

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

Rosemary Jenkins v. United States Postal Service

Jenkins, 2025 MSPB 6 (United States Merit Systems Protection Board 2025) · No. DC-0752-11-0867-M-1 ·
Decided December 1, 2025

SUMMARY

The Merit Systems Protection Board vacated its February 27, 2023 decision and remanded Rosemary Jenkins’s appeal for further development concerning her placement on enforced leave and the retroactive effect of an Office of Workers’ Compensation Programs reconsideration decision. The Board held that placement on enforced leave for more than 14 days is appealable as an adverse action under 5 U.S.C. § 7512, even when related to a compensable injury, and overruled Kinglee v. U.S. Postal Service to the extent it held otherwise. The Board declined to reconsider Jenkins’s due process claim under the law of the case doctrine.

CASE DETAILS

COURT	United States Merit Systems Protection Board
WRITING FOR THE COURT	Henry J. Kerner, Vice Chairman; James J. Woodruff II, Member
JURISDICTION	United States Merit Systems Protection Board
DECIDED	December 1, 2025
DOCKET	DC-0752-11-0867-M-1
DISPOSITION	vacated
PROCEDURAL POSTURE	The Board considered the case on voluntary remand from the U.S. Court of Appeals for the Federal Circuit to determine whether Archuleta v. Hopper warranted a different result from the Board’s prior decision dismissing the appeal.
STANDARD OF REVIEW	The Board applied the law of the case doctrine to the due-process issue and reviewed the jurisdictional and statutory questions de novo; it remanded because the record was insufficient to determine whether a proper limited-duty search would have identified available work.
PRECEDENTIAL VALUE	precedential
PARTIES	Rosemary Jenkins v. United States Postal Service

TOPICS

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QUESTIONS PRESENTED

1. Whether placement on enforced leave for more than 14 days because of a compensable injury is an appealable adverse action under 5 U.S.C. § 7512 and within the Board's chapter 75 jurisdiction.
2. Whether the appellant's chapter 75 remedies were subsumed in, or displaced by, a restoration appeal under 5 C.F.R. §§ 353.301(d) and 353.304(c).
3. Whether OWCP's retroactive determination that the injury was compensable conferred restoration rights during the period of enforced leave.
4. Whether the record was sufficiently developed to determine whether the agency conducted a proper search for limited-duty work and whether available work existed.
5. Whether the appellant could relitigate her due-process claim under the law of the case doctrine.

HOLDINGS

1. Placement on enforced leave for more than 14 days is an appealable adverse action under 5 U.S.C. § 7512(2), even when the enforced leave results from a compensable injury, because the statutory exceptions to appealable adverse actions are limited to those expressly identified in the statute.
2. A partially recovered employee's chapter 75 suspension appeal is not subsumed in, and is not displaced by, a restoration appeal under 5 C.F.R. § 353.304(c).
3. When OWCP reverses a prior determination that an employee's injury was not compensable, restoration rights may apply retroactively during the period covered by the reversed determination.
4. The record was insufficient to determine whether a proper search for limited-duty work during the relevant period would have identified available duties within Jenkins's restrictions, requiring remand for further adjudication.
5. The appellant could not relitigate her due-process claim because the law of the case doctrine applied and none of its recognized exceptions was present.

KEY QUOTATIONS

“This Opinion and Order clarifies that placement on enforced leave for more than 14 days is appealable as an adverse action under 5 U.S.C. § 7512(2), even if the enforced leave was due to a compensable injury.” (¶ 1)

“Accordingly, in light of Archuleta, we conclude that the appellant’s suspension constitutes an appealable adverse action under chapter 75.” (¶ 18)

“Accordingly, we overrule *Kinglee* and vacate our previous decision in *Jenkins*, 2023 MSPB 8.” (§ 21)

FACTUAL BACKGROUND

Jenkins, a preference-eligible City Carrier, suffered compensable right-foot injuries and later submitted medical documentation clearing her for sedentary work with substantial restrictions. After the Postal Service found no suitable work in Norfolk, it placed her on enforced leave for more than 14 days and later returned her to leave without pay. OWCP subsequently determined that her later injury was a compensable recurrence of the earlier injury, retroactively establishing the compensable-injury status relevant to her restoration rights. The agency had not searched for available limited-duty work as broadly as required by its internal rules.

PROCEDURAL HISTORY

Jenkins appealed her placement on enforced leave, asserting constructive suspension, disability-discrimination, due-process, and harmful-error claims. After an administrative judge initially dismissed for lack of jurisdiction, the Board remanded under Abbott and later sustained the enforced-leave action. In 2023, the Board dismissed the chapter 75 appeal and directed that the matter proceed as a restoration appeal, but the Federal Circuit granted the Board's unopposed motion for voluntary remand. The Board now vacated its 2023 decision and remanded for further development and a new merits determination.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the Board's February 27, 2023 decision in its entirety and remand to the Washington Regional Office for further development of the record and a new merits finding. The regional office must consider the retroactive effect of OWCP's September 19, 2011 reconsideration decision and determine whether a proper search for limited-duty work during the relevant period would have identified available duties within Jenkins's medical restrictions. The administrative judge may join the case with the pending restoration appeal.

CASES CITED

- *Jenkins v. U.S. Postal Service*, 2023 MSPB 8
- *Brocks v. U.S. Postal Service*, MSPB Docket No. DC-0752-11-0628-I-1, Final Order (Aug. 22, 2012)
- *Abbott v. U.S. Postal Service*, 121 M.S.P.R. 294 (2014)
- *Archuleta v. Hopper*, 786 F.3d 1340 (Fed. Cir. 2015)
- *Kinglee v. U.S. Postal Service*, 114 M.S.P.R. 473 (2010)
- *Cronin v. U.S. Postal Service*, 2022 MSPB 13
- *Bledsoe v. Merit Systems Protection Board*, 659 F.3d 1097 (Fed. Cir. 2011)
- *Tom v. Department of the Interior*, 97 M.S.P.R. 395
- *Welber v. U.S. Postal Service*, 62 M.S.P.R. 98 (1994)
- *Doe v. Department of Justice*, 121 M.S.P.R. 596 (2014)

- Hoover v. Department of the Navy, 57 M.S.P.R. 545 (1993)

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