

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

## United States Court of Appeals for the Federal Circuit

04-3055

WILFREDO TORRES,

Petitioner,

v.

MERIT SYSTEMS PROECTION BOARD,

Respondent.

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DECIDED: November 18, 2004

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Before GAJARSA, Circuit Judge, PLAGER, Senior Circuit Judge and LINN, Circuit Judge.

PER CURIAM.

This is an unusual circumstance where Mr. Torres had two separate and distinct cases pending before the Merit System Protection Board ("Board"). He believed he was appealing one case, Torres v. Dep't of Treasury, AT-0752-03-0155-I-1 (MSPB Initial Decision Jan. 23, 2003), and in actuality, he appealed the other, Torres v. Office of Pers. Mgmt., AT-0845-02-0431-I-1 (MSPB Sept. 22, 2003).

Mr. Torres appears to believe that he is appealing the case relating to his involuntary retirement and constructive removal claim against the Department of

Treasury. The case was dismissed for lack of jurisdiction. Torres, AT-0752-03-0155-I-1, slip op. at 1. However, he appealed the Board's dismissal for untimeliness of his appeal for denial of a pension overpayment waiver against the Office of Personnel Management. Torres, AT-0845-02-0431-I-1. Mr. Torres, therefore, appealed the wrong case. The respondent noted that Mr. Torres did not acknowledge the timeliness issue in his arguments, but did not advise this Court of Mr. Torres's failure to appeal the appropriate case.

In spite of the erroneous filing by Mr. Torres, we have reviewed the appealed matter relating to the Board's dismissal for untimeliness relative to the pension overpayment. Because Mr. Torres has failed to demonstrate that the Board's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence, this Court affirms the Board's decision.