

No. _____

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 APPENDIX

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NOTE: This order is nonprecedential.

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

JULIAN R. HOOD, JR.,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2026-1099

Petition for review of the Merit Systems Protection
Board in No. CH-0353-24-0299-I-1.

Decided: April 16, 2026

JULIAN HOOD, JR., Escondido, CA, pro se.

KELLY WINSHIP, Office of the General Counsel, United
States Merit Systems Protection Board, Washington, DC,
for respondent. Also represented by KATHERINE MICHELLE
SMITH.

Before CHEN, CUNNINGHAM, and STARK, *Circuit Judges*.
PER CURIAM.

Julian R. Hood Jr., a pro se litigant, appeals from a final decision of the Merit Systems Protection Board (Board) dismissing his appeal for lack of jurisdiction. *Julian Hood Jr. v. U.S. Postal Serv.*, No. CH-0353-24-0299-I-1, 2025 WL 3241066 (M.S.P.B. Sept. 30, 2025) (*Decision*) (SAppx 1-17).¹ The Board held that Mr. Hood's appeal, contending that he should be restored to duty after partially recovering from an injury, was barred by collateral estoppel because the dispositive issues had previously been fully litigated before the Board. The Board further held that Mr. Hood failed to present new evidence that would change the jurisdictional analysis as to his restoration appeal. For the reasons discussed below, we *affirm*.

BACKGROUND

In 1999, Mr. Hood began working as a part-time Flexible Mail Processing Clerk for the Postal Service in Grand Rapids, Michigan. He filed an Office of Worker's Compensation Programs (OWCP) claim for workplace stress that occurred in December 2000. The OWCP partially accepted his claim and awarded him compensation for an episode of Major Depressive Disorder from December 21, 2000 to January 12, 2001. The OWCP awarded him compensation for subsequent periods in 2001 and 2002.

On October 30, 2002, Mr. Hood and the Postal Service entered into a Last Chance Agreement (LCA) to resolve a fourteen-day suspension and a Notice of Removal. He was subsequently removed in August 2003 for "failure to be regular in attendance/violation of [LCA]," based on his unscheduled absences between April 1, 2003, and July 17, 2003. *Decision*, 2025 WL 3241066, at 1-2.

¹ Because the online version of the Initial Decision lacks pagination, we use the pagination employed in the Board's original document. "*Decision*, 2025 WL 3241066, at 1," for example, corresponds to the first page of the decision, located at SAppx 1.

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In November 2005, Mr. Hood signed a settlement agreement to resolve an Equal Employment Opportunity (EEO) complaint he had filed. The agreement paid Mr. Hood monetary compensation and changed his removal to a "resignation." In exchange, Mr. Hood agreed to waive his right to pursue "all other employment claims and grievances that are pending or could have been brought" against the Postal Service, except for his then-pending OWCP claim, and he agreed not to apply for employment with the Postal Service. On December 14, 2007, the Office of Personnel Management (OPM) approved Mr. Hood's application for disability retirement.

In 2014, Mr. Hood filed a Board appeal alleging that the agency failed to restore him to duty after he partially recovered from an injury. The administrative judge (AJ) dismissed the appeal for lack of jurisdiction, finding that Mr. Hood failed to establish that his removal in 2003 was due to a compensable injury because the dates of unscheduled absences the Postal Service cited in Mr. Hood's removal did not correspond to OWCP-covered dates.

In 2016, the Board dismissed Mr. Hood's subsequent restoration-related claims, including challenges to his resignation and disability retirement. The Board explained that those claims did not confer jurisdiction absent a valid restoration claim. In a subsequent appeal in 2017, the Board also rejected reliance on a 2016 letter from OWCP, which stated that Mr. Hood was partially recovered and able to return to work, finding that the letter did not give him a renewed right to restoration. Mr. Hood did not appeal this decision and it became final on October 18, 2017.

In the current proceedings, Mr. Hood filed an appeal with the Board in March 2024, again seeking restoration and claiming that he was separated because of a compensable injury and now partially recovered. The AJ dismissed the appeal for lack of jurisdiction, holding that Mr. Hood's claims were barred by collateral estoppel and that he failed to provide new evidence that changed the

restoration analysis. *Decision*, 2025 WL 3241066, at 5–9. On November 4, 2025, the AJ's initial decision became final. Mr. Hood timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

DISCUSSION

We set aside a final decision of the Board only if it is: “(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence.” 5 U.S.C. § 7703(c). We review the Board's jurisdictional determinations de novo and its underlying factual findings for substantial evidence. *Bryant v. Merit Sys. Prot. Bd.*, 878 F.3d 1320, 1325 (Fed. Cir. 2017).

Mr. Hood argues that the Board erred in applying collateral estoppel to his restoration claim, which was premised on his alleged partial recovery from a compensable injury. To establish Board jurisdiction over such claim under 5 C.F.R. § 353.304(c), a petitioner must show that: (1) he was absent from his position due to a compensable injury; (2) he recovered sufficiently to return to duty on a part-time basis, or to return to work in a position with less demanding physical requirements than those previously required of him; (3) the agency denied his request for restoration; and (4) the denial was arbitrary and capricious. *Bledsoe v. Merit Sys. Prot. Bd.*, 659 F.3d 1097, 1104 (Fed. Cir. 2011) (citation omitted).

Collateral estoppel applies when an issue previously adjudicated is identical with the one now presented, was actually litigated and necessary to the prior judgment, and the party precluded was fully represented in the prior action. *Morgan v. Dep't of Energy*, 424 F.3d 1271, 1274–75 (Fed. Cir. 2005) (citation omitted).

Mr. Hood contends that collateral estoppel is inapplicable because neither the 2002 LCA nor the 2005 settlement contained any adjudication of his restoration rights

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or whether his separation was due to a compensable injury. The government responds that preclusion arises not from those agreements, but from Mr. Hood's prior Board restoration appeals in 2014 and 2017.

We agree with the government. In 2014 and 2017, the Board adjudicated Mr. Hood's restoration claims and rejected them. As the AJ properly held, the previous issue in those proceedings—whether Mr. Hood's separation was due to absences caused by a compensable injury—is identical to the issue he seeks to relitigate here. *Decision*, 2025 WL 3241066, at 5–7.

In 2014, the AJ found that Mr. Hood failed to satisfy the first element of a restoration claim because he did not show that his absences were due to a compensable injury. SAppx 51–52. Specifically, the dates of his separation did not correspond to the dates covered by his accepted OWCP claims. *Id.* In 2017, the AJ again addressed the issue, concluding that a later OWCP letter did not provide him with restoration rights. SAppx 36–37. Accordingly, the issue of whether Mr. Hood's absences were due to a compensable injury was actually litigated, necessary to the prior decisions, and resolved against him.

Mr. Hood argues that he lacked a “full and fair opportunity to litigate” because material facts relating to the 2005 settlement agreement were allegedly concealed until 2024. But the AJ in 2017 did not rely on the 2005 settlement agreement nor any waiver arising from such agreement in determining that the Board lacked jurisdiction over Mr. Hood's restoration claim. See SAppx 40 n.6. And, the AJ in 2025 properly concluded that Mr. Hood's restoration claims had already been litigated in his 2014 and 2017 appeals and were barred by collateral estoppel. *Decision*, 2025 WL 3241066, at 5–7. Any alleged fraud or concealment related to the 2005 settlement agreement therefore does not undermine the preclusive effect of the prior decision because it did not rely on the agreement in finding a lack of jurisdiction.

Accordingly, the requirements for collateral estoppel are satisfied, and the Board did not err in concluding that Mr. Hood is precluded from relitigating his restoration claim.

Mr. Hood also contends that newly discovered evidence defeats preclusion. But the AJ reasonably found that the additional OWCP benefit statements Mr. Hood submitted did not address whether he suffered a compensable injury during the relevant period. *Id.* at 7–8. Nor does the record show that OWCP accepted claims covering those dates. *Id.* Thus, the purported new evidence does not alter the Board's conclusion.

Mr. Hood further argues that the previous Board decisions were legally erroneous. But even assuming error, which we do not find, collateral estoppel applies “even though the determination was reached upon an erroneous view or by an erroneous application of the law.” *Morgan*, 424 F.3d at 1274 (internal quotations and citation omitted). Mr. Hood's contention that OWCP's acceptance of a claim alone satisfies the first element of a restoration claim is likewise incorrect. Our law requires that Mr. Hood show that he was absent from his position “*due to a compensable injury*” to establish jurisdiction under 5 C.F.R. § 353.304(c). *Bledsoe*, 659 F.3d at 1104 (emphasis added). That determination was previously resolved against him, and the Board therefore properly applied collateral estoppel and dismissed the appeal for lack of jurisdiction.

We have considered Mr. Hood's remaining arguments and find them unpersuasive. For the foregoing reasons, we *affirm* the decision of the Board.

AFFIRMED

COSTS

No costs.

NOTE: This order is nonprecedential.

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

JULIAN R. HOOD, JR.,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2026-1099

Petition for review of the Merit Systems Protection
Board in No. CH-0353-24-0299-I-1.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

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

PER CURIAM.

ORDER

¹ Circuit Judge Newman did not participate.

On April 27, 2026, Julian R. Hood, Jr. filed a combined petition for panel rehearing and rehearing en banc [ECF No. 37]. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

May 28, 2026

Date

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE**

JULIAN HOOD JR.,
Appellant,

DOCKET NUMBER
CH-0353-24-0299-I-1

v.

U.S. POSTAL SERVICE,
Agency.

DATE: September 30, 2025

Julian Hood Jr., Escondido, California, pro se.

Roderick Eves, Saint Louis, Missouri, for the agency.

Maryl Rosen, St. Louis, Missouri, for the agency.

BEFORE

Katherine Beaumont Kern
Administrative Judge

INITIAL DECISION

INTRODUCTION

On April 8, 2024, the appellant, Julian R. Hood, Jr., asked the Board to review an alleged failure to restore him to duty, when the agency failed to respond to his March 1, 2024 request for restoration following his partial recovery from a compensable injury. *See* Initial Appeal File (IAF), Tab 1. The appellant was a part-time Flexible Mail Processing Clerk, PS-05, in Grand Rapids, Michigan until his removal (later changed to a resignation), effective August 22, 2003. Although the appellant requested a hearing, he is not entitled to one because he failed to make a non-frivolous allegation that the Board has 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.

BACKGROUND

The material facts of this appeal are not in dispute.¹ The appellant began working for the United States Postal Service on October 23, 1999. *Hood v. United States Postal Service*, MSPB Docket No. CH-0353-14-0121- I-1, Initial Decision (April 29, 2014), (0121). He filed an Office of Workers' Compensation Programs ("OWCP") claim for workplace stress that occurred in December 2000. *Id.* The Department of Labor partially accepted the appellant's OWCP claim and awarded him compensation from December 21, 2000 to January 12, 2001, for a single episode of Major Depressive Disorder. *Id.* The OWCP subsequently awarded him compensation for additional periods in 2001 and 2002. *Id.* On October 30, 2002, the parties entered a Last Chance Agreement ("LCA") that resolved both a fourteen-day suspension and Notice of Removal. *Id.* On August 22, 2003, the Postal Service removed the appellant for "failure to be regular in attendance/violation of [LCA]," based on unscheduled absences between April 1, 2003 and July 17, 2003. *Id.*

The appellant grieved his removal and filed an Equal Employment Opportunity ("EEO") complaint. *Hood*, 0121 ID at 2. In settlement of that EEO claim, the appellant signed a Settlement Agreement on November 18, 2005, pursuant to which the Postal Service paid him \$444 in compensatory damages, \$2,056 in attorney fees, and changed his removal to a "resignation." *Id.* In exchange for that consideration, the appellant waived his right to pursue "all other employment claims and grievances that are pending or could have been brought" against the Postal Service, with the exception of his OWCP claim, and he agreed not to apply for employment with the Postal Service. *Id.* The Office of

¹ See IAF, Tabs 7, 8, 10 and *Hood v. United States Postal Service*, MSPB Docket No. CH-0353-14-0121- I-1, Initial Decision (April 29, 2014).

Personnel Management (“OPM”) approved the appellant’s application for a disability retirement on December 14, 2007. *Id.*

In 2014, the appellant filed a Board appeal alleging the agency failed to restore him to duty following his partial recovery. *Hood*, 0121 ID. In her Initial Decision, Administrative Judge Puglia found the dates the Postal Service cited in the appellant’s removal were not the dates identified in the appellant’s accepted OWCP claims, and accordingly, he was not separated due to a compensable injury. *Id.* at 7. Judge Puglia found: “The Postal Service removed the appellant for ‘failure to be regular in attendance / violation of [LCA],’ in connection with unscheduled absences between April 1, 2003 and July 17, 2003. These are not the dates the appellant identified in his accepted OWCP claims. Because the appellant has not shown he was separated solely because of his compensable injury, his restoration appeal must be dismissed for lack of jurisdiction.” *Id.* The appellant’s challenges to his 2003 suspension and removal were also dismissed because the Board lacks jurisdiction over such actions taken against a non-preference-eligible, non-supervisory/managerial employee of the Postal Service such as the appellant. *Id.* at 3.

On April 12, 2016, the appellant filed a subsequent appeal, asking the Board to review an alleged failure to restore him to duty, arguing that he was terminated before his OWCP cases were approved. *Hood v. United States Postal Service*, M.S.P.B. Docket No. CH-0752-16-0342-I-1, Initial Decision (June 22, 2016), (0342). In her decision, Judge Puglia detailed that the appellant previously challenged his appeal to the Board and to the U.S. District Court for the Western District of Michigan – the latter dismissing all six lawsuits because the challenges to his removal were barred by the settlement agreement and for other reasons. *Id.* at 2. In dismissing additional lawsuits against the Postal Service concerning his removal, the Court of Federal Claims noted the appellant has filed at least sixteen such claims in federal court. *Id.* Judge Puglia dismissed the appellant’s challenge to his claims of involuntary resignation and retirement,

explaining that where the Board has no jurisdiction over his removal appeal, a claim that his subsequent resignation or retirement was involuntary does not afford him any additional rights. *Id.* at 3.

On August 15, 2016, the appellant filed a subsequent appeal, again asking the Board to review an alleged failure to restore him to duty following his partial recovery from a compensable injury. *Hood v. United States Postal Service*, M.S.P.B. Docket No. CH-0353-17-0093-I-1, Initial Decision (September 13, 2017) (0093). The appellant argued that a subsequent letter he received from the OWCP in April 2016 changed the restoration analysis. The appellant alleged that on April 28, 2016, the OWCP found him to be partially recovered and responsible to return to work in connection with his December 21, 2000 injury. *Id.* He sought restoration in connection with OWCP's finding and was denied by the agency. In that appeal, I considered whether the OWCP's April 2016 letter gave the appellant a renewed right to restoration and found that it did not. *Id.*

In the instant appeal, the appellant alleges he again sought restoration on March 1, 2024, because he was separated because of a compensable injury and is now partially recovered. IAF, Tab 1 at 2, Tab 5 at 5. He alleges the agency denied his request for restoration by not responding. *Id.* The appellant was apprised of his burden to show Board jurisdiction over his appeal as well as the Board's authority to employ the doctrine of collateral estoppel to the extent his prior appeals involved the same cause of action. IAF, Tabs 3, 7. The appellant responded and the record on jurisdiction is now closed. *See* IAF, Tabs 5, 8, 10.

ANALYSIS

In order to establish Board jurisdiction over a restoration appeal, the appellant must make a nonfrivolous allegation that: (1) he was absent from his position due to a compensable injury; (2) he recovered sufficiently to return to duty on a part-time basis or to return to work in a position with less demanding physical requirements than those previously required of him; (3) the agency denied his request for restoration; and (4) the denial was arbitrary and capricious.

35 C.F.R. § 1201.57(a)(4)(b); 5 C.F.R. § 353.304(c); *Latham v. United States Postal Service*, 117 M.S.P.R. 400, 408 (2012).

Collateral estoppel, or issue preclusion, is appropriate when: (1) an issue is identical to that involved in the prior action; (2) the issue was actually litigated in the prior action; (3) the determination on the issue in the prior action was necessary to the resulting judgment; and (4) the party against whom the prior issue preclusion is sought had a full and fair opportunity to litigate the issue in the prior action, either as a party or as one whose interests were otherwise fully represented in that action. *Kroeger v. United States Postal Service*, 865 F.2d 235, 239 (Fed. Cir. 1988); *Encarnado v. Office of Personal Management*, 116 M.S.P.R. 301 (2011).

Collateral Estoppel

In this appeal, the appellant challenges the agency's denial of his March 1, 2024 restoration request, arguing, as he has previously, that he was separated from employment for reasons substantially related to a compensable injury, and not removed for cause as the agency alleges. IAF, Tab 5. The appellant repeats his challenge to his removal, arguing again that between November 2002 and the time of his removal (encompassing the period of unexcused absences between April 1, 2003 and July 17, 2003, for which he was removed), he was forced to work under conditions outside his physician's restrictions. *Compare* IAF, Tab 5 at 8, *with Hood*, 0093 IAF, Tab 20 at 12-13, *and Hood*, 0121 IAF, Tab 7 at 10-12. This argument was considered and rejected in the appellant's first appeal to the Board, finding no jurisdiction over the appellant's challenge to his removal. *Hood*, 0121 ID at 3. The appellant similarly repeats his argument that his removal was related to his compensable injury. Again, this argument was considered and rejected, the Administrative Judge in the appellant's initial appeal finding that the unscheduled absences listed in the removal are not dates the appellant identified in his accepted OWCP claims. *Id.* at 6. The appellant further repeats his argument that the agency's wrongful actions negate his subsequent

Settlement Agreement, resignation, and disability retirement. These arguments were also considered and rejected in the appellant's first and second appeals, finding that the Board has no jurisdiction over the appellant's challenges to his removal and that his argument that his subsequent resignation and retirement were involuntary do not afford him any additional right to an appeal before the Board. *Hood*, 0121 ID; *Hood*, 0093 ID. The Board further held that the appellant's pendant claims of prohibited personnel practices were waived by the November 2005 Settlement Agreement. *Hood*, 0121 at 7; *see also Hood v. Brennan*, 2015 WL 4173425, (W.D. MI 2015) (Finding the appellant failed cite any legal basis for setting aside the Settlement Agreement, that he was represented by counsel, that the agency fulfilled all of its obligations thereunder, and that any equitable challenge to the agreement was untimely after almost ten years).

As I found in the appellant's third Board appeal, because he may not relitigate these well-settled jurisdictional findings, the only issue before me is whether he has presented new evidence that changes the jurisdictional analysis as to his restoration appeal. *See* 0093 ID, Tab 39 at 5. In the instant case, he points to the same April 2016 OWCP letter that he used to support his third appeal, claiming that the letter's instruction to contact the agency for limited duty work changes the analysis of whether he was separated due to a compensable injury. *Compare Hood*, 0093, Tab 1 at 10-12 *with* IAF, Tab 8 at 14-16. As I found in the appellant's previous appeal, it does not. *Hood*, 0093 ID at 4-5.

The appellant is correct that a dismissal for lack of subject matter jurisdiction does not preclude a second action on the same claim based on *res judicata*. IAF, Tab 10 at 5. Based on collateral estoppel, however, I find the appellant is barred from attempting to relitigate the same issues that have been settled many times over: the appellant was not separated from the agency based on a compensable injury and the Board has already ruled there is no jurisdiction over his subsequent attacks on his removal, settlement, resignation, and

retirement. Further, the appellant's April 2016 letter from OWCP provides no support for a renewed restoration analysis. I turn, therefore, to the appellant's other evidence to see if it supports his claim for renewed consideration of his right to restoration as a partially covered employee.

Compensable Injury

The Postal Service removed the appellant for "failure to be regular in attendance/violation of [LCA]," in connection with unscheduled absences between April 1, 2003 and July 17, 2003. An employee who is removed for cause or who is separated from his position by resignation or retirement does not become entitled to restoration under 5 C.F.R. Part 353 simply by receiving an OWCP award after his separation. The separation must have resulted from or been substantially related to the compensable injury. *See Miner v. United States Postal Service*, 31 M.S.P.R. 369 at 372-73. A compensable injury is a medical condition accepted by OWCP to be job-related and for which medical or monetary benefits are payable from the Employees' Compensation Fund. *Norwood v. United States Postal Service*, 100 M.S.P.R. 494 (2005). The OWCP's finding controls as a matter of law. *See Simonton v. U.S. Postal Service*, 85 M.S.P.R. 189, ¶ 11 (2000) (The determination of whether an individual suffers from a compensable injury is within the exclusive purview of OWCP (subject to review by the Employees Compensation Appeals Board)). Thus the issue is whether the OWCP accepted and awarded benefits for a medical condition suffered by the appellant between April 1, 2003 and July 17, 2003.

As detailed above, in his previous appeal, the appellant submitted an April 28, 2016 letter including back payments for periods between September 13, 2003 and February 29, 2016. *See* IAF, Tab 1, Ex. 2. These are not dates the agency identified in its removal for unscheduled absences (April 1, 2003 and July 17, 2003). Herein, the appellant submits an additional OWCP benefit statement covering dates between February 25, 2024 and March 23, 2024 and an October 5, 2017 OWCP letter regarding a rehabilitation plan and expectation that he would

return to work. *Id.* at 7-12. The documentation is silent as to any compensable injury suffered between April 1, 2003 and July 17, 2003. The appellant refused to release any additional OWCP documents to the agency. IAF, Tab 8 at 5.

The appellant admitted that – at the time of the 2014 decision – his removal was not related to his compensable injury of major depression. *Hood*, 0093 ID at 3; *see also* IAF, Tab 8 at 4. While the appellant, now, baldly asserts that OWCP retroactively covered LWOP for the periods in 2003 upon which his Letter of Removal was based, he has presented no evidence to support his claim. *Id.* at 6. Nothing in the record impacts this Board’s previous finding that the appellant was not separated from employment due to a compensable injury.

“An employee who has been removed for cause rather than a compensable injury is not entitled to restoration and cannot appeal to the Board.” *Minor v. Merit Systems Protection Board*, 819 F.2d 280, 282 (Fed. Cir. 1987). The Board has held that a “valid reason for separation, unrelated to a compensable injury, precludes restoration rights, even if the separation was also related to a compensable injury.” *Payton v. Department of Homeland Security*, 113 M.S.P.R. 463, ¶ 8 (2010). The appellant’s receipt of an OWCP award, covering periods of time after his separation, does not give rise to a restoration claim where he was not separated as a result of a compensable injury.

The appellant’s decision to resign from agency employment, pursuant to settlement, and to agree not to apply for future employment, are further intervening causes that distance the cause of the appellant’s separation from service from a compensable injury. *Trobovic v. General Services Administration*, 328 Fed. Appx. 643, 645 (Fed. Cir. 2009) (Table). I find persuasive the holding in *Trbovic*, affirming the Board’s conclusion that a similar settlement agreement divested the Board of jurisdiction over the appellant’s challenges to his removal and subsequent appeals related to the agency’s decision not to rehire him. *Id. slip op.* at 4. The record, here, reveals that the Postal Service did not get the benefit of its bargain in paying the appellant a consideration not to accept future

employment with the agency while the appellant received full benefit of his bargain which led to his ability to resign rather than face removal. *See Torres v. Department of Homeland Security*, 110 M.S.P.R. 482, ¶ 11 (2009) (a key concern in interpreting settlement agreements is that the Board 'see to it that the parties receive that for which they bargained'). Implicit in any settlement agreement is the requirement that both parties fulfill their respective contractual obligations in good faith. *Kuykendall v. Department of Veterans Affairs*, 68 M.S.P.R. 314, 323 (1995).

Because the appellant has not shown he was separated because of his compensable injury, his restoration appeal must be dismissed for lack of jurisdiction. 5 C.F.R. § 353.304(c).

DECISION

The appeal is DISMISSED.

Katherine Beaumont Kern

FOR THE BOARD:

Katherine Beaumont Kern
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **November 4, 2025**, unless a petition for review is filed by that date. This is an important date because it is usually the last day on which you can file a petition for review with the Board. Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. The date that the petitioner receives the initial decision is determined according to the standard set forth at § 1201.22(b)(3), pertaining to an appellant's receipt of an agency decision. If the petitioner is represented, the 30-day time begins to run upon receipt of the initial decision by either the representative or the petitioner, whichever comes first. The date on which the initial decision becomes final also controls when you can file a petition for review with one of the authorities discussed in the "Notice of Appeal Rights" section, below. The paragraphs that follow tell you how and when to file with the Board or one of those authorities. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review.

Your petition must state your objections to the initial decision, including all of your legal and factual arguments, and must be supported by references to applicable laws or regulations and by specific references to the record. You must file it with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.

Washington, DC 20419

A petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov/>).

Criteria for Granting a Petition for Review

Pursuant to 5 C.F.R. § 1201.115, the Board normally will consider only issues raised in a timely filed petition for review. Situations in which the Board may grant a petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact. (1) Any alleged factual error must be material, meaning of sufficient weight to warrant an outcome different from that of the initial decision. (2) A petitioner who alleges that the judge made erroneous findings of material fact must explain why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will 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.

(b) 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 petitioner must explain how the error affected the outcome of the case.

(c) The 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.

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the

documents themselves, must have been unavailable despite due diligence when the record closed.

As stated in 5 C.F.R. § 1201.114(h), petition for review, or a response to a petition for review, whether computer generated, typed, or handwritten, is limited to 30 pages or 7500 words. A reply to a response to a petition for review is limited to 15 pages or 3750 words. A party relying on word count to adhere to the length limitation must include certification of the word count with their pleading. Argument formatted such that the length of the pleading cannot be determined may be rejected. Computer generated and typed pleadings must use no less than 12-point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. Length limitations may not be circumvented by including argument in attachments. Failure to comply with length limitations, after sufficient opportunity to comply, may lead to dismissal of the petition for review. A request for leave to file a pleading that exceeds the limitations must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to submit pleadings of the maximum length.

If you file a petition for review, you should not include documents that were part of the record below, as the entire administrative record will be available to the Board. Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. The date that the petitioner receives the initial decision is determined according to the standard set forth at § 1201.22(b)(3), pertaining to an appellant's receipt of an agency decision. If the petitioner is represented, the 30-day time period begins to run

upon receipt of the initial decision by either the representative or the petitioner, whichever comes first.

Any response to a petition for review must be filed within 25 days after the date of service of the petition. Any reply to a response to a petition for review must be filed within 10 days after the date of service of the response to the petition for review. The Board's regulation at 5 C.F.R. § 1201.23 governs the computation of time.

NOTICE OF LACK OF QUORUM

While administrative judges may continue to issue initial decisions like this one, the Board must have two or more members (known as a quorum) to issue decisions on petitions for review (PFR). See 5 U.S.C. § 1201; 5 C.F.R. § 1200.3(a), (e). Currently, the Board only has one member, so it is unable to issue any final Board decisions on PFRs. This means that while parties may still file PFRs on initial decisions during this time, no decisions on them will be issued until at least two members are in place, thereby restoring the Board's quorum. Importantly, the absence of a quorum does not extend any deadlines for filing a PFR. Anyone filing a PFR must still meet the deadline outlined above.

NOTICE TO AGENCY/INTERVENOR

Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel (under 5 U.S.C. 1212(c)) may file a petition for review. Each party is limited to filing a single petition for review, response to a petition for review, and reply to a response to a petition for review. A petition for review filed by an agency should address the agency's compliance with any interim relief requirements and should contain a certification, as set forth at 5 C.F.R. § 1201.116(a).

NOTICE OF APPEAL RIGHTS

You may obtain review of this initial decision only after it becomes final, as explained in the "Notice to Appellant" section above. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this decision when it becomes final, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date this decision becomes final. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.

Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (*not* the U.S. Court of Appeals for the Federal Circuit), within **30 calendar days** after this decision becomes final under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within **30 calendar days** after this decision becomes final as explained above. 5 U.S.C. § 7702(b)(1).

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, N.E.
Suite 5SW12G
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and your judicial petition for review "raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D)," then you may file a petition for judicial review with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. The court of appeals must receive your petition for review within **60 days of the date this decision becomes final** under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx

CERTIFICATE OF SERVICE

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

Appellant

Electronic Service Julian Hood
Served on email address registered with MSPB

Agency Representative

Electronic Service Roderick Eves
Served on email address registered with MSPB

Agency Representative

Electronic Service Maryl Rosen
Served on email address registered with MSPB

09/30/2025

(Date)

Rosa Canchola-Cudaback

Rosa Canchola-Cudaback
Paralegal Specialist

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE**

JULIAN R. HOOD, JR.,
Appellant,

DOCKET NUMBER
CH-0353-17-0093-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: September 13, 2017

Julian R. Hood, Jr., Escondido, California, pro se.

Maryl R. Rosen, Esquire, Chicago, Illinois, for the agency.

BEFORE

Katherine Beaumont Kern
Administrative Judge

INITIAL DECISION

INTRODUCTION

On August 15, 2016, the appellant, Julian R. Hood, Jr., asked the Board to review an alleged failure to restore him to duty following his partial recovery from a compensable injury. See Initial Appeal File (IAF), Tab 1. The appellant was a part-time Flexible Mail Processing Clerk, PS-05, in Grand Rapids, Michigan until his removal (later changed to a resignation), effective August 22, 2003. Although the appellant requested a hearing, he is not entitled to one because he failed to make a non-frivolous allegation that the Board has 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.

BACKGROUND

The material facts of this appeal are not in dispute¹. The appellant began working for the United States Postal Service on October 23, 1999. He filed an Office of Workers' Compensation Programs ("OWCP") claim for workplace stress that occurred in December 2000. The Department of Labor partially accepted the appellant's OWCP claim and awarded him compensation from December 21, 2000 to January 12, 2001, for a single episode of Major Depressive Disorder. The OWCP subsequently awarded him compensation for additional periods in 2001 and 2002. On October 30, 2002, the parties entered a Last Chance Agreement ("LCA") that resolved both a fourteen-day suspension and Notice of Removal. On August 22, 2003, the Postal Service removed the appellant for "failure to be regular in attendance/violation of [LCA]," based on unscheduled absences between April 1, 2003 and July 17, 2003.

The appellant grieved his removal and filed an Equal Employment Opportunity ("EEO") complaint. In settlement of that EEO claim, the appellant signed a Settlement Agreement on November 18, 2005, pursuant to which the Postal Service paid him \$444 in compensatory damages, \$2,056 in attorney fees, and changed his removal to a "resignation." In exchange for that consideration, the appellant waived his right to pursue "all other employment claims and grievances that are pending or could have been brought" against the Postal Service, with the exception of his OWCP claim, and he agreed not to apply for employment with the Postal Service. IAF, Tab 12, pp. 55-59.

The Office of Personnel Management ("OPM") approved the appellant's application for a disability retirement on December 14, 2007. In 2014, the appellant filed a Board appeal alleging the agency failed to restore him to duty following his partial recovery. *See Hood v. United States Postal Service*,

¹ See IAF, Tab 12 and *Hood v. United States Postal Service*, CH-0353-14-0121-I-1 (2014).

CH-0353-14-0121-I-1 (2014). In her Initial Decision, Administrative Judge Nina Puglia found the dates the Postal Service cited in the appellant's removal were not the dates identified in the appellant's accepted OWCP claims, and accordingly, he did not suffer a compensable injury. *See Hood v. United States Postal Service*, CH-0353-14-0121-I-1 (April 29, 2014). Judge Puglia found: "The Postal Service removed the appellant for 'failure to be regular in attendance / violation of [LCA],' in connection with unscheduled absences between April 1, 2003 and July 17, 2003. These are not the dates the appellant identified in his accepted OWCP claims. Because the appellant has not shown he was separated solely because of his compensable injury, his restoration appeal must be dismissed for lack of jurisdiction." *Id.* The appellant admits that – at the time of the 2014 decision – his removal was not related to his compensable injury of major depression. IAF, Tab 13, p. 10.

The appellant believes, however, a subsequent letter he received from the OWCP in April 2016 changes the restoration analysis. IAF, Tab 13, p. 9. The appellant alleges that on April 28, 2016, the OWCP found him to be partially recovered and responsible to return to work in connection with his December 21, 2000 injury. *See* IAF, Tab 1; Tab 19. The appellant alleges he sought restoration in connection with OWCP's finding on May 20, 2016, and was denied by the agency. IAF, Tab 21, p. 11. The issue is whether OWCP's April 2016 letter gives the appellant a renewed right to restoration. *See* April 28, 2016 Letter, IAF, Tab 1, Ex. 2.

ANALYSIS

In order to establish Board jurisdiction over a restoration appeal, the appellant must make a nonfrivolous allegation that: (1) he was absent from his position due to a compensable injury; (2) he recovered sufficiently to return to duty on a part-time basis or to return to work in a position with less demanding physical requirements than those previously required of him; (3) the agency denied his request for restoration; and (4) the denial was arbitrary and capricious.

5 C.F.R. § 1201.57(a)(4)(b); 5 C.F.R. § 353.304(c); *Latham v. United States Postal Service*, 117 M.S.P.R. 400, 408 (2012).

Compensable Injury

The Postal Service removed the appellant for “failure to be regular in attendance/violation of [LCA],” in connection with unscheduled absences between April 1, 2003 and July 17, 2003. An employee who is removed for cause or who is separated from his position by resignation or retirement does not become entitled to restoration under 5 C.F.R. Part 353 simply by receiving an OWCP award after his separation. The separation must have resulted from or been substantially related to the compensable injury. See *Miner v. United States Postal Service*, 31 M.S.P.R. 369 at 372–73. A compensable injury is a medical condition accepted by OWCP to be job-related and for which medical or monetary benefits are payable from the Employees’ Compensation Fund. *Norwood v. United States Postal Service*, 100 M.S.P.R. 494 (2005). The OWCP’s finding controls as a matter of law. See *Simonton v. U.S. Postal Service*, 85 M.S.P.R. 189, ¶ 11 (2000) (The determination of whether an individual suffers from a compensable injury is within the exclusive purview of OWCP (subject to review by the Employees Compensation Appeals Board)). Thus the issue is whether the OWCP accepted and awarded benefits for a medical condition suffered by the appellant between April 1, 2003 and July 17, 2003.

As detailed above, the appellant previously filed an appeal to the Board based on the same allegation in the instant appeal: that the agency failed to properly restore him following a compensable injury. The appellant alleged this appeal differs because, “I was ordered by the U.S. Department of Labor, Office of Workers Compensation Program to seek reemployment with the agency. I have never been instructed prior to April 2016 to seek reemployment and the prior judgment was for transactions prior to 2008.” IAF, Tab 13, pp. 9-10. Because the Board already ruled that – as of 2014 – the appellant was not separated due to

a compensable injury, the appellant is correct that the only issue before me is whether the OWCP's 2016 letter changes this analysis². It does not.

In its letter the OWCP awards the appellant compensation benefits for total disability (75% rate of pay including back payment for period between September 13, 2003 and February 29, 2016. See April 28, 2016 Letter, IAF, Tab 1, Ex. 2. There are not dates the agency identified in its removal for unscheduled absences (April 1, 2003 and July 17, 2003). The appellant's receipt of an OWCP award, after his separation, does not give rise to a restoration claim where he was not separated as a result of a compensable injury. Because the appellant has not shown he was separated because of his compensable injury, his restoration appeal must be dismissed for lack of jurisdiction. 5 C.F.R. § 353.304(c).

Partial Recovery

The appellant also fails in the second prong of the restoration analysis in that does not nonfrivolously allege that he has recovered sufficiently to return to duty on a part-time basis or to return to work in a position with less demanding physical requirements. To the contrary, the appellant's evidence shows he is totally disabled and unable to return to his previous employment.

OWCP's letter indicates that the appellant is eligible for regular total disability payments (75% rate of pay beginning in March of 2016. IAF, Tab 1.

² Collateral estoppel or issue preclusion is appropriate when: (1) an issue is identical to that involved in the prior action; (2) the issue was actually litigated in the prior action; (3) the determination on the issue in the prior action was necessary to the resulting judgment; and (4) the party against whom the prior issue preclusion is sought had a full and fair opportunity to litigate the issue in the prior action, either as a party or as one whose interests were otherwise fully represented in that action. *Kroeger v. United States Postal Service*, 865 F.2d 235, 239 (Fed. Cir. 1988); *Encarnado v. Office of Personal Management* 116 M.P.R. 301 (2011). The appellant states that his previous appeal involved appeal rights occurring prior to 2008. I find that collateral estoppel applies to bar re-litigation of the issue relating to the appellant's removal and restoration claim raised in *Hood v. United States Postal Service*, *supra*, (2014).

Ex. 2. The letter goes on to state that the appellant was issued back payments for the following periods and amounts³:

9/13/2003 to 11/30/2005: \$34,087.86
12/01/2005 to 11/30/2008: \$59,717.67
12/01/2008 to 11/30/2011: \$63,779.57
12/01/2011 to 11/30/2013: \$46,004.72
12/01/2013 to 2/29/2016: \$61,613.79

Id. Periodic support payments, or wage loss benefits, for a total or partial disability – as are shown here – are available only if the claimant submits evidence that he is incapacitated, because of an employment injury, to earn the wages he was receiving at the time of injury. 5 U.S.C. §§ 8105–8106; *Hays v. Department of the Air Force*, 84 M.S.P.R. 443 (1999) (explaining that, by awarding wage loss benefits to the appellant, OWCP made an implicit finding that the appellant's compensable injury made her incapable of earning the wages she was receiving at the time of the injury). Where an employee is in receipt of such OWCP benefits, OWCP has determined the employee is totally, temporarily disabled from work⁴. Where OWCP has determined the appellant is totally disabled, it is not within the purview of the Board to find him partially recovered.⁵ See, e.g., *Bynum v. United States Postal Service*, 112 M.S.P.R. 403,

³ The amounts are net after deductions for the appellant's overpayment to the Office of Personnel Management (OPM) for the respective periods. *Id.*

⁴ It does appear that the OWCP's letter was poorly cobbled together using standard language from various form letters. The appellant's confusion – undoubtedly caused by the OWCP's included suggestion that he ask his employing agency whether light or limited duty work is available for partially disabled employees – is understandable. Nevertheless, the OWCP disability payments do not suggest he is a partially-recovered employee capable of returning to duty. IAF, Tab 1, Ex. 2.

⁵ Pursuant to 5 U.S.C. § 8128(b)(1), OWCP's determination in allowing or denying a payment for a compensable injury is considered “final and conclusive for all purposes and with respect to all questions of law and fact.”

407 11 (2009). Accordingly, the OWCP letter establishes that the appellant is not a partially-recovered employee.

To put it another way it is the cessation of the periodic support payments while temporarily totally or partially disabled, not the payment of a schedule award for a permanent injury, that triggers the restoration rights set forth in 5 U.S.C. § 353.304. See *Stewart v. Merit System Protection Board*, 534 F. App'x 956, 962 (Fed. Cir. 2013); *Nixon v. Department of the Treasury*, 104 M.S.P.R. 189, 19 (2006). Thus, the fact that the appellant received an OWCP disability award does not give rise to restoration rights as the appellant suggests.

Moreover, there is no medical documentation in the record to suggest that the appellant is, contrary to the finding by the OWCP, a partially recovered employee. In fact, while the appellant alleges his previous Board appeal covered periods of time prior to 2008 (IAF, Tab 13, pp. 9-10.), I did not find *any* medical documentation since 2008 in the record. The appellant's statement that, "I feel that I can return to duty in a limited/light duty position that is telework eligible as I am not able to handle the physical requirements of the position, and my request for accommodations and restoration have been denied," is woefully insufficient to contradict OWCP's determination of disability. The appellant's conclusion about his ability or inability to perform the job are *pro forma* and are insufficient to establish a nonfrivolous allegation of jurisdiction. *Kinglsey v. United States Postal Service*, 123 M.S.P.R. 365 (2015). As the appellant has failed to nonfrivolously allege that he has recovered sufficiently to return to duty, he fails to demonstrate jurisdiction over his restoration claim for this reason as well. 5 U.S.C. § 353.304(c).

Pendant Jurisdiction

The appellant alleges that the Postal Service's failure to restore him was arbitrary and capricious due to discrimination on the basis of his race, sex and disabling condition, and retaliation for EEO activity. Because the appellant did not sufficiently allege (1) he was absent from his position due to a compensable injury; or (2) he recovered sufficiently to return to duty on a part-time basis or to return to work in a position with less demanding physical requirements than those previously required of him, the Board lacks pendent jurisdiction to otherwise review the appellant's claims of prohibited personnel practices. Even if the Board could reach these issues pursuant to its restoration jurisdiction, the appellant waived their adjudication in a November 2005 settlement agreement⁶.

DECISION

The appeal is DISMISSED.

FOR THE BOARD:

Katherine Beaumont Kern
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **October 18, 2017**, unless a petition for review is filed by that date. This is an important date because it is usually the last day on which you can file a petition for review with the Board.

⁶ The agency argues that the settlement agreement, signed by the appellant, precludes his restoration claim as he agreed not to seek employment with the Postal Service in addition to waiving his right to pursue "all other employment claims and grievances that are pending" against the Postal Service. As I have determined I do not have jurisdiction over the appellant's restoration claim, I do not reach this issue. For the same reasons, I do not the appellant's argument that the agreement was obtained by fraud.

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE**

JULIAN R. HOOD, JR.,
Appellant,

DOCKET NUMBER
CH-0353-14-0121-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: April 29, 2014

Julian R. Hood, Jr., Escondido, California, pro se.

Maryl R. Rosen, Esquire, Chicago, Illinois, for the agency.

BEFORE
Nina Puglia
Administrative Judge

INITIAL DECISION

INTRODUCTION

On November 18, 2013, Julian R. Hood, Jr., asked the Board to review a suspension, removal, and alleged failure to restore him to duty following his partial recovery from a compensable injury. He was a Part-time Flexible Mail Processing Clerk, PS-05, in Grand Rapids, Michigan until his removal, effective August 22, 2003. Although the appellant requested a hearing, he is not entitled to one because he failed to make a non-frivolous allegation that the Board has jurisdiction over his appeal. *See Hardy v. Merit Sys. Prot. Bd.*, 13 F.3d 1571, 1575 (Fed. Cir.), *cert. denied*, 512 U.S. 1235 (1994). The appeal is adjudicated on the written record.

For the reasons set forth below, the appeal is DISMISSED for lack of jurisdiction.

BACKGROUND

The material facts of this appeal are not in dispute. The appellant began working for the U.S. Postal Service on October 23, 1999, and filed an Office of Workers' Compensation Programs ("OWCP") claim for workplace stress that occurred in December 2000. His most recent medical restrictions, dated April 16, 2001, restrict him to eight hours of work per day and forty hours of work per week.

The parties entered a Last Chance Agreement ("LCA") on October 30, 2002, that resolved both a fourteen-day suspension and Notice of Removal. *See* Agency File, Tab 4(ss). On August 22, 2003, the Postal Service removed the appellant for "failure to be regular in attendance/violation of [LCA]," based on unscheduled absences between April 1, 2003 and July 17, 2003. The dates the Postal Service cited in the appellant's removal are not dates identified in the appellant's accepted OWCP claims.

The appellant grieved his removal and filed an Equal Employment Opportunity ("EEO") complaint. In settlement of that EEO claim, which the appellant signed on November 18, 2005, the Postal Service paid him \$444 in compensatory damages, \$2,056 in attorney fees, and changed his removal to a "resignation." *See* Agency File, Tab 4(j). In exchange for that consideration, the appellant waived his right to pursue "all other employment claims and grievances that are pending or could have been brought" against the Postal Service, with the exception of his OWCP claim, and he agreed not to apply for employment with the Postal Service.

After the appellant's removal, the Department of Labor partially accepted the appellant's OWCP claim and awarded him compensation for December 21, 2000 to January 12, 2001, for a single episode of Major Depressive Disorder. The OWCP subsequently awarded the appellant compensation for additional periods in 2001 and 2002. On July 26, 2006, the OWCP determined the appellant was not entitled to benefits after July 18, 2003. The Office of Personnel Management ("OPM") approved the appellant's application for a disability retirement on December 14, 2007.

The Board Lacks Jurisdiction to Review the Appellant's Suspension or Removal

The appellant asks the Board to review his suspension from duty and removal, effective August 22, 2003. To appeal an adverse action under 5 U.S.C. § 7512, a Postal Service employee must (1) be a preference eligible as defined by 5 U.S.C. § 2108, or a management or supervisory employee, or an employee engaged in personnel work in other than a purely non-confidential, clerical capacity, and (2) have completed one year of current, continuous service in the same or similar positions. *See* 39 U.S.C. § 1005(a); 5 U.S.C. § 7511(a)(1)(B); *McCandless v. Merit Sys. Prot. Bd.*, 996 F.2d 1193, 1198-99 (Fed. Cir. 1993).

The appellant acknowledges he is not a preference-eligible employee, he is not a supervisory or management employee, and he did not perform personnel work. *See* Appeal File, Tab 14. The Board therefore lacks authority to adjudicate an adverse employment action taken against him by the Postal Service including his suspension and removal.

The Board Lacks § 353.304(c) Jurisdiction over the Appellant's 2001 Claim.

The appellant claims the Postal Service improperly failed to restore him to duty following his partial recovery from a compensable injury in 2001. He

claims the Postal Service had work available within his medical restrictions in his last-held position performing non-modified duties. According to the appellant, the Postal Service's failure to restore him was arbitrary and capricious because it was based on discrimination and retaliation for EEO activity.

Board appeal rights in restoration cases derive from OPM regulations. *Foley v. United States Postal Serv.*, 105 M.S.P.R. 307, 311 (2007); 5 C.F.R. § 353.304. In order to establish Board jurisdiction over a restoration appeal under 5 C.F.R. § 353.304(c), the appellant must prove by preponderant evidence that: (1) He was absent from his position due to a compensable injury; (2) he recovered sufficiently to return to duty on a part-time basis or to return to work in a position with less demanding physical requirements than those previously required of him; (3) the agency denied his request for restoration; and (4) the denial was arbitrary and capricious because of the agency's failure to perform its obligations under 5 C.F.R. § 353.301(d). *Bledsoe v. Merit Sys. Prot. Bd.*, 659 F.3d 1097, 1104 (Fed. Cir. 2011); *Latham v. United States Postal Serv.*, 117 M.S.P.R. 400, 408 (2012). If an appellant establishes jurisdiction over a 5 C.F.R. § 353.304(c) appeal, he automatically prevails on the merits. *Scott v. United States Postal Serv.*, 118 M.S.P.R. 375, 379-80 (2012).

The appellant has shown he was absent from his position due to a compensable injury, but has not sufficiently alleged that he was required to work part-time or in a position with less demanding physical requirements than those previously required of him. Additionally, he has not sufficiently alleged the Postal Service denied his request for restoration. According to the appellant, from May 1, 2001 to January 29, 2002, the Postal Service placed him in a position that was inappropriate because when assigned to a particular supervisor, he worked outside his physician's restriction of 40 hours per week. The appellant concedes he was capable of performing eight hours of non-modified Mail

Processing Clerk duties and the agency placed him in a non-modified position. Such an action is not be appealable because it pertains merely to the "details and circumstances" of the restoration. *See Booker v. Merit Sys. Prot. Bd.*, 982 F.2d 517, 519 (Fed. Cir. 1992).

I find the Board lacks jurisdiction to review the appellant's claim that the Postal Service failed to restore him to duty starting May 1, 2001 by placing him in an inappropriate position because he does not assert that the position requires duties outside his restrictions. He alleges he worked overtime for a particular supervisor; he does not allege overtime was a requirement for the position. I further note the appellant waived his right to appeal "all other employment claims and grievances that are pending or could have been brought" against the Postal Service, with the exception of his OWCP claim, in an EEO settlement on November 18, 2005. He therefore relinquished his right to challenge an allegedly discriminatory and/or retaliatory job assignment in 2001.

The Board Lacks § 353.304(c) Jurisdiction over the Appellant's 2003 Claim.

The appellant also claims the Postal Service failed to restore him on June 16, 2003, by discontinuing his regular, non-modified, assignment. The appellant alleges he was intermittently off work, and ultimately received compensation for his absences, due to Post-Traumatic Stress Disorder and asthma until January 2002. He explained the Postal Service terminated his employment and restored him to a regular position without medical restrictions in January 2003 pursuant to the LCA. He further alleges the Postal Service sent him home on June 16, 2003, for a few weeks, perhaps for disciplinary reasons, due to discrimination and retaliation.

The appellant has not made a non-frivolous allegation that he was absent from his position on June 16, 2003, due to a compensable injury. Moreover, he filed an EEO claim alleging his manager would not allow him to punch in on June 21, 2003. In settlement of that claim, the appellant waived his right to pursue "all other employment claims and grievances that are pending or could have been brought" against the Postal Service, with the exception of his OWCP claim, and he agreed not to apply for employment with the Postal Service. *See* Agency File, Tab 4(j). Because the appellant does not sufficiently allege he was absent from his position on June 16, 2003 due to a compensable injury, but rather has shown he waived his right to challenge his absence regarding that date, I find he has not sufficiently alleged the Board has jurisdiction over a restoration claim concerning June 16, 2003.

The Board Lacks § 353.304(c) Jurisdiction over the Appellant's 2004 Claim.

The appellant also seeks to appeal a denial of restoration for dates occurring after his removal. The Postal Service removed the appellant on August 22, 2003; he alleges the Postal Service improperly discontinued a limited-duty Modified Mail Processing Clerk assignment in 2004. The appellant challenged his removal through the negotiated grievance and EEO processes: the Postal Service later agreed to allow his resignation.

To be entitled to restoration rights, the appellant bears the burden of proving he was separated solely because of his compensable injury. *Walley v. Dep't of Veterans Affairs*, 279 F.3d 1010, 1017, 1020 (Fed. Cir. 2002). The Postal Service removed the appellant for "failure to be regular in attendance/violation of [LCA]," in connection with unscheduled absences between April 1, 2003 and July 17, 2003. These are not dates the appellant identified in his accepted OWCP claims. Because the appellant has not shown he

was separated solely because of his compensable injury, his restoration appeal must be dismissed for lack of jurisdiction. 5 C.F.R. § 353.304(c).

The appellant alleges Postal Service's failure to restore him was arbitrary and capricious due to discrimination on the basis of his race, sex and disabling condition, and retaliation for EEO activity. Because he appellant did not sufficiently allege (1) He was absent from his position due to a compensable injury; (2) he recovered sufficiently to return to duty on a part-time basis or to return to work in a position with less demanding physical requirements than those previously required of him; and (3) the agency denied his request for restoration; I do not reach the issue of whether the Postal Service's actions were arbitrary and capricious. The Board lacks pendent jurisdiction to otherwise review the appellant's claims of prohibited personnel practices.¹ Even if the Board could reach these issues pursuant to its restoration jurisdiction, the appellant waived their adjudication in a November 2005 settlement agreement.

DECISION

The appeal is DISMISSED.

FOR THE BOARD:

Nina Puglia
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on June 3, 2014, unless a petition for review is filed by that date. This is an important date because it is usually the

¹ The appellant's motion to compel discovery is denied.

last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. If you are represented, the 30-day period begins to run upon either your receipt of the initial decision or its receipt by your representative, whichever comes first. You must establish the date on which you or your representative received it. The date on which the initial decision becomes final also controls when you can file a petition for review with the Equal Employment Opportunity Commission (EEOC) or with a federal court. The paragraphs that follow tell you how and when to file with the Board, the EEOC, or the federal district court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review.

If the other party has already filed a timely petition for review, you may file a cross petition for review. Your petition or cross petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file it with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.
Washington, DC 20419

A petition or cross petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov>).

Criteria for Granting a Petition or Cross Petition for Review

The criteria for review are set out at 5 C.F.R. § 1201.115, as follows:

The Board normally will consider only issues raised in a timely filed petition or cross petition for review. Situations in which the Board may grant a petition or cross petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact; (1) Any alleged factual error must be material, meaning of sufficient weight to warrant an outcome different from that of the initial decision. (2) A petitioner who alleges that the judge made erroneous findings of material fact must explain why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will 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.

(b) 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 petitioner must explain how the error affected the outcome of the case;

(c) The 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;

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed;

(e) Notwithstanding the above provisions in this section, the Board reserves the authority to consider any issue in an appeal before it.

As stated in 5 C.F.R. § 1201.114(h), a petition for review, a cross petition for review, or a response to a petition for review, whether computer generated,

typed, or handwritten, is limited to 30 pages or 7500 words, whichever is less. A reply to a response to a petition for review is limited to 15 pages or 3750 words, whichever is less. Computer generated and typed pleadings must use no less than 12 point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to submit pleadings of the maximum length. Typically, a well-written petition for review is between 5 and 10 pages long.

If you file a petition or cross petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. A petition for review must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you or your representative more than 5 days after the date of issuance, 30 days after the date you or your representative actually received the initial decision, whichever was first. If you claim that you and your representative both received this decision more than 5 days after its issuance, you have the burden to prove to the Board the earlier date of receipt. You must also show that any delay in receiving the initial decision was not due to the deliberate evasion of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (*see* 5 C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by fax or by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial

delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. *See* 5 C.F.R. § 1201.4(j). If the petition is filed electronically, the online process itself will serve the petition on other e-filers. *See* 5 C.F.R. § 1201.14(j)(1).

A cross petition for review must be filed within 25 days after the date of service of the petition for review.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request further review of this decision only after it becomes final, as set forth above.

Discrimination Claims: Administrative Review

You may request review of this decision on your discrimination claims by the Equal Employment Opportunity Commission (EEOC). *See* Title 5 of the United States Code, section 7702(b)(1) (5 U.S.C. § 7702(b)(1)). If you submit your request by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit your request via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, NE
Suite 5SW12G
Washington, D.C. 20507

You, or your representative if you are represented, should send your request to EEOC no later than 30 calendar days after the date this decision becomes final. If you choose to file, be very careful to file on time.

Discrimination and Other Claims: Judicial Action

If you do not request EEOC to review this final decision on your discrimination claims, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States district court. *See* 5 U.S.C. § 7703(b)(2). You, or your representative if you are represented, must file your civil action with the district court no later than 30 calendar days after the date this decision becomes final. If you choose to file, be very careful to file on time. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e5(f) and 29 U.S.C. § 794a.

DECISION CASE CITES LISTING

Julian R. Hood, Jr. v. United States Postal Service

Docket No. CH-0353-14-0121-I-1

Bledsoe v. Merit Systems Protection Board, 659 F.3d 1097, 1104 (Fed. Cir. 2011)4

Bledsoe v. Merit Systems Protection Board, 659 F.3d 1097 (Fed. Cir. Oct. 3, 2011) (No. 2011-3054)

Booker v. Merit Systems Protection Board, 982 F.2d 517, 519 (Fed. Cir. 1992)...5

Booker v. Merit Systems Protection Board, 982 F.2d 517 (Fed. Cir. 1992) (No. 92-3402), cert. denied, 510 U.S. 862 (1993).

Hardy v. Merit Systems Protection Board, 13 F.3d 1571, 1575 (Fed. Cir.), cert. denied, 512 U.S. 1235 (1994).....1

Hardy v. Merit Systems Protection Board, 13 F.3d 1571 (Fed.Cir.) (No. 93-3101), cert. denied, 512 U.S. 1235 (1994) (No. 93-1621)

Latham v. U.S. Postal Service, 117 M.S.P.R. 400, 408 (2012)4

Latham v. U.S. Postal Service, 117 M.S.P.R. 400, 2012 MSPB 20 (February 24, 2012) (No. DA-0353-10-0408-I-1, DC-0752-11-0196-I-1, AT-0353-11-0369-I-1, CH-0353-10-0823-I-1, SF-0353-10-0329-I-1)

McCandless v. Merit Systems Protection Board, 996 F.2d 1193, 1198-99 (Fed. Cir. 1993)3

McCandless v. Merit Systems Protection Board, 996 F.2d 1193 (Fed. Cir. 1993) (No. 92-3434, 92-3435, 92-3436)

Parrott v. Merit Systems Protection Board, 519 F.3d 1328, 1332 (Fed. Cir. 2008)4

Parrott v. Merit Systems Protection Board, 519 F.3d 1328 (Fed. Cir. Mar. 12, 2008) (No. 2007-3119)

Scott v. U.S. Postal Service, 118 M.S.P.R. 375, 379-80 (2012).....4

Scott v. U.S. Postal Service, 118 M.S.P.R. 375, 2012 MSPB 93 (July 27, 2012) (No. PH-0353-10-0596-I-1)

Walley v. Dep't of Veterans Affairs, 279 F.3d 1010, 1017, 1020 (Fed. Cir. 2002)6

NOTHING FOUND IN IC-LIST.DOC

THIS CITE CHECK CONDUCTED BY _____ ON April 25, 2014.

Employees' Compensation Act in title 5, United States Code.

Statutory Notes and Related Subsidiaries

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(71) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8150. Effect on other statutes

(a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

(b) Section 8141 of this title and section 9491 of title 10 do not confer military or veteran status on any individual.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555; Pub. L. 115-232, div. A, title VIII, § 809(c)(4), Aug. 13, 2018, 132 Stat. 1841.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 791-4(b).	Oct. 14, 1949, ch. 691, § 305(b), 63 Stat. 868.
(b)	5 U.S.C. 803a.	Aug. 3, 1956, ch. 926, § 1 "Sec. 4", 70 Stat. 981.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232 substituted "section 9491 of title 10" for "section 9441 of title 10".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§ 8151. Civil service retention rights

(a) In the event the individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management—

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his

former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his former or equivalent position within such department or agency, or within any other department or agency.

(Added Pub. L. 93-416, § 22, Sept. 7, 1974, 88 Stat. 1149; amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

Editorial Notes

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as an Effective Date of 1974 Amendment note under section 8101 of this title.

§ 8152. Annual report

The Secretary of Labor shall, at the end of each fiscal year, prepare a report with respect to the administration of this chapter. Such report shall be submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore¹ Harbor Workers' Compensation Act (33 U.S.C. 942).

(Added Pub. L. 104-66, title I, § 1102(b)(3)(A), Dec. 21, 1995, 109 Stat. 723.)

Statutory Notes and Related Subsidiaries

REPORT ON AFFECTED EMPLOYEES

Pub. L. 117-263, div. E, title LIII, § 5305(a)(5), Dec. 23, 2022, 136 Stat. 3254, provided that: "Beginning on the date that is 1 year after the date of enactment of this Act [Dec. 23, 2022], with respect to each annual report required under section 8152 of title 5, United States Code, the Secretary [of Labor]—

"(A) shall include in the report the total number of, and demographics regarding, employees in fire protection activities with illnesses and diseases described in the list (as the list may be updated under this subsection [enacting section 8143b of this title and provisions set out as notes under section 8143b of this title] and the amendments made by this subsection), as of the date on which that annual report is submitted, which shall be disaggregated by the specific illness or disease for the purposes of understanding the scope of the problem facing those employees; and

"(B) may—

¹So in original. Probably should be "Longshore and".

No. _____
IN THE
SUPREME COURT OF THE UNITED STATES

JULIAN R. HOOD, JR.,
Petitioner,
v.
MERIT SYSTEMS PROTECTION BOARD,
Respondent.

PROOF OF SERVICE

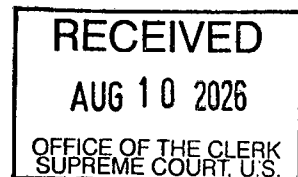
I, Julian R. Hood, Jr., declare that I am the petitioner in this proceeding and that I am proceeding pro se.

On August 5, 2026, I served a true and correct copy of the following documents:

1. Motion for Leave to Proceed In Forma Pauperis;
2. Declaration in Support of Motion for Leave to Proceed In Forma Pauperis;
3. Petition for a Writ of Certiorari; and
4. Appendix to the Petition for a Writ of Certiorari.

I served one copy of the foregoing documents on each person listed below by depositing the documents in the United States mail, with first-class postage prepaid, addressed as follows:

Solicitor General of the United States
Room 5616



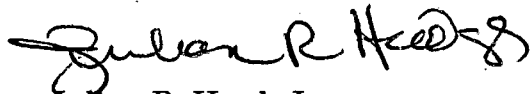
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
Counsel for Respondent

Kelly Winship
Office of the General Counsel
Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419-0002
Telephone: 717.210.1589
Counsel for Respondent Merit Systems Protection Board

All parties required to be served have been served.

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

Executed on August 5, 2026, at Escondido, California.



Julian R. Hood, Jr.
Petitioner Pro Se
2000 S. Escondido Boulevard, Unit 33
Escondido, CA 92025
(616) 293-1565
Jhood384@yahoo.com

This content is from the eCFR and is authoritative but unofficial.

Title 5 — Administrative Personnel

Chapter I — Office of Personnel Management

Subchapter B — Civil Service Regulations

Part 353 — Restoration to Duty from Uniformed Service or Compensable Injury

Subpart A — General Provisions

Authority: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

Source: 60 FR 45652, Sept. 1, 1995, unless otherwise noted.

§ 353.102 Definitions.

In this part:

Agency means.

- (1) With respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and
- (2) With respect to uniformed service, an executive agency as defined in 5 U.S.C. 105 (other than an intelligence agency referred to in 5 U.S.C. 2302(a)(2)(C)(ii)), including the U.S. Postal Service and Postal Rate Commission, a nonappropriated fund instrumentality of the United States, or a military department as defined in 5 U.S.C. 102. In the case of a National Guard technician employed under 32 U.S.C. 709, the employing agency is the adjutant general of the State in which the technician is employed.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter 1, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military leave means paid leave provided to Reservists and members of the National Guard under 5 U.S.C. 6323.

Notice means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an agency by the employee performing the service or by the uniformed service in which the service is to be performed.

Partially recovered means an injured employee, though not ready to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

- (1)

- (i) For medical reasons the employee is unable to perform the duties of the position formerly held or an equivalent one, or
 - (ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).
- (2) The condition is considered permanent with little likelihood for improvement or recovery.

Reasonable efforts in the case of actions required by an agency for a person returning from uniformed service means actions, including training, that do not place an undue hardship on the agency.

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from employment for the purpose of examination to determine fitness to perform such duty.

Status means the particular attributes of a specific position. This includes the rank or responsibility of the position, its duties, working conditions, pay, tenure, and seniority.

Undue hardship means actions taken by an agency requiring significant difficulty or expense, when considered in light of—

- (1) The nature and cost of actions needed under this part;
- (2) The overall financial resources of the facility involved in taking the action; the number of persons employed at the facility; the effect on expenses and resources, or the impact otherwise of the action on the operation of the facility; and
- (3) The overall size of the agency with respect to the number of employees, the number, type, and location of its facilities and type of operations, including composition, structure, and functions of the work force.

Uniformed services means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

This content is from the eCFR and is authoritative but unofficial.

Title 5 —Administrative Personnel

Chapter I —Office of Personnel Management

Subchapter B —Civil Service Regulations

Part 353 —Restoration to Duty from Uniformed Service or Compensable Injury

Subpart C —Compensable Injury

Authority: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

Source: 60 FR 45652, Sept. 1, 1995, unless otherwise noted.

§ 353.301 Restoration rights.

- (a) Fully recovered within 1 year.** An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency must offer the employee a position (as described above) in another location. This paragraph also applies when an injured employee accepts a lower-grade position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.
- (b) Fully recovered after 1 year.** An employee who separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of the cessation of compensation. Priority consideration is accorded by entering the individual on the agency's reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers.
- (c) Physically disqualified.** An individual who is physically disqualified for the former position or equivalent because of a compensable injury, is entitled to be placed in another position for which qualified that will provide the employee with the same status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. This right is agencywide and applies for a period of 1 year from the date eligibility for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.
- (d) Partially recovered.** Agencies must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees

substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

This content is from the eCFR and is authoritative but unofficial.

Title 5 — Administrative Personnel

Chapter I — Office of Personnel Management

Subchapter B — Civil Service Regulations

Part 353 — Restoration to Duty from Uniformed Service or Compensable Injury

Subpart C — Compensable Injury

Authority: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

Source: 60 FR 45652, Sept. 1, 1995, unless otherwise noted.

§ 353.304 Appeals to the Merit Systems Protection Board.

- (a) Except as provided in paragraphs (b) and (c) of this section, an injured employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) may appeal to the MSPB an agency's failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals must be submitted in accordance with MSPB's regulations.
- (b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.
- (c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 13 SFC
LONDON, KY 40742-8300
Phone: (415) 241-3300

August 9, 2017

Date of Injury: 12/21/2000
Employee: JULIAN R. HOOD-JR

DEBORAH RAPHAEL
RAPHAEL CONSULTING SERVS
217 ESCONDIDO AVE STE 4
VISTA, CA 92084

Dear DEBORAH:

The Office of Workers' Compensation Programs (OWCP) is referring this employee to you for development of a vocational rehabilitation program. OWCP is responsible for providing guidance and making decisions on issues and benefits to ensure the employee's prompt return to employment. The employee's cooperation and participation in vocational rehabilitation is compulsory under Section 8113(b) of the Federal Employees' Compensation Act, which provides benefits for wage loss if the injured worker must return to a lower-paying job.

You are responsible for following the policies and procedures in OWCP's Vocational Rehabilitation Counselor Handbook (<http://www.dol.gov/owcp/dfec/procedure-manual.htm>), the standards in your agreement with OWCP (OWCP-36), and the directions of the OWCP Rehabilitation Specialist (RS). The OWCP RS reserves the right to change or terminate your services when it is in the best interest of the government.

This letter serves as a referral and authorization to provide counseling, guidance, testing and placement services not to exceed \$5,000 or two years from the date of this letter.

Services over and above this initial authorization must be authorized in advance and in writing by me.

COUNSELOR'S RESPONSIBILITY AND INSTRUCTIONS

You are responsible for providing an initial interview and vocational assessment of the injured workers' skills and abilities. You must contact the injured worker and the worker's previous employer within ten business days of receiving this referral to begin selective placement of the worker in a suitable position, unless instructed otherwise in Form OWCP-3 accompanying this letter. If the previous employer does not respond positively within 30 days of the contact, you should make arrangements for necessary testing or vocational evaluation services to determine the worker's potential to benefit from retraining or job placement services leading to productive employment in the open labor market. Your initial report to me is due in 45 days from the date of this letter unless instructed otherwise.

Regular progress reports are required on your efforts to reemploy or develop a plan for this worker. If the employee is not back at work you will forward a recommendation for alternative vocational

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

services, which you and the worker have discussed, no later than 90 days from the date of this letter. I will evaluate the plan and provide you with written approval or denial of recommended services.

You are expected to develop a realistic, cost-effective and timely course of services, considering the interests and abilities of the injured worker, which is likely to result in employment. Training should be recommended if it is needed for placement with the previous employer, or if transferable skills or local labor market conditions indicate that the injured worker will earn significantly less than the pre-injury job, and a training program will materially improve earnings. Pre-vocational services such as work adjustment or academic remediation services may be recommended if these are required to prepare the worker for training or placement services. Once your plan is submitted and approved by me in writing you may proceed to provide the approved services.

You are required to call me to discuss any problems which affect your ability to develop a plan for this injured worker. If you determine that the injured worker has no potential to benefit from vocational services or you believe that vocational planning should be postponed, you should contact me immediately to review your findings.

BILLING FOR SERVICES

OWCP will pay you within 30 days of receiving a proper bill. You must do the following to assure your bill is proper:

- * Complete all items on the OWCP bill format
- * Submit the original monthly bill attached to the front of the original report for that period to:

Conduent-Central Bill Pay Facility and Medical Authorization
OWCP-DFEC
P.O. Box 8300
London, KY 40742-8300

Note that all case information, Physical Capacities Evaluation (if applicable) and the medical report(s) are for your official and confidential use. This information is protected and covered under the Privacy Act and must be handled in accordance with its provisions.

INJURED WORKER'S RESPONSIBILITIES:

You have been approved for temporary benefits under the FECA and have not returned to full duty with your employer. You are now being referred for vocational rehabilitation services to assist you in a successful return to work. You are required by OWCP's regulations to cooperate with the Rehabilitation Specialist and to undertake rehabilitation activities directed toward suitable employment, or benefits may be terminated or reduced. You are also required to seek suitable work, and to accept suitable work if it is offered to you. We will work with the employer and your physician to ensure a safe return to work within the medical limitations determined by the claims examiner.

You are being referred to an OWCP Certified Rehabilitation Counselor to assist you in returning to work. You are expected to be an active participant in exploring the availability of modified work or reassignment with your employing agency. If modified or alternative employment is not available,

you are expected to become actively involved in developing a return-to-work plan with your assigned counselor. You should be realistic and flexible regarding adjustments that you may have to make to return to work. Work hours or shifts, pay scale and promotional prospects may not be the same in your new employment.

PREVIOUS EMPLOYER'S RESPONSIBILITY:

Rehabilitation of this employee reduces the cost of compensation and is generally the preference of the injured worker. As an employer you can benefit from the productivity of this employee who is receiving \$2990.00 in compensation payments each 28 days. If employment cannot be achieved, the employer's compensation cost could be many times this amount over the lifetime of the employee.

You will be contacted by an OWCP-certified Rehabilitation Counselor, who is instructed to pursue employment which is suitable to the employee's medical condition and skills and abilities. Any job offer must be in writing and include specific job duties and physical requirements. If you have not made a positive response within 30 days, the counselor is instructed to provide testing and develop an alternative vocational program designed to lead to employment. This program may include recommendations for training, placement in the non-public sector or FECA Assisted Reemployment, which is a wage subsidy paid to a new employer.

If you need further information or have questions about the vocational rehabilitation process, please contact me at 4152413300.

Sincerely,

Vicki Crane
Rehabilitation Specialist

UNITED STATES POSTAL SERVICE
GREATER MICHIGAN PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
PO BOX 999444
GRAND RAPIDS, MI 49599

JULIAN R HOOD-JR
2000 SOUTH ESCONDIDO BOULEVARD
UNIT 33
ESCONDIDO, CA 92025

ALAN J SHAPIRO
ATTORNEY AT LAW
8 SHAKER GLEN
SHAKER HEIGHTS, OH 44122

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DETROIT DISTRICT OFFICE

COMPLAINT OF
JULIAN R. HOOD, JR.,

Complainant,

v.

JOHN E. POTTER,
POSTMASTER GENERAL OF
THE UNITED STATES,

Respondent Agency.

) EEOC Case No: 230-2005-00025X
) Respondent No.: 4-J-493-0094-03

) ADMINISTRATIVE JUDGE
) DEBORAH M. BARNO

STIPULATION AND SETTLEMENT AGREEMENT

The parties in this matter, Complainant, Julian R. Hood, Jr., and the Respondent, John E. Potter, Postmaster General of the United States Postal Service, represented by Maryl R. Rosen, Attorney for the United States Postal Service, agree to compromise the above-captioned action as follows:

1. Julian R. Hood, Jr. agrees to withdraw EEOC No. 230-2005-00025X / Respondent No. 4-J-493-0094-03, and all other employment discrimination claims and grievances that are pending or could have been brought against John E. Potter, as Postmaster General, or the United States Postal Service, as of the date of the execution of this Settlement Agreement. *Mr. Hood is not waiving his pending OWCP claim through this Agreement.*

2. The parties agree that this Settlement Agreement fully resolves the issues in appeal as settled. The Equal Employment Opportunity Commission

*OKH
gpt*

shall retain jurisdiction of this action as may be necessary to enforce the terms of this Settlement Agreement.

3. The Respondent, Postal Service, agrees to change the entry on Complainant's last Notification of Personnel Action, Form 50, issued by the Postal Service, in the "Nature of Personnel Action" from "Removal" to "Resignation."

4. To settle all claims for compensatory damages, Respondent shall pay Complainant the sum of \$444.00. The Postal Service will not withhold money from this amount, however, it is understood between the parties that this payment is subject to taxation and will be reported to the Internal Revenue Service. The check will be made out to Wheeler Upham, P.C., and Julian R. Hood, Jr. and mailed to Julian R. Hood, Jr. in care of his counsel. To settle all claims for attorneys' fees, Respondent shall pay Wheeler Upham, P.C. the sum of \$2056.00. The Postal Service will not withhold money from this amount, however, it is understood between the parties that this payment is subject to taxation and will be reported to the Internal Revenue Service.

5. In exchange for the promise in ¶¶ 3 and 4, above, Complainant agrees not to apply for employment with the Postal Service. However, the parties agree that Complainant is not similarly barred from applying for employment with another federal agency.

6. Complainant and his heirs, executors, administrators or assigns hereby agree to accept the above consideration in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind

and nature, arising from, including but not limited to the claims alleged herein and any claims against the Postal Service, its agents, servants, and employees on account of the same subject matter that gave rise to the above-captioned lawsuit.

7. By entering this Settlement Agreement, neither party admits any liability or wrongdoing. The Settlement Agreement is not to be construed as any comment or indications of the merits of either party's claims or defenses.

8. The parties agree that the terms of this Settlement Agreement are unique to the facts and circumstances of this case and will not establish any precedent whatsoever except as is necessary to implement the terms and conditions of the Agreement as required by law. This Settlement Agreement may not be used as a basis by either party, any individual, or any representative or organization for seeking or justifying similar terms in any subsequent case. However, the parties agree that it may be cited by either party in a subsequent action involving Julian R. Hood, Jr. and the United States Postal Service.

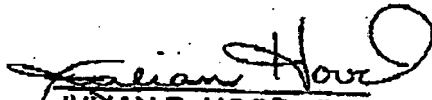
9. The parties stipulate that this Settlement Agreement fully sets forth all of the terms and conditions governing the settlement of EEOC No. EEOC No. 230-2005-00025X /Respondent No. 4-J-493-0094-03.

10. Julian R. Hood, Jr. agrees that after reviewing this entire document he freely and voluntarily enters into it and recognizes that this document will bind him to the Settlement Agreement. Julian R. Hood, Jr. has read the terms contained in the Settlement Agreement.

11. This Settlement Agreement constitutes the entire understanding of the parties.

IN WITNESS WHEREOF, the undersigned parties have caused this Settlement Agreement, consisting of 4 pages, to be executed.

JULIAN R. HOOD, JR.,
COMPLAINANT


JULIAN R. HOOD, JR.

Date: 11/18/05


GLENN L. SMITH, ESQ.

Date: 11/18/05

JOHN E. POTTER
POSTMASTER
GENERAL, UNITED STATES
POSTAL SERVICE


Brian T. Stoll
Manager, Labor Relations
Greater Michigan District
United States Postal Service

Date:

IN WITNESS WHEREOF, the undersigned parties have caused this Settlement Agreement, consisting of 4 pages, to be executed.

JULIAN R. HOOD, JR.,
COMPLAINANT

JULIAN R. HOOD, JR.

Date:

GLENN L. SMITH, ESQ.

Date:

JOHN E. POTTER
POSTMASTER
GENERAL, UNITED STATES
POSTAL SERVICE

Brian T. Stoll

Brian T. Stoll
Manager, Labor Relations
Greater Michigan District
United States Postal Service

Date: *Nov. 16, 2005*