

MIKE WEBB v. DEPARTMENT OF DEFENSE
Docket # DC-3443-18-0299-I-1
Agency Motion to Dismiss for Lack of Jurisdiction
Summary Page

Case Title : MIKE WEBB v. DEPARTMENT OF DEFENSE

Docket Number : DC-3443-18-0299-I-1

Pleading Title : Agency Motion to Dismiss for Lack of Jurisdiction

Filer's Name : Devon L. Zebrovious

Filer's Pleading Role : Agency Representative

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

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

Yes

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

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

Mike Webb,	}	
	}	
Appellant.	}	Docket Number
	}	AT-3443-18-0299-I-1
v.	}	
	}	
Department of Defense,	}	Date: April 4, 2018
Defense Intelligence Agency,	}	
	}	
Agency.	}	
	}	

AGENCY’S MOTION TO DISMISS AND MOTION TO STAY PROCEEDINGS

The Defense Intelligence Agency (“DIA” or “Agency”), by and through undersigned counsel, hereby responds to the Notice and Order to Parties (Order) dated and received by the Agency on April 4, 2018. That Order was issued pursuant to a petition for appeal submitted by Appellant on February 2, 2018 challenging his alleged selection for a federal position. The Agency submits that Appellant’s petition for appeal should be dismissed for lack of jurisdiction, as the Merit Systems Protection Board grants it jurisdiction to hear appeals over adverse actions, including removals, suspensions for more than fourteen days, reductions in pay and grade, and furloughs of less than 30 days.

Discussion

The Merit Systems Protection Board's jurisdiction is not plenary, but is limited to those areas specifically granted by some law, rule, or regulation. *See* 5 U.S.C. § 7701(a); *Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985). Thus, the Board does not have jurisdiction over all actions that are alleged to be incorrect. *See, e.g., Weyman v. Department of*

Justice, 58 M.S.P.R. 509, 512 (1993). Moreover, as a limited-jurisdiction tribunal, the Board has an obligation to inquire into its own jurisdiction. *See, e.g., Rogers v. United States Postal Service*, 59 M.S.P.R. 647, 651 (1993).

Generally speaking, the Board holds appellate jurisdiction over adverse actions pursuant to 5 U.S.C. §7512. The adverse actions identified include as being subject to the Board's jurisdiction are (1) removals, (2) a suspension for more than fourteen days, (3) a reduction in grade, (4) a reduction in pay, and (5) a furlough of 30 days or less. See 5 U.S.C. § 7512. Here, Appellant does not identify any such adverse actions as being the basis of his appeal. (MSPB Form 185-2, Box 1)

The Agency also notes that even if the MSPB had jurisdiction over this appeal, it should be dismissed as untimely. The job offer complained of allegedly occurred on February 10, 2016. Per 5 C.F.R. § 1201.22(b)(1), Appellant had thirty (30) calendar days from the effective date of the action in question or the date Appellant received the offer, whichever is later, to submit any appeal to the MSPB. Appellant did not submit the current appeal at issue until February 2, 2018, seven hundred twenty-four (724) calendar days after the alleged offer.

As Appellant is not alleging an action that is under the purview of the Board, he is not bringing a claim that may be adjudicated under Chapter 75 of Title 5 U.S.C. Furthermore, he is almost seven hundred days past the deadline to file his appeal. As a result, the MSPB has no jurisdiction to hear this appeal. The Agency, therefore, respectfully requests that his appeal be dismissed.

Conclusion

The MSPB only has jurisdiction to consider the appeals that are of an adverse nature within its purview and that are timely filed. As Appellant is neither alleging an adverse action

under the relevant statute, and is drastically untimely with his appeal, the Agency moves that the Board dismiss this appeal for lack of jurisdiction.

Respectfully submitted,

/s/ *Devon L. Zebrovius*

Devon L. Zebrovius, Esq.
Assistant General Counsel
Defense Intelligence Agency

Certificate Of Service

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

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	Agency Motion to Dismiss for Lack of Jurisdiction	e-Appeal / e-Mail
Mike Webb Appellant	Agency Motion to Dismiss for Lack of Jurisdiction	e-Appeal / e-Mail