed Removal

This settlement shall become a permanent part of the Grievant's Official Personnel File. It shall be removed only after eighteen (18) months of active employment with the Postal Service, provided no further discipline is issued for attendance during the eighteen (18) month period.

It is agreed by all parties to this agreement that any violation of the terms or conditions of this agreement by Grievant will result in removal.

Beginning November 20, 2019, you had the following unscheduled absence:

November 20, 2019	03.51 Hours AWOL
-------------------	------------------

Your absence charged as AWOL on November 20, 2019 as defined in the Last Chance Agreement and failure to provide acceptable documentation for your unscheduled absence constitutes a violation of your Last Chance Agreement. As such, your actions warrant your removal from the Postal Service.

During the investigative interview, you admitted you entered into a Last Chance Settlement Agreement (LCA) dated November 19, 2019. When asked if you agreed to abide by the terms of the LCA, you said you are not a lawyer. You said it's kind of black-mailish. You said if you don't sign it you're fired. You said it was true that you agreed to make appropriate changes in order to fulfill your attendance obligations. You admitted you would incur no more than three unscheduled absences during any six-month period and no instances of AWOL. However, you said that you were not AWOL yesterday (November 20, 2019.) You said "Darlene" knew where you were at. However, there is no "Darlene" in Maintenance Management staff.

When asked isn't it true as a condition of your LCA, you could have no instances of AWOL, you responded nope, that you're dyslexic. That answer directly contradicted the answer you gave three questions earlier. When asked if an AWOL violated the terms and conditions of the LCA you signed, you stated you don't know, and you are dyslexic. When asked isn't it true that you violated your LCA when you had the instance of AWOL, you said nope.

Your actions are in violation of the following Postal Rules and Regulations:

Employee and Labor Relations Manual Sections:

511.4 Unscheduled Absence

511.41 Definition

Unscheduled absences are any absences from work that are not requested and approved in advance.

511.43 Employee Responsibilities

Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences.

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Andrew Faris
Notice of Proposed Removal

665.41 Requirement for Attendance

Employees are required to be regular in attendance.

665.42 Absence Without Permission

Employees who fail to report for duty on scheduled days, including Saturdays, Sundays, and holidays, are considered absent without leave, except in cases where actual emergencies prevent them from obtaining permission in advance. In emergencies, the supervisor or proper official must be notified of the inability to report as soon as possible. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or who fails to provide satisfactory evidence that an actual emergency existed will be placed in a non-pay status for the period of such absence. The absence may be the basis for disciplinary actions.

In addition, the following elements of your record have been considered in arriving at this decision:

1. You were issued disciplinary action February 27, 2019, charging you with Unsatisfactory Attendance. You received a 7-Day Suspension.
2. You were issued a 14-Day Suspension dated July 15, 2019, charging you with Unsatisfactory Attendance.
3. You were issued a Proposed Notice of Removal, dated October 29, 2019, charging you with Unsatisfactory Attendance. You received a 14-Day Last Chance Suspension.

Your use of unscheduled leave resulting in failure to maintain a regular schedule demonstrates your unreliability as an employee and warrants your removal from the Postal Service.

Your removal will promote the efficiency of the service.

You and/or your representative may review the material relied on to support the reasons for this notice at the Indianapolis Processing and Distribution Center. If you do not understand the reasons for this notice, contact Ms. Tori Jenkins for further explanation.

You and/or your representative may answer this proposal within 10 days from your receipt of this letter, either in person or in writing or both, before Wayne Vaughn, 125 W South St, Indianapolis, IN between 9:00 a.m. and 4:00 p.m. You may also furnish affidavits or other written material to Mr. Vaughn within 10 days from your receipt of this letter. You will be afforded a reasonable amount of official time for the above purpose if you are otherwise in a duty status. After the expiration of the 10-day time limit for reply, all the facts in the case, including any reply you submit will be given full consideration before a decision is rendered. You will receive a written decision from Mr. Vaughn.

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Page Four
Andrew Paris
Notice of Proposed Removal

You have the right to file a grievance under the Grievance/Arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

[Signature]
Signature of Supervisor

[Name]
Name of Supervisor (Printed)

Approved by Installation Head or Designee [Signature]

I HAVE RECEIVED THE ORIGINAL OF THIS LETTER ON [Signature] - 1/17 ✓

SIGNATURE [Signature] TIME: 14:00



DATE: February 3, 2020
SUBJECT: Letter of Decision – Removal
TO: Andrew Faris
Labor Custodian
EID: [REDACTED]
Pay Location: 523/Indianapolis P&DC

You were issued a notice, dated December 2, 2019, proposing to remove you based on the charge outlined in the notice.

I have given full consideration to all evidence of record. I find the circumstances surrounding these incidents and the charge as stated in the notice dated December 2, 2019 are supported by the evidence.

After receiving no response from you or your representative, either in person, via telephone, or in writing, and considering all evidence of record, I find that your attendance record is unacceptable.

In order to determine the appropriate penalty, I have considered a number of factors.

A review of your disciplinary history shows you have been issued progressive discipline in an attempt to correct your attendance deficiencies. The record of evidence shows you have failed to heed the warnings relative to your attendance. The prior disciplinary action has not had the corrective value of rectifying your attendance deficiencies, as was intended by the Postal Service's disciplinary process and the clarity with which you were placed on notice.

You entered into a Last Chance Settlement Agreement on November 19, 2019, in an effort to continue your career with the USPS. You violated that agreement on November 20, 2019, when you were Absent With Out Leave (AWOL) for 3.51 hours. This was a direct violation of item #5 where it was provided that you would have no instances of AWOL.

I have considered your nearly 3 years of postal employment. I do not find this to be a mitigating factor in your favor.

I find that the penalty is consistent with those imposed upon other employees for the same or similar offense.

I have considered your potential for rehabilitation. However, based on your actions in violating your Last Chance Settlement Agreement less than 24 hours after signing it, I find your potential for rehabilitation sorely lacking.

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Andrew Faris
Letter of Decision – Removal

I find no effective alternate action to be appropriate. Your actions warrant your removal from the Postal Service. Your removal will promote the efficiency of the service. Therefore, it is my decision that you be removed from the Postal Service at the close of business on February 14, 2020.

As a preference eligible, you have a right to appeal this decision in writing to the Merit Systems Protection Board (MSPB), Central Regional Office, 230 S. Dearborn Street, Room 3100, Chicago, IL 60604-1669 within 30 calendar days from the effective date of this decision.

If you believe that the action is based, in whole or in part, on discrimination you have the option of filing an appeal with the MSPB or filing an EEO complaint with the Postal Service, but not both. Before filing an EEO complaint, you must bring the matter to the attention of EEO Dispute Resolution, () within 45 calendar days of the effective date of this decision. The EEO complaint will be processed pursuant to the appropriate regulations, 29 CFR Section 1614.302 through 1614.310. You are not entitled to a hearing by the Equal Employment Opportunity Commission (EEOC). You may, however, request a hearing by the MSPB after the Postal Service has rendered a decision on your EEO complaint or after 120 calendar days from filing your complaint, whichever occurs first. If you appeal to the MSPB, your appeal should state whether you do or do not wish a hearing and you should furnish me a copy of your appeal. For further information on appeals procedures, contact Timothy J Williams. Attached for your reference are a copy of the MSPB regulations and a copy of the appeal form.

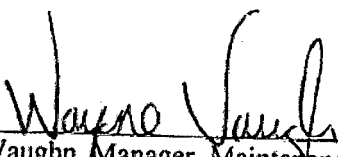
If you appeal this action, you will remain on the rolls, but in a non-pay, non-duty status after the effective date of this action until disposition of your case has been reached either by settlement or through exhaustion of your administrative remedies.

For a grievance to be timely filed in accordance with Article 15 of the National Agreement, it must be presented at Step 1 within 14 days of the receipt of the proposed action. The notice of proposed removal is dated December 2, 2019. You have the right to file an MSPB appeal and a grievance on the same matter. However, if the MSPB issues a decision on the merits of your appeal, if an MSPB hearing begins, if the MSPB closes the record after you request a decision without a hearing, or if you settle the MSPB appeal, you will be deemed to have waived access to arbitration. Further, if you have an MSPB appeal pending and the union appeals your grievance to arbitration, or if you appeal to the MSPB after the grievance has been appealed to arbitration, you will be deemed to have waived access to arbitration. If you appeal to the MSPB, please provide me a copy of your appeal.


If this action is reversed or modified on appeal by the Merit Systems Protection Board or through the Equal Employment Opportunity appeals process, back pay may be allowed in accordance with 5 CFR §§ 550.801, et. seq., as applicable, unless the award or decision specifies otherwise.

Page Three
Andrew Faris
Letter of Decision – Removal

If this action is reversed or modified in arbitration, back pay may be allowed, unless the award specifies otherwise, only if you have made reasonable efforts to obtain alternate employment during the potential back pay period. The documentation which you must maintain and present to support a back pay claim is described in Part 436 of the Employee and Labor Relations Manual.



Wayne Vaughn, Manager, Maintenance (Signature)



Wayne Vaughn, Manager, Maintenance (Printed)

I RECEIVED THE ORIGINAL OF THIS LETTER ON _____

SIGNATURE  TIME _____

may be allowed in accordance with 5 CFR §§ 550.801, et seq., as applicable, unless the award or decision specifies otherwise.

Respectfully,

Wayne Vaughn, Manager, Maintenance

WAYNE VAUGHN (Printed)

APPENDIX I:

**USPS EMPLOYEE AND LABOR RELATIONS MANUAL (ELM)
PROVISIONS**

ELM § 511.4 – Unscheduled Absence

Unscheduled absences are any absences from work that are not requested and approved in advance of the employee's scheduled reporting time.

ELM § 511.41 – Definition

Unscheduled absences are any absences from work that are not requested and approved in advance.

ELM § 511.43 – Employee Responsibilities

Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences.

ELM § 651.71 – Disciplinary Action for Unacceptable Attendance

Employees who fail to maintain acceptable attendance may be subject to disciplinary action, up to and including removal.

ELM § 651.73 – Progressive Discipline

The Postal Service utilizes progressive discipline to address attendance issues, including oral warnings, written warnings, suspensions, and removal.

ELM § 651.74 – Decision Letter Requirements

The deciding official, who must be higher in authority than the proposing official, considers the employee's response and gives a written decision, including reasons for the decision, as soon as possible after the employee's time to respond has expired, but no later than 60 calendar days following the receipt of the employee's response. If the decision is to effect the adverse action or to modify it to a lesser penalty, the employee's appeal rights, including Merit Systems Protection Board (MSPB) appeal rights, if applicable, are stated.

ELM § 651.76 – Last Chance Agreements

A Last Chance Agreement may be offered in lieu of removal to provide an employee with a final opportunity to demonstrate compliance with performance or conduct standards. Such agreements typically include specific performance metrics, a defined period of observation, and consequences for non-compliance.

ELM § 665.41 – Requirement for Attendance
Employees are required to be regular in attendance.

ELM § 665.42 – Absence without Permission
Employees who fail to report for duty on scheduled days, including Saturdays, Sundays, and holidays, are considered absent without leave, except in cases where actual emergencies prevent them from obtaining permission in advance. In emergencies, the supervisor or proper official must be notified of the inability to report as soon as possible. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or who fails to provide satisfactory evidence that an actual emergency existed will be placed in a non-pay status for the period of such absence. The absence may be the basis for disciplinary action.

APPENDIX J:

USPS TIME AND ATTENDANCE HANDBOOK F-21

621 Preparing Timecards for Totaling

621.12 The timekeeper is to verify that he has a timecard for all employees that are on the rolls of the office even if the employee performed no service during the week. The timekeeper should give careful attention to the daily entries on the timecards to see that they have been properly recorded and calculated. Hours should be recorded in hours and hundredths. Leave and other paid hour identification codes should appear where require

BLOWN UP SECTION OF TIME CONVERSION CHART FOUND IN USPS TIME AND ATTENDANCE HANDBOOK F-21 (TAB 4C) No .51 so 3.51 hours is impossible. ...

28	.47	48	.80
29	.48	49	.82
30	.80	50	.83
31	.52	51	.85
32	.53	52	.87

TIME CONVERSION CHART FOUND IN USPS TIME AND ATTENDANCE HANDBOOK F-21

TIME CONVERSION TABLE

Postal messengers use a combination of military time (for the hour) and decimal time (for the minute). Hours in the morning need no conversion, but use a zero before hours below 10; to show evening hours, add 12. (Example: 0 00 am = 0000, 1 00 pm = 1300.) Using the chart, convert minutes to fractions of one hundred. Thus, 15 min. = .25, 30 min. = .50, 45 min. = .75, and so forth. (Example: 8 15 am = 0825, 4 40 pm = 1640.)

Ordinary Time Clock	24-hour Clock	Minutes	Fractional Minutes
12 Midnight	0000	00	.00
1 AM	0100	01	.01
2 AM	0200	02	.02
3 AM	0300	03	.03
4 AM	0400	04	.04
5 AM	0500	05	.05
6 AM	0600	06	.06
7 AM	0700	07	.07
8 AM	0800	08	.08
9 AM	0900	09	.09
10 AM	1000	10	.10
11 AM	1100	11	.11
12 Noon	1200	12	.12
1 PM	1300	13	.13
2 PM	1400	14	.14
3 PM	1500	15	.15
4 PM	1600	16	.16
5 PM	1700	17	.17
6 PM	1800	18	.18
7 PM	1900	19	.19
8 PM	2000	20	.20
9 PM	2100	21	.21
10 PM	2200	22	.22

Minutes	Fractional Minutes
23	.23
24	.24
25	.25
26	.26
27	.27
28	.28
29	.29
30	.30
31	.31
32	.32
33	.33
34	.34
35	.35
36	.36
37	.37
38	.38
39	.39
40	.40
41	.41
42	.42
43	.43
44	.44
45	.45
46	.46
47	.47
48	.48
49	.49
50	.50

Minutes	Fractional Minutes
51	.51
52	.52
53	.53
54	.54
55	.55
56	.56
57	.57
58	.58
59	.59
60	.60

51 UNCLAS
NOT EXACT

APPENDIX K

7. PRO SE APPELLANTS.

The MSPB's policy is to make special efforts to accommodate pro se appellants. These efforts may include the following: the AJ may schedule a status conference early in the process to explain what will be required of the pro se appellant and to advise that the pro se appellant may contact the RO or FO with questions regarding procedural matters. Generally, the AJ should not reject filings by pro se appellants for failing to comply with technical requirements, unless the violations are repeated after a clear warning. The AJ ordinarily should not impose sanctions for failing to comply with an order unless the record establishes that the pro se appellant received instructions that a reasonable person, unfamiliar with Board procedures, would have understood. The AJ may allow greater latitude to the pro se appellant in questioning witnesses and in giving testimony. The AJ may allow some leading questions, and may need to instruct the pro se appellant regarding the correct method of questioning. The Board has stated, in this regard, that AJs "should provide more guidance to pro se appellants and interpret their arguments in the most favorable light." *Miles v. Department of Veterans Affairs*, 84 M.S.P.R. 413, 421 (1999).

Chapter 2

11

APPENDIX L:

Relevant MSPB Procedural Regulations (5 C.F.R. Part 1201)

5 C.F.R. § 1201.3 — Board jurisdiction (excerpt)

"The Board has jurisdiction over appeals ... within its authority as provided by or under title 5, United States Code ... and other applicable law."

5 C.F.R. § 1201.21 — Notice of appeal rights (excerpt)

"When an agency issues a decision notice on a matter that is appealable to the Board, the agency must notify the employee of the right to appeal, the time limit for filing an appeal, and the office in which the appeal may be filed."

5 C.F.R. § 1201.41 — Type of decision (excerpt)

"An initial decision is a decision made by a presiding official ... after considering an appeal.... A final decision is a decision made by the Board itself on the merits of an appeal...."

5 C.F.R. § 1201.113 — Petitions for review (excerpt)

"Any party may file with the Board a petition for review of an initial decision.... The Board will presume that an initial decision is correct."

5 C.F.R. § 1201.114 — Petition to reopen (excerpt)

“A party may petition to reopen a case that was dismissed or closed for reasons other than an initial or final decision ... [by showing] extraordinary circumstances beyond the party’s control....”

39 C.F.R. § 211.2 — Timekeeping

(a) Postal Service installations must maintain timekeeping records in accordance with Handbook F-21, Time and Attendance Collection System (TACS), and the Employee and Labor Relations Manual (ELM).

(b) Time and attendance records must accurately reflect hours worked, leave used, and other attendance information for each employee.

(c) Employees are responsible for accurately recording their time and attendance in accordance with Postal Service procedures.

APPENDIX M:

Pertinent Provisions

U.S. Constitution, Amendment V (Due Process Clause)

“No person shall be ... deprived of life, liberty, or property, without due process of law.”

Statutes

5 U.S.C. § 2108 — Preference eligible (excerpt)

“Preference eligible’ means ... a veteran ... or disabled veteran....”

5 U.S.C. § 7511 — Employee; application (excerpt)

“Employee’ means ... a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions ... in the United States Postal Service or Postal Regulatory Commission.”

5 U.S.C. § 7513 — Cause and procedure (excerpt)

“An agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

An employee against whom an action is proposed is entitled to—

- (1) at least 30 days’ advance written notice ... stating the specific reasons for the proposed action;
- (2) a reasonable time ... to answer orally and in writing ...;
- (3) be represented by an attorney or other representative; and
- (4) a written decision and the specific reasons therefor at the earliest practicable date.

An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.”

5 U.S.C. § 7701 — Appellate procedures (excerpt)

“An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

- (1) to a hearing for which a transcript will be kept; and
- (2) to be represented by an attorney or other representative.”

5 U.S.C. § 7703 — Judicial review (excerpt)

“Any employee or applicant for employment adversely affected or aggrieved by a final order or final decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

... a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit ... within 60 days after the Board issues notice of the final order or decision of the Board.

In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

- (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.”

28 U.S.C. § 1254 — Courts of appeals; certiorari (excerpt)

“Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case....”

28 U.S.C. § 1295 — Jurisdiction of the United States Court of Appeals for the Federal Circuit (excerpt)

“The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction ... of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5.”

28 U.S.C. § 2101(c) (Time to file cert petition; possible extension)

Sets the general 90-day deadline to apply for a writ of certiorari in a civil case and allows a Justice, for good cause, to extend up to 60 days.

APPENDIX N:

MSPB Filing Rejection letter

July 16, 2020

Notice to:

Andrew D. Faris

Indianapolis, IN 46221

U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk of the Board

1615 M Street, N.W. Washington, D.C. 20419-0002

Phone: 202-653-7200; Fax: 202-653-7130; E-Mail: mspb@mspb.gov

Re: Andrew D. Faris v. United States Postal Service MSPB Docket Number: CH-0752-20-0205-I-1

On July 16, 2020, the Board received your two filings, titled, "other information for my case" and "other factors," in which you submit additional pleadings. Pursuant to the provisions of 5 C.F.R. § 1201.114(k), the record in this appeal is closed to additional submissions. The Board's regulations do not provide for pleadings other than a petition for review, a cross petition for review, a response to the petition for review or cross petition for review, and a reply to a response to a petition for review. 5 C.F.R. § 1201.114(a)(5). A description of these pleadings and the time limits for filing them are set forth in the Board's regulations. 5 C.F.R. § 1201.114(a), (e). For the Board to consider a party's pleading, other than one of those set forth above, the party must describe the nature and need for the pleading. 5 C.F.R. § 1201.114(a)(5). If a party wishes to submit a pleading after the record has closed, the party must also show that the evidence was not readily available before the record closed. 5 C.F.R. § 1201.114(a)(5), (k).

If you filed your additional pleadings by non-electronic means, such as fax or U.S. mail, it is being returned to you at this time via U.S. mail. If you submitted your additional pleading through e-Appeal, it has been deleted from the e-Appeal Repository and will be returned to you via separate email. You may submit a motion, as described above, that requests leave to file an additional pleading. Please do not include your additional pleading with your motion. If you choose to submit a

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motion, you will be informed at a later date of the Board's decision to grant or deny your request. If the Board grants your request, you will be given 10 days in which to submit your additional

pleading to the Board. For more information about the Board's petition for review process, please review the Board's regulations at 5 C.F.R. § 1201.114 - 1201.120.

Jennifer Everling
Acting Clerk of the Board

Dinh Chung
Case Manager

PROOF OF SERVICE (FOR THIS MOTION)

I, Andrew Dale Faris, do swear or declare that on March 4, 2026, as required by Supreme Court Rule 29, I served the enclosed Motion for Leave to File Petition with Fewer Than Ten Copies on counsel for Respondent by depositing an envelope containing the motion in the United States mail properly addressed to counsel and with first-class postage prepaid (or by delivery to a third-party commercial carrier for delivery within 3 calendar days).

The name and address of counsel served are as follows:

KELLY WINSHIP
Office of the General Counsel
United States Merit Systems Protection Board
1615 M Street, N.W.
Washington, DC 20419

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 4, 2026.

Andrew Dale Faris

A handwritten signature in black ink, appearing to read 'Andrew Dale Faris', with a long horizontal flourish extending to the right.