ROBERT J. MACLEAN v. DEPARTMENT OF HOMELAND SECURITY
Docket # SF-0752-06-0611-C-1
Appellant's Response to Board's Order of November 30, 2016
Summary Page

Case Title : ROBERT J. MACLEAN v. DEPARTMENT OF HOMELAND SECURITY

Docket Number : SF-0752-06-0611-C-1

Pleading Title : Appellant's Response to Board's Order of November 30, 2016

Filer's Name : Thad M. Guyer, Esq.

Filer's Pleading Role : Private Attorney

Details about the supporting documentation

N/A

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Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

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2. Does your pleading assert facts that you know from your personal knowledge?

No

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WESTERN REGIONAL OFFICE

ROBERT J. MACLEAN,

APPELLANT

DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION,

Agency

DOCKET NUMBER:
SF-0752-06-0611-C-1
ADMINISTRATIVE JUDGE:
Franklin Kang

Date: December 30, 2016

APPELLANT'S LEGAL MEMORANDUM IN RESPONSE TO BOARD'S ORDER OF NOVEMBER 30, 2016

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Appellant files this memorandum in response to the Board's November 30, 2016 Order.

I. FILINGS IN SUPPORT OF PETITION FOR ENFORCEMENT

Appellant requests that the following documents he has submitted be considered by the Board in ruling upon his Petition for Enforcement and Supplemental Petition for Enforcement:

Doc #	Title of Documents Filed by Appellant in Support of Petition for Enforcement	Date
	RESPONSES SPECIFIC TO NOVEMBER 30, 2016 ORDER	
45	Declaration: New Evidence to Supplement Request for WPEA Compensatory Damages	12/30/2016
44	Declaration: Supplemental Request for Consequential Damages	12/28/2016
43	Declaration: Request for WPEA Compensatory Damages PART 4	12/27/2016
42	Declaration: Request for WPEA Compensatory Damages PART 3	12/27/2016
41	Declaration: Request for WPEA Compensatory Damages PART 2	12/27/2016
40	Declaration: Request for WPEA Compensatory Damages PART 1	12/27/2016
	PRIOR FILINGS INCORPORATED BY REFERENCE	
36	Declaration: Reply to Agency's 9/12/2016 Response to 7 members of Congress	9/27/2016
35	Declaration: Reply To Agency's 8/17/16 Response To His Correction Of Agency's 6/	8/29/2016
34	Declaration in Reply to Agency's Response to his of 5 USC 3352 request	8/29/2016
29	Congress Bipartisan Bicameral April 12, 2016 Letter With Regards To Agency's Fai	8/15/2016
28	Declaration: Agency Fails To Comply By Not Correctly Calculating Retroactive TSP	8/15/2016
27	Declaration: Correction Of Agency's June 18, 2015 Backpay Statement After Adjust	8/11/2016
26	Withdrawal of "June 30, 2016 5 U.S.C. § 3352 Head Of	8/7/2016

	Agency Review Request"	
25	Service of July 21, 2016 5 U.S.C. § 3352 Head of Agency Review Request	8/7/2016
12	Appellant's Reply Memorandum to Agency Response to Petitions for Enforcement	4/5/2016
11	Appellant's Declaration of Facts in Reply to Agency's Response to Petition for E	4/3/2016
6	Memorandum of Law in Support of Original and Supplemental Petitions	3/7/2016
5	Supplemental Petition for Enforcement re PPP	3/7/2016
4	Part 2 Exhibits for Appellant's Declaration in Support of his PFE	3/6/2016
3	Petition for Enforcement	3/6/2016
2	Table of Contents for PFE Exhibits	3/6/2016
1	Part 1 Exhibits for Appellant's Declaration in Support of his PFE	

II. THE AGENCY CONTINUES REJECTING THAT THE BOARD HAS AN ENFORCEMENT DUTY TO FASHION COMPLETE RELIEF FOR APPELLANT

The Agency simply rejects that the Board has broad statutory authority to fashion complete relief and corrective action for the Appellant through its enforcement powers. 5 U.S.C. § 1204(a)(1)(2) provides in pertinent part:[1]

> The Merit Systems Protection Board shall *** order *any Federal Agency or employee* to comply with any order or decision issued by the Board under the

[1] 5 USC § 1204 "Powers and functions of the Merit Systems Protection Board" provides:

(a) The Merit Systems Protection Board shall--

(a) The Merit Systems Protection Board shall--

(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, chapter 43 of title 38 [38 USCS §§ 4301 et seq.], or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

> authority granted under paragraph (1) of this subsection and enforce compliance with any such order ***.

(Emphasis added). As the Board explained in *Souders v. Office of Pers. Mgmt.*, 35 M.S.P.R. 353, 1987 MSPB LEXIS 203, 1987 MSPB LEXIS 203 (M.S.P.B. 1987):

> OPM has mischaracterized this action as an appeal of its reconsideration decision denying health benefits to appellant, and thus incorrectly concluded that the Board is without jurisdiction. This is an action for enforcement of a final Board order, not an appeal.
>
> The Board's jurisdiction in seeking enforcement of its orders is broad and not limited to its statutory jurisdiction governing appeals. *Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 1984). In reviewing a compliance decision, the *Kerr* court found that the Board erred as a matter of law when it held that it had no jurisdiction over a reassignment without loss of pay or grade. Id. at 732. The court concluded that the Board's enforcement authority in 5 U.S.C. § 1205(a)(2) "was meant to be a broad grant of enforcement power," and the Board has the obligation to "place the employee as nearly as possible in the status quo ante." I*d*. at 733. The court defined status quo ante as follows:
>
> The Supreme Court long ago stated that the general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed.

The Board has attempted to fully implement this broad jurisdictional grant articulated in *Kerr*. *Kerr at* 732-733 made clear that the primary objective of any relief from a prohibited personnel practice is to return the whistleblower to the situation he would have been in had it not been for retaliation:

> The original MSPB order of April 9, 1981 directed the agency to comply with the initial (presiding official's) decision that petitioner's termination be cancelled. The purpose of such a cancellation order is to place the employee as nearly as possible in the status quo ante. In our view, appropriate steps to enforce compliance must include more than the formal determination that an individual was reinstated to a position bearing the same title, grade and pay -- no matter what the actual content of that position may be at the time of reinstatement.

This is a fundamental guiding principle of law, and the *Kerr* court cited specifically to it with *Wicker v. Hoppock*, 73 U.S. 94 (1867). Hence, *Kerr* concluded at 733:

> The Board erred in this determination that petitioner's mere reinstatement to his former title at the same grade and pay ended any further consideration by the MSPB concerning actual compliance. The matter of compliance did not end with that formal reinstatement, and the Board had and has jurisdiction to consider the particulars of petitioner's claim under 5 U.S.C. § 1205(a)(2).

The remedial purposes of the Back Pay Act mirror these objectives, and place the burden of proof on the agency to show that it has undone all of it prior wrongs to the Appellant*. Smith v. Dep't of the Army*, 458 F.3d 1359 (Fed. Cir. 2006), and *Wilson-Bowers v. VA*, 2016 MSPB LEXIS 610 (M.S.P.B. Feb. 4, 2016). Other than a few payment arguments, coupled with broad assertions that the Board lacks jurisdiction to do very much, the Agency has made little effort to shoulder its burden of proof.

III. THE AGENCY IS OBLIGATED TO PROMOTE THE APPELLANT IN ORDER TO PUT HIM IN THE POSITION HE WOULD HAVE BEEN IN HAD IT NOT ILLEGALLY TRIED TO WRECK HIS CAREER

There should be no mincing of words. As the Appellant has stated in his most recent declarations (Docs # 40 and # 45), this Agency has engaged in vigorous, vicious, sustained, unrepentant, and politically motivated efforts to wreck his career, both before and especially since this enforcement proceeding has commenced. The law is settled that the essence of any corrective action is to order the agency to cease and desist with its retaliation, and to prove it has done so.

Retroactive promotion is warranted where an appellant demonstrates that the agency retaliated against him for protected disclosures by not selecting him for promotions to positions

posted in vacancy announcements. *Morgan v. DOE*, 81 M.S.P.R. 48, 50 (M.S.P.B. 1999). The Board explained:

> As discussed above, the appellant was a federal employee when the agency committed the prohibited personnel practices of not selecting him for four GS-14 positions because of his whistleblowing. As an "employee," he is covered by the Back Pay Act. See 5 U.S.C. § 5596(b)(1). The Board has found that the appellant was "affected by an unjustified or unwarranted personnel action." Thus, that requirement of the Back Pay Act is also satisfied.

Morgan v. Doe, id. at 52-53. The Board then held:

> Accordingly, we find that the Board has the authority under the WPA to order the agency to promote the appellant to a supervisory GS-14 position retroactive to February 1990, the date when the agency did not select him for a supervisory GS-14 position because of his whistleblowing activity. We also find that the Board has the authority under the Back Pay Act to order the agency to pay him back pay for the period between his nonselection in February 1990 and his prospective promotion to a GS-14 position pursuant to the Board's May 12, 1997 Order.

Morgan v. DOE, id. at 54, citing *Brown v. Secretary of the Army*, 918 F.2d 214 (D.C. Cir. 1990), cert. denied, 502 U.S. 810 (1991).

The agency has demonstrated a dogged refusal to end the retaliation against the Appellant. 5 USC § 2302(a)(2)(A) "Prohibited personnel practices", provides that covered personnel actions include "(iv) a detail, transfer, or reassignment; (v) a reinstatement; [and](vi) a restoration". The WPEA extended the Board's IRA jurisdiction to claims arising under 2302(b)(9)(A)(i). See *Mudd v. Department of Veterans Affairs*, 120 M.S.P.R. 365 P7 (2013). Section 2302(b)(8) prohibits reprisal based on the disclosure of information and section 2302(b)(9)(A) prohibits reprisal based upon exercising a right to complain. *McGuire v. VA*, 2015 MSPB LEXIS 9589 (M.S.P.B. Dec. 2, 2015).

IV. THE WPEA APPLIES THIS ENFORCEMENT ACTION WITHOUT NEW COMPLAINTS TO THE OFFICIE OF SPECIAL COUNSEL

As Appellant argued in his Memorandum of Law in Support of Original and Supplemental Petitions (Doc # 6, March 7, 2016):

> The Whistleblower Protection Enhancement Act of 2012 (WEPA), Pub. L. No. 112-199, 126 Stat. 1465, applies to all personnel actions occurring after the statute's effective date of December 27, 2012. The Agency's refusal to promote the Appellant retroactively is a personnel action occurring since December 27, 2012. No exhaustion with the OSC is required because the in enforcement proceedings, an agency is already required to end any continuation or effects of the retaliation already held to have existed.

At the time the Board entered its order of reinstatement and corrective action in this case on November 3, 2015 (which became final on December 8, 2015), the WPEA was fully in effect. The Agency's new and continuing violations since that order, indeed since it unilaterally reinstated Appellant --with ultimatums-- following the Supreme Court's decision in *Dep't of Homeland Sec. v. MacLean*, 135 S. Ct. 913, 190 L. Ed. 2d 771 (2015), are all subject to the WPEA. This includes (1) the failure to promote, (2) denial of transfer requests, (3) failure to timely institute reinstatement of Appellant's security clearance, and (4) the patently hostile work environment which Congress has repeatedly tried to address. Therefore, Appellant is entitled to compensatory damages for all of the emotional distress and financial injuries he has suffered at the hands of the Agency since the reinstatement.

Despite the Appellant having made jurisdictionally non-frivolous allegations of continuing retaliation in violation of the Board's reinstatement order, the Agency does not meaningfully respond, other than to assert the Board has very few jurisdictional options, and that Appellant must start anew with the OSC. More, more, more OSC complaints, more litigation

and endless appeals, this is not just the Agency's argument—it is its avowed strategy. As Appellant set forth in his declaration (Doc. 45, December 30, 2016, paras. 4-6):

> The email attachment is a photo of a December 15, 2014 calendar invitation emailed from the Agency's then-Assistant Chief Counsel/now-Assistant Administrator for the Office of Professional Responsibility ("OPR") Steven Colón to Agency Supervisory Litigation Attorney Jeffrey Velasco and to other employees within the Agency's Office of Chief Counsel ("OCC"). Mr. Velasco was one of the two Agency attorneys present for my November 5, 2009 hearing before this court. Mr. Colón's message to the group writes:
>
>> Jeff if you can join us, I would appreciate it. We already fired Barnett. And I am done being conciliatory with OSC. They have been a **nightmare** to deal with for the Employment advice folks. **They want war, they got one.** Unless the evidence stinks. *(Emphasis added).*

Cynical may be the word that comes to mind.

That Appellant may have alternative "war" remedies with the OSC, and has filed new complaints, has nothing to do with the Board's jurisdiction on a petition for enforcement based on the same retaliatory conduct. As stated in *Kerr*:

> Finally, the government argues that petitioner's proper channel of remedy was the filing of a complaint with the Special Counsel concerning a prohibited personnel action under 5 U.S.C. § 2302(b)(9). Because we hold that the MSPB does have the compliance power for which petitioner contends, we need not reach the question *whether he could alternatively* have pursued his complaint with the Special Counsel.

(Emphasis added).

The Board should not too quickly and uncritically reject Appellant's claim to application of the WPEA to this enforcement action. This argument is not affected by the presumption against retroactive application of a statute. Retroactivity is not needed to order WPEA corrective

action for the Agency's post-reinstatement wrongs here.[2] Under the WPEA, when an agency retaliates against an employee for filing a previous appeal related to whistleblowing, the board is empowered to order such corrective action as it deems appropriate, 5 U.S.C. § 1221(e)(1), including restoring the employee, "as nearly as possible, [to] the position the individual would have been in had the prohibited personnel practice not occurred," and awarding "back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages," *Hicks v. MSPB*, 819 F.3d 1318, 1322 (Fed. Cir. 2016), citing § 1221(g)(1)(A). The rule should be no different in an enforcement proceeding where an agency continues its retaliation after reinstatement, *and during the period of the enforcement proceedings*.

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[2] To the extent that Appellant's argument would in some manner rely on retroactive application of the WPEA, then he now argues that the WPEA is retroactive to his enforcement claims. The Federal Circuit very recently in *Hicks v. MSPB*, 819 F.3d 1318, 1322 (Fed. Cir. 2016) cautioned against overly broad and ill-considered retroactivity decisions:

> We emphasize, however, that our holding is a narrow one. While we conclude that, under the particular circumstances presented here, section 101(b)(1) of the WPEA does not operate retroactively to supply board jurisdiction over Hicks' appeal, we express no view on whether other provisions of the WPEA can be given retroactive effect. See *Landgraf*, 511 U.S. at 280 (explaining that "there is no special reason to think that all the diverse provisions of [an] Act must be treated uniformly" for retroactivity purposes).
> ***
> For example, we need not—and therefore do not—decide whether the board has correctly concluded that the WPEA's "clarification" of the term "disclosure" applies retroactively, see *Day v. Dep't of Homeland Sec.*, 119 M.S.P.R. 589, 598 (2013), but that the WPEA's provision allowing for the award of compensatory damages does not, see *King v. Dep't of the Air Force*, 119 M.S.P.R. 663, 669-75 (2013).

V. APPELLANT IS ENTITLED TO RETROACTIVE PROMOTION AND INCREASED BACK PAY

The Board has approved remanding cases to the agency to reevaluate the merits of a retroactive promotion where a prohibited personnel practice has occurred. In cases in which the Appellant has not shown clear entitlement to a retroactive promotion, but has shown the likelihood that retaliation was a factor in the promotion being denied. Citing *Morgan v. DOE, supra*, the Board held as follows in *Rios v. DOC*, 122 M.S.P.R. 50 (M.S.P.B. 2014):

> It is not clear whether the appellant would have been promoted but for his protected whistleblowing. The promotion was noncompetitive and his application never received fair consideration. Even absent consideration of the appellant's whistleblowing, the agency may or may not have promoted the appellant after an honest assessment of his skills and abilities, particularly his ability to manage the most complex criminal investigations. Therefore, we do not agree that the appellant is entitled to a promotion at this point and agree with the administrative judge that the proper remedy in this case is for the agency to give the appellant's application for promotion fair and objective review based on merit factors and not on prohibited factors, and to award the appellant a retroactive promotion with back pay if the record shows that the agency would have promoted the appellant absent his whistleblowing.

If the Board holds that current precedent places upon the Appellant the burden of proof to show that he clearly would have been promoted, then that precedent should be overruled as inconsistent with the burdens of proof established under the WPA and WPEA.[3]

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[3] The Appellant is preserving this argument in the event of further review, and is therefore obligated to present it first now. The employee should be required only to show that it is more probable than not that he would have been promoted, particular in a case like the one here, where an exemplary employee was unlawfully removed from employment for a decade or more. Once that showing is made, then the burden of proof should be upon the Agency to demonstrate by clear and convincing evidence that the Appellant would not have been promoted.

VI. THE AGENCY ERRONEOUSLY ASSERTS THAT IT IS EXEMPT FROM TITLE 5 WHISTLEBLOWER PROTECTIONS AND VOLUNTARY LATERAL PROGRAM TRANSFER

Retroactive to April 1, 1996, the Federal Aviation Administration Personnel Management System, with its exclusions of certain whistleblower protections, no longer applies to Transportation Security Administration whistleblowers such as Appellant. On February 14, 2012, the Ford Act (Public Law 112-95 112th Congress) made an exception for the Agency's whistleblowers, codified at 49 U.S.C. § 40122(g)(2)(A):

> **(2) APPLICABILITY OF TITLE 5. —**The provisions of title 5 shall not apply to the new [Department of Transportation / Federal Aviation Administration] personnel management system developed and implemented pursuant to paragraph (1), with the exception of—
>
> **(A)** section 2302(b), relating to whistleblower protection, including the provisions for investigation and enforcement as provided in chapter 12 of title 5;

49 U.S.C. § 40122(g)(3), retroactive to April 1, 1996, provides:

> (3)Appeals to merit systems protection board. —
>
> Under the new [Department of Transportation / Federal Aviation Administration] personnel management system developed and implemented under paragraph (1), an employee of the Administration may submit an appeal to the Merit Systems Protection Board and may seek judicial review of any resulting final orders or decisions of the Board from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996. Notwithstanding any other provision of law, retroactive to April 1, 1996, the Board shall have the same remedial authority over such employee appeals that it had as of March 31, 1996.
>
> (4) Effective date. —This subsection shall take effect on April 1, 1996.

The language of the statute permits no other interpretation than that Appellant is fully covered by whistleblower protections. Moreover, as Congress expressly prescribed the amendment's reach as "retroactive to April 1, 1996," there can be no question that it applies to Appellant's case, as it was

pending with the MSPB on the date the amendment was enacted. This is appropriate issue within the Board's enforcement authority.[4]

VII. THE BOARD HAS AUTHORITY TO REQUIRE THE AGENCY AND THE THRIFT SAVINGS PLAN TO TAKE OR REFRAIN FROM ACTION

The Board's authority under 5 USCS § 1204 to order *any federal agency* to comply with any order or decision issued under its adjudicatory authority includes enforcement jurisdiction over his Thrift Savings Plan account. The WPEA provides for relief to Appellant for any tax-related and other consequences of financially coerced withdrawals because they would be compensatory damages. As the Board held in *Giove v. OPM,* 2007 M.S.P.B. 146, 106 M.S.P.R. 53, 2007 MSPB LEXIS 5283, 106 M.S.P.R. 53, 2007 MSPB LEXIS 5283 (M.S.P.B. 2007):

> The reasons the administrative judge gave for denying the petition indicate, however, that the disposition was based instead on a jurisdictional finding. That is, the administrative judge stated that she found "no provision of . . . law, rule, or regulation, that would allow the Board to review matters solely within the discretion of the Federal Retirement Thrift Savings Board under 5 C.F.R. [parts] 1600-1690," and she stated further that, "where the Board is without jurisdiction over the merits of an appeal, it has no authority to adjudicate a petition for enforcement."

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[4] Because of the Agency's denial that it has any obligations for lateral transfer, it is highly doubtful that the Agency can show it has conducted a review of Appellant's several transfer requests since January 15, 2016 under 5 U.S.C. § 3352 permanent transfer preference. The statute requires the "head of such agency to review the rejection" per paragraph (d) of the statute:

> An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

It seems apparent that the Agency has made no credible attempt to comply with the statute.

> In his petition for review, the appellant argues that the Board does have jurisdiction over this issue. The Board has the authority, under 5 U.S.C. § 1204(a)(2), to order any federal agency to comply with any order or decision issued under its adjudicatory authority, and to enforce compliance with any such order. Under that provision, the Board may review matters related to TSP accounts, including claims that an agency failed to take corrective actions it should have taken with respect to such an account. *See, e.g., Shobert v. Department of the Air Force*, 90 M.S.P.R. 262, PP 9-11 (2001) (the Board's order to cancel the employee's suspension required the agency to comply with applicable TSP regulations, including those providing for transfer of funds to the employee's TSP account and for payment of lost earnings on that account). We therefore agree with the appellant that the Board has the authority to review his TSP-related claim, and to determine whether OPM or any other federal agency has failed to take action necessary as a result of the August 2004 order mentioned above.

In *Giove,* the Board rejected the employee's claim for compensatory damages because they did not exist in 2007. Obviously, any and all TSP related financially injury to Appellant in this case could only have occurred since reinstatement, since the effective date of the WPEA.

VIII. CONCLUSION

Under the Board's broad enforcement jurisdiction provided by 5 U.S.C. § 1204, he is entitled to corrective action for WPA violations as to (1) denial of his reinstatement based promotion, (2) denial of his transfer requests, (3) delay in the restoration of his security clearance, (4) hostile work environment, and (5) the consequential he has described. He is also entitled under the WPEA to protection for all post-reinstatement retaliation during the pendency of these enforcement proceedings, and to the compensatory damages he has described.

If the Board holds that current precedent precludes the awarding of consequential damages for the Appellant's costs of private insurance, then that precedent should be overruled. Similarly, if the Board holds that current precedent places upon the Appellant the burden of

proof to show that he clearly would have been promoted, then that precedent should be overruled.

Based on the record to date, the Appellant should be awarded all appropriate and necessary relief, including his costs and attorney's fees in maintaining this addendum proceeding and petition for enforcement.

Respectfully Submitted,

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CERTIFICATE OF SERVICE BY FAX AND MAIL

I certify that pursuant to 5 CFR § 1201.26(b)(2), I served one copy of **APPELLANT'S LEGAL MEMORANDUM IN RESPONSE TO BOARD'S ORDER OF NOVEMBER 20, 2016** by facsimile to the address and fax number listed below on December 30, 2016, AND via the E-filing portal at www.mspb.gov:

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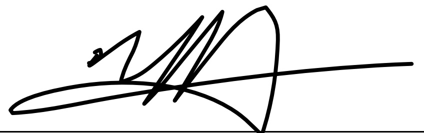

THAD M. GUYER, ESQ

Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

Name & Address	Documents	Method of Service
MSPB: Western Regional Office	Appellant's Response to Board's Order of November 30, 2016	e-Appeal / e-Mail
Robert J. MacLean Appellant	Appellant's Response to Board's Order of November 30, 2016	e-Appeal / e-Mail
Eileen Dizon Calaguas, Esq. Agency Representative	Appellant's Response to Board's Order of November 30, 2016	e-Appeal / e-Mail

I agree to send a printed copy of the electronic pleading with attachments to non-efilers by the end of next business day, as follows:

Name & Address	Documents	Method of Service
Thomas Devine, Esq. Appellant Representative Government Accountability Project 1612 K Street, NW, Suite 1100 Washington, DC 20006 USA	Appellant's Response to Board's Order of November 30, 2016	Fax