NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

LADONNA COLLIER,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2025-1339

Petition for review of the Merit Systems Protection Board in No. NY-1221-23-0093-W-1.

Decided: September 17, 2026

LADONNA COLLIER, Staten Island, NY, pro se.

ELIZABETH W. FLETCHER, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by ALLISON JANE BOYLE, KATHERINE MICHELLE SMITH.

Before LOURIE, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

LaDonna Collier petitions for review of the Merit Systems Protection Board's final order affirming the dismissal of her whistleblower Individual Right of Action appeal for lack of jurisdiction. Because Ms. Collier fails to identify any reversible error or nonfrivolously allege that she made any protected disclosures under the Whistleblower Protection Act, we *affirm*.

I

In August 2021, Ms. Collier was appointed to a temporary position with the Small Business Administration as an Attorney Advisor in its Office of Disaster Assistance, Processing and Disbursement Center. During her tenure, Ms. Collier managed Economic Injury Disaster Loans (EIDLs) and conducted first-level reviews to flag possible illegal or fraudulent activity. Any files that she determined contained no fraudulent or illegal activity were sent to second-level investigators, called "Fixers," who would review the files and escalate further if necessary. At times, the Fixers disagreed with Ms. Collier's assessment of EIDL loan files. Ms. Collier reported some of these instances to her supervisors, suggesting that the Fixers failed to abide by internal policies, failed to report certain possibly fraudulent files, and erroneously reported other cases for fraud or other illegal activity. In April 2022, Ms. Collier filed a complaint with the Office of Special Counsel (OSC). Pertinent to this appeal, Ms. Collier reported her disagreements with several Fixers about their alleged wrongdoing.

On May 18, 2022, while OSC's investigation remained ongoing, the agency sent Ms. Collier a letter explaining that her temporary appointment was to expire on May 27, 2022, due to the agency ending its work with the project for which she was hired. After Ms. Collier's employment ended, in February 2023, OSC issued a final decision and closure letter.

On April 19, 2023, Ms. Collier then filed an Individual Right of Action (IRA) appeal with the Merit Systems

Protection Board alleging that the agency retaliated against her for making disclosures protected by the Whistleblower Protection Act (WPA). A week later, the administrative judge issued a jurisdiction order explaining the elements and burdens of proof for establishing the Board's jurisdiction over an IRA appeal. Ms. Collier submitted a response alleging that she had made several protected disclosures that led to the agency subjecting her to prohibited personnel practices from December 2021 through May 2022. On July 27, 2023, the administrative judge issued an initial decision dismissing Ms. Collier's appeal for lack of jurisdiction because she failed to nonfrivolously allege that she made any protected disclosures or engaged in protected activity that was a contributing factor to a covered personnel action. *See Collier v. Small Bus. Admin.*, No. NY-1221-23-0093-W-1, 2023 MSPB LEXIS 3868, at *1 (July 27, 2023) (*Initial Decision*).

Ms. Collier petitioned for review of the initial decision before the full Board. In October 2024, the Board issued a final decision denying her petition and affirming the initial decision as modified to supplement the initial decision's analysis. *Collier v. Small Bus. Admin.*, No. NY-1221-23-0093-W-1, 2024 MSPB LEXIS 6217, at *1 (Oct. 29, 2024) (*Final Decision*). Specifically, the Board modified the portions of the initial decision's rationale that relied on *Mc Corcle v. Dep't of Agric.*, 98 M.S.P.R. 363, ¶ 24 (2005). *See Final Decision*, 2024 MSPB LEXIS 6217, at *4–8.

In the initial decision, the administrative judge cited *Mc Corcle* to suggest that "an appellant's own personal complaints about how she was treated by the agency or mere debatable disagreements with the agency's policy decisions do not qualify as nonfrivolous disclosures of an abuse of authority." *Initial Decision*, 2023 MSPB LEXIS 3868, at *13 (cleaned up). On review, the Board explicitly overruled *Mc Corcle* and its progeny to the extent they "have held that a disclosure of an alleged abuse of authority is not protected simply because it involves personal

complaints or grievances about how the agency treated an appellant, without assessing whether it meets the definition of 'abuse of authority.'" *Final Decision*, 2024 MSPB LEXIS 6217, at *7. The Board concluded, however, that although the administrative judge relied on *Mc Corcle* for this overruled principle, that reliance was harmless because "the administrative judge nevertheless correctly addressed the issue of whether the appellant made a nonfrivolous allegation of an abuse of authority by applying the definition of abuse of authority to the allegations." *Id.* at *9. Accordingly, the Board denied Ms. Collier's petition and adopted the initial decision as its final decision as modified to eliminate reliance on *Mc Corcle*. *See id.* at *7–9. Ms. Collier timely appealed the Board's decision. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

II

We must affirm the Board's decision unless it is "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c). "Whether the Board has jurisdiction over a particular matter is a question of law that this court reviews de novo." *Kerrigan v. Merit Sys. Prot. Bd.*, 833 F.3d 1349, 1353 (Fed. Cir. 2016). The Board has jurisdiction over an IRA appeal if the appellant makes "'non-frivolous allegations' that (1) [s]he engaged in whistleblowing activity by making a protected disclosure under 5 U.S.C. § 2302(b)(8), and (2) the disclosure was a contributing factor in the agency's decision to take or fail to take a personnel action as defined by 5 U.S.C. § 2302(a)." *Yunus v. Dep't of Veterans Affs.*, 242 F.3d 1367, 1371 (Fed. Cir. 2001).

A

As a general matter, Ms. Collier argues that she nonfrivolously alleged that she disclosed gross mismanagement, an abuse of authority, and violations of law, rule, or

regulation under 5 U.S.C. § 2302(b)(8)(A).[1] A disclosure of information is protected under the WPA if the speaker "reasonably believes" it evidences "(i) any violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." 5 U.S.C. § 2302(b)(8)(A). We apply an objective test to determine whether an employee's belief is "reasonable." *Young v. Merit Sys. Prot. Bd.*, 961 F.3d 1323, 1328 (Fed. Cir. 2020). This court asks "whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee would reasonably conclude that the actions of the government evidence wrongdoing as defined by the Whistleblower Protection Act." *Id.* "A nonfrivolous allegation is an assertion that, if proven, could establish the matter at issue." 5 C.F.R. § 1201.4(s). "An allegation generally will be considered nonfrivolous when, under oath or penalty of perjury, an individual makes an allegation that: (1) Is more than conclusory; (2) Is plausible on its face; and (3) Is material to the legal issues in the appeal." *Id.*

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[1] Ms. Collier's initial appeal to the Board seemingly alleged ten separate protected disclosures, including four that she described as Protected Management Disclosures. *See Initial Decision*, 2023 MSPB LEXIS 3868, at *43–54. In her briefing to this court, however, she expressly waives any arguments related to these purported Protected Management Disclosures, and she claims that only her "6 Nonfrivolous and Protected Fixer Disclosures" form the basis of her whistleblower claims. Pet. Br. 13; *see also* Pet. Reply Br. 6 (stating the Board did not have jurisdiction over her "NFAP Management Disclosures"). Accordingly, any arguments pertaining to her Protected Management Disclosures are waived.

Like the Board, we conclude that Ms. Collier fails to nonfrivolously allege that she made a protected disclosure under the WPA. Ms. Collier's alleged disclosures are instances of discretionary policy decisions made by other agency employees that are insufficient to qualify for WPA protections unless the employee reasonably believes that the alleged disclosure evidences wrongdoing as described in 5 U.S.C. § 2302(a)(2)(D). For example, in disclosure (1), Ms. Collier claimed that a specific Fixer "failed to follow agency instructions to report an identity theft EIDL Loan file to the SIT/SEF Fraud Department after [he] expressly agreed to do so." S.A. 80.[2] But this amounts to a disagreement with how her colleagues exercised discretion with respect to the EIDL loan files they reviewed. And such allegations do not amount to non-frivolous disclosures under the WPA because "a communication concerning policy decisions that lawfully exercise discretionary authority" is not a disclosure unless the employee reasonably believes, under an objective test, that the disclosure evidences "(i) any violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." 5 U.S.C. § 2302(a)(2)(D). This is consistent with the principle that "[a] purely subjective perspective of an employee" does not establish an objective reasonable belief of such a violation because the WPA "is not a weapon in arguments over policy." *Lachance v. White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999). We agree with the Board that Ms. Collier's alleged disclosures and underlying evidence show a professional disagreement between agency employees. That is, Ms. Collier has not established that she made disclosures that "a disinterested observer with knowledge of the essential facts known to and readily ascertainable" by Ms. Collier could reasonably conclude

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[2] S.A. refers to the Supplemental Appendix filed by the government. ECF No. 38.

constitute the kinds of unlawful actions contemplated by the WPA. *See id.* Ms. Collier's remaining disclosures fail for the same reason. Accordingly, we find no error in the Board's determination that Ms. Collier failed to nonfrivolously allege that she made a protected disclosure as contemplated by the WPA.[3]

B

We briefly address Ms. Collier's arguments that both the administrative judge and full Board committed several legal and procedural errors. We conclude that Ms. Collier fails to identify any legal or procedural errors that warrant reversal.

Ms. Collier claims that the Board failed to provide her with a notice of deficiency before dismissing her claims, which she contends constitutes a due process violation. Pet. Br. 51–53. To the extent such a notice was even necessary given the agency's clear contention that jurisdiction was improper, we note that the administrative judge's jurisdictional order—which was issued in response to Ms. Collier's initial petition—informed her of the requirements to establish Board jurisdiction and notified her that the Board's jurisdiction was in question in her case. *See* S.A. 91–98; *Cahill*, 821 F.3d at 1375–76. Thus, the administrative judge adequately provided notice of any perceived

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[3] Because we agree with the Board that Ms. Collier failed to nonfrivolously allege that she made any protected disclosures under the WPA, we do not need to address whether the purported disclosures contributed to any retaliatory personnel action. *See Cahill v. Merit Sys. Prot. Bd.*, 821 F.3d 1370, 1373 (Fed. Cir. 2016) (noting that to establish Board jurisdiction, an appellant must make nonfrivolous allegations that (1) they made a protected disclosure *and* (2) the disclosure was a contributing factor in the agency's decision to take a personnel action).

deficiencies and provided Ms. Collier with an opportunity to cure them.

Ms. Collier also argues that the administrative judge applied an incorrect standard for assessing its jurisdiction. *See* Pet. Br. 31 (contending "the AJ abused her discretion by only quoting the first half of my jurisdictional burden of proof"). And she seemingly suggests that she was not required to prove the protected status of her disclosures "until the merits hearing," and thus it was error for the administrative judge and Board to assess whether her disclosures were protected under the WPA at the jurisdictional stage. *Id.* at 38. Not so. First, our caselaw makes it clear that "the threshold question of whether an appellant has invoked the Board's jurisdiction should be assessed under a 'non-frivolous allegation' standard analogous to the 'well-pleaded complaint rule.'" *Hessami v. Merit Sys. Prot. Bd.*, 979 F.3d 1362, 1367 (Fed. Cir. 2020) (citation omitted). And while we have made clear that the Board must "separate the issue of jurisdiction from that of the merits of a petitioner's case," *Piccolo v. Merit Sys. Prot. Bd.*, 869 F.3d 1369, 1371 (Fed. Cir. 2017) (citation omitted), whether there are non-frivolous allegations suggesting that the purported disclosures fall within the category of protected disclosures as defined by the WPA is not an improper assessment of the merits.

Finally, we address Ms. Collier's arguments that the administrative judge erred by quoting the agency's legal arguments in its decision and that the Board erred by "summarily affirm[ing] the AJ's copying and pasting." Pet. Br. 39–40. Ms. Collier claims that the administrative judge and Board failed to make an independent jurisdictional determination based on Ms. Collier's evidence. *See id.* at 39–41. Our caselaw makes it clear that "[t]he Board may not deny jurisdiction by crediting the agency's interpretation of the evidence as to whether the alleged disclosures fell within the protected categories or whether the disclosures were a contributing factor to an adverse personnel action."

Hessami, 979 F.3d at 1369. But the administrative judge did not improperly credit the agency's interpretation of evidence. Rather, the administrative judge presented the agency's arguments and explained why those arguments were persuasive. *See generally Initial Decision*, 2023 MSPB LEXIS 3868, at *15–60. Despite the vagueness of Ms. Collier's purported disclosures, the Board conducted a thorough, independent review of her claims and provided a comprehensive decision explaining that Ms. Collier failed to nonfrivolously allege that she reasonably believed that she made a protected disclosure under the WPA. Ms. Collier fails to identify any error by the administrative judge or the full Board that would warrant reversal.

III

We have considered the remainder of Ms. Collier's arguments and find them unpersuasive. For the foregoing reasons, we *affirm* the Board's dismissal of her IRA appeal for lack of jurisdiction.

AFFIRMED

COSTS

No costs.