



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the General Counsel
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General Counsel

November 7, 2022

SENT VIA EMAIL (dhartnett@elitokandhartnett.com)

F. Douglas Hartnett
Elitok and Hartnett At Law, PLLC
1101- 30th Street, NW
Suite 500
Washington, D.C. 20007

RE: Correspondence sent on behalf of Joseph Carson, PE

Dear Mr. Hartnett:

The Merit Systems Protection Board (“MSPB”) is in receipt of your correspondence dated October 11, 2022, on behalf of Joseph Carson, PE, with the subject line “RE: Your statutory duty 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.*’ (5 U.S.C. § 1204(a)(3)).” This correspondence and your follow-up email dated November 2, 2022, were sent to the MSPB’s Office of the Clerk of the Board, which referred it to the MSPB’s Office of General Counsel for consideration and response.

As your letter acknowledges, for the past decade or more, Mr. Carson has litigated various claims before and against the MSPB relating to, among other things:

- his belief that the MSPB is not satisfactorily fulfilling its statutory duty pursuant to 5 U.S.C. § 1204(a)(3) to “conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and 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”;
- his belief that various individuals at the MSPB holding or previously holding adjudicatory and non-adjudicatory positions have a conflict of interest regarding his cases that mandates their recusal;
- his belief that these alleged conflicts of interest mandate that the MSPB assign his cases to be heard by an administrative law judge (“ALJ”) rather than an administrative judge (“AJ”); and
- his belief that the MSPB’s prior refusal to assign his cases to be heard by an ALJ was harmful error.

As your letter also acknowledges, Mr. Carson has not prevailed on any of these claims, including his judicial challenges in various United States circuit courts. *E.g.*, *Carson v. Merit Sys. Prot. Bd.*, 6th Cir. no. 20-3459 (May 17, 2021 opinion rejecting Mr. Carson’s claim that the MSPB erred in rejecting his conflict of interest contentions and declining to assign his appeal to an ALJ rather than an AJ); *Carson v. Merit Sys. Prot. Bd.*, D.C. Cir. no. 14-1306 (Oct. 6, 2015 order summarily affirming the MSPB’s dismissal for lack of jurisdiction, Mr. Carson’s whistleblower claims relating to the MSPB’s alleged failure to prepare studies required by 5 U.S.C. § 1204(a)(3)). These claims, and others which Mr. Carson pursued or could have pursued through the judicial process, have been finally adjudicated.

MSPB is prohibited by statute from issuing advisory opinions. 5 U.S.C. § 1204(h). Mr. Carson currently has no pending cases before the MSPB (nor are we aware of any cases he has pending against MSPB in the federal courts). An opinion on future recusal would be advisory and, therefore, prohibited. Should Mr. Carson file another case before MSPB, he may raise any relevant recusal arguments for consideration in that case.

Finally, MSPB has no statutory obligation to seek a legal opinion from the President or the Attorney General regarding “the proper interpretation and application of 5 U.S.C. § 1204(a)(3).”

Thank you for contacting the MSPB.

Sincerely,

A handwritten signature in blue ink that reads "Allison J. Boyle". The signature is fluid and cursive, with the first name being the most prominent.

Allison J. Boyle