

No.
26-5286 ORIGINAL
IN THE

SUPREME COURT OF THE UNITED STATES

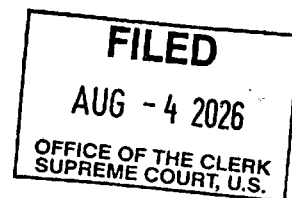
JULIAN R. HOOD, JR.,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.



On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A partially recovered federal employee may appeal an agency's failure to restore him to employment under 5 U.S.C. § 8151 and 5 C.F.R. § 353.304(c). The Federal Circuit affirmed dismissal of petitioner's 2024 restoration appeal on issue-preclusion grounds because earlier Board proceedings had determined that his 2003 separation was not due to a compensable injury, although the 2024 appeal arose from a new restoration request, an alleged new agency denial, and a later-developed administrative record.

The question presented is:

Whether a prior jurisdictional dismissal precludes a later federal restoration appeal arising from postjudgment agency conduct without first determining whether intervening facts or a materially distinct causal theory changed the jurisdictional issue actually and necessarily decided.

PARTIES TO THE PROCEEDING

Petitioner Julian R. Hood, Jr. was the petitioner in the court of appeals. The Merit Systems Protection Board was the respondent in the court of appeals. The United States Postal Service was the agency in the underlying Board proceeding.

RELATED PROCEEDINGS

Hood v. Merit Systems Protection Board, No. 2026–1099 (Fed. Cir.), judgment entered April 16, 2026; petition for panel rehearing and rehearing en banc filed April 27, 2026; rehearing denied May 28, 2026.

Hood v. United States Postal Service, MSPB Docket No. CH-0353-24-0299-I-1, initial decision issued September 30, 2025, final November 4, 2025.

Hood v. United States Postal Service, No. CH-0353-17-0093-I-1, Merit Systems Protection Board. Initial decision issued September 13, 2017; final October 18, 2017.

Hood v. United States Postal Service, No. CH-0353-14-0121-I-1, Merit Systems Protection Board. Initial decision issued April 29, 2014; final June 3, 2014.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Julian R. Hood, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The Federal Circuit's nonprecedential opinion in *Hood v. Merit Systems Protection Board*, No. 2026–1099 (Fed. Cir. Apr. 16, 2026), is reproduced at Pet. App. 2a–7a. The order denying panel rehearing and rehearing en banc is reproduced at Pet. App. 8a–9a. The MSPB's initial decision is reproduced at Pet. App. 10a–27a.

JURISDICTION

The Federal Circuit entered judgment on April 16, 2026. Petitioner timely filed a combined petition for panel rehearing and rehearing en banc on April 27, 2026. The court denied rehearing on May 28, 2026. This petition is timely under Supreme Court Rule 13.3 because it is being filed on or before August 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant provisions of 5 U.S.C. § 8151 and 5 C.F.R. §§ 353.102, 353.301, and 353.304 are reproduced at Pet. App. 50a–55a.

STATEMENT OF THE CASE

A. Statutory framework

Congress directed that federal employees who overcome compensable injuries receive specified retention and restoration protections. 5 U.S.C. § 8151. The

implementing regulation provides that an employee who has partially recovered from a compensable injury “must be given priority consideration for reemployment” in the former agency and that the agency must make every effort to place the employee in the former or an equivalent position. 5 C.F.R. § 353.301(d).

An employee may appeal to the MSPB when an agency’s failure to restore or improper restoration is “arbitrary and capricious.” 5 C.F.R. § 353.304(c). Under Federal Circuit precedent, an appellant seeking review as a partially recovered employee must establish that he was absent from his position due to a compensable injury, recovered sufficiently to return to duty in some capacity, requested restoration, and received an arbitrary-and-capricious denial. *Bledsoe v. Merit Systems Protection Board*, 659 F.3d 1097, 1104 (Fed. Cir. 2011).

B. Petitioner’s injury, separation, and earlier proceedings

Petitioner began working for the Postal Service in 1999. OWCP accepted a work-related emotional-condition claim and paid compensation for periods in 2000, 2001, and 2002. The Postal Service removed petitioner in August 2003 for attendance-related charges arising under a last-chance agreement.

In 2005, petitioner and the Postal Service entered a settlement resolving an EEO dispute. Pet. App. 59a. The agreement changed the personnel action from removal to resignation and preserved petitioner’s then-pending OWCP claim. The Federal Circuit’s decision below did not enforce that agreement as the basis for preclusion. Instead, it held that a prior Board decision independently determined that petitioner had not shown that his 2003 separation was due to a compensable injury. Pet. App. 6a.

Petitioner filed a restoration appeal in 2014. The administrative judge dismissed it for lack of jurisdiction after determining that the unscheduled absences relied on in the 2003 removal did not correspond to OWCP-covered dates. Pet. App. 36a–42a. A later Board proceeding rejected petitioner’s reliance on an OWCP letter stating that he was partially recovered and able to return to work. That decision became final in 2017. Pet. App. 28a–35a.

The 2014 initial decision also discussed the 2005 settlement and stated that petitioner had waived certain employment-related rights. Pet. App. 42a. Later Board proceedings treated the 2014 jurisdictional determination as preclusive. Petitioner disputed whether the settlement waived statutory restoration rights because the agreement expressly preserved his pending FECA claim. Pet. App. 59a. The Federal Circuit declined to resolve the settlement’s validity, reasoning that the earlier jurisdictional ruling independently rested on petitioner’s failure to establish that his separation was due to a compensable injury. Pet. App. 6a. The settlement history is relevant here only to identifying the grounds actually and necessarily decided in the earlier proceeding.

C. The 2024 restoration request and decision below

On March 1, 2024, petitioner submitted a new request for restoration. Petitioner alleged that the Postal Service denied the request by failing to respond. He then filed the present MSPB appeal, relying on his accepted OWCP condition, his partial-recovery status, additional OWCP benefit materials, and the new request and alleged agency nonresponse. Petitioner maintained that those later operative events required

a determination whether the jurisdictional issue remained identical to the issue decided in the earlier proceedings.

The MSPB dismissed the appeal. It held that collateral estoppel barred relitigation of whether petitioner's absence or separation was due to a compensable injury and concluded that the additional OWCP materials did not alter the earlier analysis. Pet. App. 10a–18a.

The Federal Circuit affirmed in a six–page nonprecedential opinion. It stated that collateral estoppel applied because the causal–nexus issue had been decided in the 2014 and 2017 proceedings. Pet. App. 2a–7a. It also held that the later OWCP benefit statements did not establish accepted claims for the dates associated with the removal. Pet. App. 6a. The court added that issue preclusion applies even if the earlier determination rested on an erroneous view of law. Pet. App. 6a–7a.

Petitioner's causal–nexus allegation was not limited to whether OWCP separately awarded wage–loss compensation for each charged absence between April 1 and July 17, 2003. Petitioner alleged that the Postal Service had assigned him modified duty because of restrictions resulting from his accepted work–related condition but required him during the period preceding removal to work outside those restrictions, contributing to the charged absences. Pet. App. 36a–42a. That allegation presented a causal question broader than whether every charged date appeared on an OWCP compensation statement: whether the accepted condition and the conditions of the modified assignment substantially contributed to petitioner's absence and separation. The decisions below nevertheless treated the absence of date–for–date OWCP compensation as dispositive without addressing that broader causal theory.

The court expressly rejected petitioner's fraud argument on the ground that the earlier jurisdictional decision did not rely on the 2005 settlement agreement. Pet. App. 6a. This petition therefore does not ask the Court to decide the validity of that agreement. It asks whether a jurisdictional issue decided in an earlier restoration proceeding may conclusively foreclose a later statutory restoration request involving postjudgment events and evidence, without a hearing directed to the later request.

REASONS FOR GRANTING THE PETITION

The courts of appeals agree that a jurisdictional dismissal may preclude relitigation of the same jurisdictional issue. They also recognize that preclusion does not extend to a later proceeding when a postjudgment event cures the earlier defect or materially changes the jurisdictional issue. In applying that limitation, other circuits identify the precise defect decided in the first action, identify the allegedly curative later event, and compare the two before determining whether the issue remains identical.

The decision below did not perform that distinct comparison. It treated the earlier historical causal-nexus determination as controlling and then evaluated petitioner's later evidence as insufficient. That approach permits the perceived weakness of later evidence to substitute for the antecedent issue-identity inquiry required by ordinary preclusion principles.

The question is important because the Federal Circuit exercises nationwide review over most MSPB appeals, while restoration rights commonly depend on changing medical status, later OWCP action, new restoration requests, and later agency responses. Review is warranted to determine whether an earlier threshold

dismissal may become a permanent bar without a focused inquiry into whether the later proceeding presents the same jurisdictional issue.

I. THE DECISION BELOW DEPARTS FROM THE CHANGED-CIRCUMSTANCES INQUIRY APPLIED BY OTHER COURTS OF APPEALS.

A. This Court limits issue preclusion to the same issue under materially unchanged controlling facts.

Issue preclusion applies only to an issue of fact or law that was actually litigated, necessarily determined, and essential to a valid final judgment. *Montana v. United States*, 440 U.S. 147, 153–154 (1979); *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). The doctrine does not apply merely because two proceedings concern the same general subject. The issue in the later proceeding must be the same issue previously resolved.

That requirement has a temporal dimension. In *Commissioner v. Sunnen*, 333 U.S. 591, 599–601 (1948), this Court explained that collateral estoppel governs only when the controlling facts and applicable legal rules remain unchanged. In *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 327–328 (1955), the Court held that an earlier judgment could not extinguish claims arising from later conduct because those claims did not yet exist. And in *Bobby v. Bies*, 556 U.S. 825, 834–835 (2009), the Court emphasized that issue preclusion does not attach when a later proceeding presents a materially different issue in light of an intervening change.

Those principles do not mean that a litigant may evade preclusion by submitting cumulative evidence, repackaging an old theory, or filing a new request that leaves the earlier defect unchanged. They require a court to determine what

the first judgment necessarily decided and whether the later proceeding truly presents that same issue under materially unchanged facts.

B. Other courts of appeals separately compare the earlier jurisdictional defect with the alleged later cure.

The D.C. Circuit expressly applies a “curable defect” limitation to jurisdictional issue preclusion. *National Ass’n of Home Builders v. EPA*, 786 F.3d 34, 41–42 (D.C. Cir. 2015). There, an earlier action had failed because the plaintiffs did not establish Article III injury traceable to the challenged agency action. In the later action, the plaintiffs submitted additional declarations addressing permits, jurisdictional determinations, development plans, and regulatory risk. The court did not treat the first ruling as conclusive merely because the same standing requirement was implicated. It identified the earlier defect and examined whether a postdismissal occurrence supplied what had been missing. *Id.* at 41. The second action remained barred only because the later declarations did not identify the required subsequent occurrence and left the standing allegations materially unchanged. *Id.* at 41–42.

The Tenth Circuit follows the same method. In *Park Lake Resources Ltd. Liability Co. v. United States Department of Agriculture*, 378 F.3d 1132, 1137–1138 (10th Cir. 2004), the first action had been dismissed as unripe because a mining claimant had not submitted a proposed plan of operations to the Forest Service. The court explained that a jurisdictional determination does not necessarily control “for all time” because “[t]hings ripen.” *Id.* at 1137. A later suit may proceed when the jurisdictional defect has been cured or has lost its controlling force. *Ibid.* The later suit was barred only after the court compared the earlier defect with the asserted

later circumstances and found that the claimant still had not submitted the required plan and relied on circumstances predating the first litigation. *Id.* at 1137–1138.

The Fifth Circuit likewise recognizes that a jurisdictional dismissal leaves open the possibility that the deficiency may later be cured. *Hopwood v. Texas*, 78 F.3d 932, 961–962 & nn.61–62 (5th Cir. 1996). The court rejected a renewed effort to intervene only after determining that the asserted circumstance had already been presented to and implicitly resolved by the earlier panel. *Id.* at 962 & n.62. Its analysis therefore turned on whether the later proceeding involved a genuinely changed jurisdictional issue, not merely on the existence of an earlier jurisdictional disposition.

The First Circuit has similarly recognized that issue identity must be reconsidered when the legal predicate for an earlier jurisdictional determination materially changes. *Coors Brewing Co. v. Méndez-Torres*, 562 F.3d 3, 12–13, 22–23 (1st Cir. 2009). Although *Coors* involved an intervening change in controlling law rather than a change in historical fact, it confirms the same principle: an earlier jurisdictional determination is not mechanically conclusive when the predicate defining the later jurisdictional issue has materially changed.

These decisions share a common analytic sequence. A court must:

- (1) identify the precise jurisdictional defect actually and necessarily decided earlier;
- (2) identify the asserted postjudgment event, changed circumstance, or distinct predicate in the later proceeding; and
- (3) determine whether that development cured the earlier defect, deprived it of controlling force, or materially changed the issue presented.

Preclusion remains proper when the later material is merely cumulative, consists of better pleading, rests on old facts, or advances a theory already resolved. But the earlier dismissal is not conclusive merely because the later proceeding invokes the same general jurisdictional element.

C. The decision below did not conduct that distinct comparison.

The earlier Board decision treated the absence of date-for-date OWCP wage-loss coverage for the charged attendance dates as defeating the required causal nexus. Pet. App. 36a–42a. The later proceeding included a new restoration request and alleged agency nonresponse, as well as additional OWCP materials and a contention that causation arose through the agency's administration of modified duty for the accepted condition.

The asserted change therefore was not merely that petitioner filed another request. Petitioner contended that the later proceeding presented a different causal predicate: whether the accepted condition substantially contributed to the separation through the restrictions and administration of the modified assignment, rather than only whether OWCP had separately awarded wage-loss compensation for each charged absence.

The Federal Circuit did not first define the precise issue necessarily decided in the earlier proceedings and then decide whether that issue encompassed the modified-duty theory and later administrative setting. It instead treated the earlier causal-nexus conclusion as controlling and examined the later OWCP benefit statements to determine whether they established accepted claims for the relevant dates. Pet. App. 6a.

That analysis used the earlier date-matching framework to evaluate whether the later material was sufficient. It did not answer the antecedent question whether the later proceeding presented the same causal issue. Under the approach applied by the D.C., First, Fifth, and Tenth Circuits, the adjudicator separately compares the prior jurisdictional defect with the allegedly curative or materially changing development before giving the earlier ruling conclusive effect.

The conflict is therefore one of legal method. The other circuits require an independent changed-circumstances or curable-defect inquiry. The decision below permitted its assessment that the later evidence was insufficient to establish that the issue remained identical. That approach risks converting a first threshold ruling into a permanent jurisdictional bar whenever a later tribunal views new evidence as unpersuasive, even when the scope of the earlier issue and the later issue is itself disputed.

D. The later claim was not merely a request to correct the earlier judgment.

Petitioner's 2024 appeal arose from conduct that had not occurred when the earlier proceedings became final: a new restoration request and an alleged new agency failure to respond. Those events did not erase any historical fact previously determined. But they created the statutory proceeding in which the Board had to decide whether jurisdiction existed on the later record.

Lawlor is instructive in that limited respect. An earlier judgment does not extinguish a claim based on later operative conduct merely because the new claim shares historical facts with the earlier case. 349 U.S. at 327–328. Petitioner did not ask the Board to reopen the 2014 decision simply because it was wrong. He sought

review of an alleged 2024 failure to restore and argued that the later proceeding required a focused determination of whether its jurisdictional predicate was materially identical to the one previously adjudicated.

The decision below did not hold merely that a new request cannot erase a historical causation finding. It gave that finding conclusive effect without separately resolving the disputed scope of the issue previously decided. That is the precise point on which review is warranted.

II. THE FEDERAL CIRCUIT RESOLVED DISPUTED ISSUE IDENTITY BY WEIGHING THE LATER RECORD AT THE JURISDICTIONAL THRESHOLD.

A. The nonfrivolous-allegation standard distinguishes threshold access from ultimate proof.

Federal Circuit precedent distinguishes between the allegations necessary to obtain a jurisdictional hearing and the evidence ultimately required to establish Board jurisdiction. See *Bledsoe*, 659 F.3d at 1102–1104; *Stokes v. Federal Aviation Administration*, 761 F.2d 682, 685–686 (Fed. Cir. 1985). When an appellant makes nonfrivolous allegations of jurisdiction and material jurisdictional facts remain disputed, the appellant ordinarily must receive an opportunity to develop and prove those facts.

Petitioner alleged an accepted compensable condition, partial recovery, a new restoration request, and an alleged new agency denial. He also relied on additional administrative materials and alleged that the accepted condition contributed to the separation through the agency's handling of his modified-duty restrictions.

The Federal Circuit did not characterize those allegations as facially frivolous. Instead, it evaluated petitioner's additional OWCP materials and concluded that they did not establish accepted claims for the dates associated with the removal. Pet. App. 6a. That was an assessment of the significance of the later record.

B. Preclusion may be resolved at the threshold only after the tribunal establishes that the issues are materially identical.

Petitioner does not contend that issue preclusion can never be decided before a jurisdictional hearing. When the earlier and later issues are indisputably identical, preclusion may foreclose renewed factual development.

But here, identity itself depended on the scope of the earlier causal determination and whether the later proceeding's modified-duty theory and administrative setting presented the same issue. The court could not resolve that dispute merely by applying the evidentiary framework used in the earlier case and finding the later materials insufficient under that framework. It first had to determine whether that framework defined the full issue presented in 2024.

The distinction matters. If the earlier decisions necessarily resolved whether petitioner's accepted condition contributed to his separation through the modified-duty circumstances alleged in the later proceeding, preclusion may apply. If the earlier decisions resolved only whether each charged absence corresponded to an accepted wage-loss date, the later causal issue may not be identical. The decision below did not make that comparison explicit.

The proper remedy is limited. Petitioner does not ask this Court to determine that Board jurisdiction exists, to reweigh the OWCP record, or to decide the

ultimate restoration claim. He asks the Court to require application of the correct issue-preclusion inquiry before the earlier threshold dismissal is given conclusive effect.

III. THE QUESTION IS IMPORTANT AND THE CASE IS AN APPROPRIATE VEHICLE.

A. The question affects administration of a nationwide restoration scheme.

The Federal Circuit exercises nationwide appellate review over most MSPB decisions. Its approach therefore governs federal employees and agencies throughout the Nation.

Restoration rights are particularly likely to produce later proceedings involving changed circumstances. A partially recovered employee's medical capacity may change. OWCP may issue later findings or instructions. An employee may submit a later restoration request. The employing agency may take or fail to take new action. Available positions and restrictions may also change.

A rule governing the preclusive effect of an earlier jurisdictional dismissal must distinguish between an unchanged attempt to relitigate the same defect and a later proceeding in which the jurisdictional predicate has materially changed. Without a required comparison, an earlier threshold ruling may become functionally permanent even when later events or a distinct causal predicate were not actually and necessarily resolved before.

The question has practical consequences beyond petitioner's case. It determines:

- whether a later OWCP development can ever alter the jurisdictional inquiry;
- whether a new restoration request and agency response may be assessed on the later record;

- whether issue identity is decided by comparing the scope of the two proceedings or simply by weighing later evidence under the first proceeding's framework; and
- whether a threshold dismissal may indefinitely foreclose access to a continuing statutory restoration process.

B. The issue was decided below and is outcome determinative.

The Federal Circuit rested its judgment on collateral estoppel and on its conclusion that petitioner's additional OWCP materials did not alter the earlier causal-nexus determination. Pet. App. 5a–7a. The issue-preclusion question is therefore squarely presented.

The court also made clear that the 2005 settlement did not supply the necessary basis for its judgment. Pet. App. 6a. This Court need not decide fraud, contract validity, damages, or whether petitioner ultimately qualifies for restoration.

The issue is outcome determinative at the present stage. If the Federal Circuit was required to conduct a distinct comparison between the earlier jurisdictional defect and the later proceeding before applying preclusion, the matter should return for that inquiry. If the earlier and later issues are ultimately found identical, preclusion may remain available. If they are not identical, petitioner should receive the jurisdictional process applicable to his later allegations.

C. The petition seeks a narrow and administrable ruling.

The Court need not hold that every new restoration request defeats preclusion. Nor need it create a special preclusion rule for FECA cases. It need only apply the ordinary requirement that issue preclusion attaches to the same issue actually and necessarily decided under materially unchanged controlling facts.

The requested rule is straightforward: before a prior jurisdictional dismissal bars a later statutory proceeding, the adjudicator must identify the precise defect previously decided, identify the asserted postjudgment change, and determine whether the change cured the defect or materially altered the jurisdictional issue. That rule preserves finality while preventing preclusion from extending beyond the matter actually adjudicated.

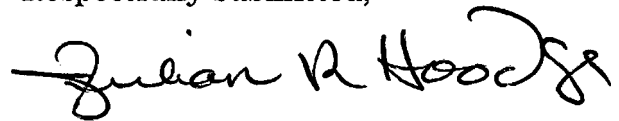
The Court should grant the petition and reverse. Alternatively, it should grant the petition, vacate the judgment, and remand for application of the proper issue-identity and changed-circumstances inquiry.

CONCLUSION

The petition for a writ of certiorari should be granted. The judgment should be reversed and the case remanded for application of the correct issue-preclusion standard. In the alternative, the Court should grant the petition, vacate the judgment below, and remand for determination whether the 2024 proceeding presented the same jurisdictional issue actually and necessarily decided in the earlier proceedings.

Date: August 5, 2026

Respectfully submitted,

A handwritten signature in black ink, reading "Julian R. Hood, Jr." with a stylized flourish at the end.

Julian R. Hood, Jr.
Petitioner Pro Se