

MERIT SYSTEMS PROTECTION BOARD

DC-1221-16-0227-W-1

JOHN S. EDWARDS

v.

DEPARTMENT OF LABOR

REQUEST FOR REOPENING OF
FNAL DECISION OF MAY 5, 2022

2022 MSPB 9

The Board is requested to reopen its final decision.

In that decision the Board held that internal complaints by Mr. Edwards to agency management concerning discriminatory practices (also alleged in the jurisdictional submissions of Edwards as an abuse of authority) against co-workers were not protected by the WPA or WPEA. Rather, even though Edwards was not the victim of the discriminatory practices, the Board held he was relegated to the EEO processes described at 29 CFR Part 1614.

The Board's decision overturned its own contrary precedent as against the weight of authority of the Federal Circuit.

The Board's decision failed to reference or distinguish the Federal Circuit's

decision in *Smolinski v. MSPB*, 23 F.4th 1345 (2022), involving comparable circumstances, reversing the Board in part, and noting, at p. 1352:

Although § 2302 does not define abuse of authority, related whistleblower-protection statutes do. The statute that extends whistleblower protections to employees of defense contractors defines it, in pertinent part, as “[a]n arbitrary and capricious exercise of authority that is inconsistent with the mission of the Department of Defense.” 10 U.S.C. § 2409(g)(6)(1). Likewise, the statute that extends whistleblower protections to employees of other federal contractors defines it as “an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned.” 41 U.S.C. § 4712(g)(1). Applying those broader definitions to 5 U.S.C. § 2302, Dr. Smolinski’s allegations evidence an abuse of authority. For whatever the Army’s mission is, Col. Hudson’s alleged bullying and sexual harassment were inconsistent with it.

Reopening is appropriate, as here, for clear, material legal error. *Guenther v. USPS*, 68 MSPR 667, 670–71 (1995); *Woodall v. FERC*, 28 MSPR 192 (1985) (Board’s failure to recognize Federal Circuit precedential decision); 5 CFR 1201.118. Were *Smolinski* applied to the facts asserted by Mr. Edwards, the Board would be required to hold that he met his jurisdictional IRA requirements and remand for appellate adjudication at the regional Board office.

SERVICE

I certify that on this 16th day of May, 2022, service of this reopening request was made by fax to Agency counsel Rolando Valdez and Elizabeth Beason via the fax number for Mr. Valdez, 202-693-5311, in the absence of ability to file this pleading by options apparent through the Board’s e-filing system.

/s/ Peter Broida

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