

“This case is before the Board by petition for review of the initial decision of the administrative law judge, which dismissed the appellant’s individual right of action appeal for lack of jurisdiction. The three Board members have recused themselves from considering this matter.”

The appeal was assigned to an Administrative Law Judge, even though the appellant was not a Board employee, because the IRA appeal involved his whistleblower disclosure against MSPB, that it was violating 5 U.S.C. §1204(a)(3) as it had failed or refused, since its creation, to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”

That identical whistleblower disclosure is part of this IRA appeal, see pages 14-15 of appellant’s September 11, 2018 whistleblower disclosure to his supervision, included with his OSC complaint of December 6, 2018 that is the basis of this IRA appeal.

The Administrative Law Judge’s initial decision of November 6, 2014 states on page 2 that 5 U.S.C. §1204(a)(3) was the involved law. The initial decision did not rule on appellant’s “reasonable belief” in his whistleblower disclosure and neither did the Board’s Order of December 23, 2014 - instead, the Board, consistent with its regulation at 5 CFR §1210.13, consistent with the case being assigned to an ALJ, recused itself from reviewing his initial decision, because it involved a whistleblower disclosure against the Board itself - that it was violating its statutory duty at 5 U.S.C. §1204(a)(3) to the President and the Congress in failing or refusing, at that point for 35 years, to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”

Given this controlling Board precedent, the Appellant respectfully requests the appeal be assigned to an ALJ, per 5 U.S.C. §1201.13, even though he is not a Board employee.

The Appellant has included the initial decision and Final Board Order in Carson v. MSPB, docket no. AT-1221-14-0637-W-1.

Respectfully,

_____/s/_____
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