NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ROCHELLE WILSON,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2025-1626

Petition for review of the Merit Systems Protection Board in No. DC-0752-21-0025-I-2.

Decided: September 17, 2026

MICHAEL FALLINGS, Tully Rinckey PLLC, Austin, TX, for petitioner.

ANNA BONDURANT ELEY, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent. Also represented by ALBERT S. IAROSSI, PATRICIA M. MCCARTHY, KRISTIN ELAINE OLSON, BRETT SHUMATE.

Before DYK, LINN, and CHEN, *Circuit Judges*.

PER CURIAM.

Rochelle Wilson petitions for review of a final order of the Merit Systems Protection Board (Board) affirming her removal from her position with the Office of Personnel Management (OPM). *Wilson v. Off. of Pers. Mgmt.*, No. DC-0752-21-0025-I-2, 2025 WL 568559 (M.S.P.B. Feb. 19, 2025) (*Decision*). For the reasons discussed below, we *affirm*.

BACKGROUND

Ms. Wilson was employed as a GS-13 Human Resources (HR) Specialist in OPM's Office of the Chief Information Officer (OCIO) Records Management Division since January 2010. Ms. Wilson became a steward of the American Federation of Government Employees, Local 32 (Union) in 2014 and was a member of a 2015 OCIO reorganization committee.

Ms. Wilson's job duties included processing former federal employees' personnel record Privacy Act requests, which required access to OPM's Electronic Official Personnel Folder (eOPF) system. The eOPF system allowed Ms. Wilson to view and correct employees' individual eOPFs. The eOPFs contained personal information, such as home addresses, social security numbers, dates of birth, compensation and retirement plans, life insurance coverage, performance appraisals, awards, and disciplinary actions.

In June 2015, Ms. Wilson's supervisor learned that Ms. Wilson had accessed records beyond the scope of her assigned duties. A subsequent investigation revealed that there were 95 separate instances between July 2014 and May 2015 in which Ms. Wilson had accessed the eOPF records of 15 employees without authorization. In order to view any document within an employee's eOPF, Ms. Wilson was required to select one of nine valid reasons for accessing the document. In each instance, Ms. Wilson had

selected "Non-eOPF transfer," referring to an instance when an employee moves to another agency. None of the 95 searches involved employees moving to another agency.

On September 16, 2020, OPM issued a decision authored by the agency's deciding official, Ms. Martorana, to remove Ms. Wilson from her employment. J.A. 203. Three charges were sustained: unauthorized use of the eOPF system; violating OPM's security and privacy policy; and providing sensitive personnel information to a third party, the Union.

Ms. Wilson sought Board review of her removal. On December 4, 2023, the administrative judge (AJ) issued an initial decision affirming OPM's removal decision. J.A. 2204–46. The AJ sustained and merged the charges of unauthorized use of the eOPF system and violation of the OPM security and privacy policy, but did not sustain the charge of providing sensitive personnel information to the Union. *Id.* at 2246.

Ms. Wilson filed a petition for review of the AJ's initial decision before the full Board, which denied her petition and affirmed the initial decision. *Decision*, 2025 WL 568559, at *1. Ms. Wilson then timely filed a petition for review of the Board's final decision. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(9).

DISCUSSION

We must affirm the Board's decision unless we find that it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" "obtained without procedures required by law, rule, or regulation having been followed;" or "unsupported by substantial evidence." 5 U.S.C. § 7703(c).

Ms. Wilson challenges five of the Board's findings: (1) Ms. Wilson was engaged in the alleged misconduct; (2) there was a nexus between Ms. Wilson's misconduct

and the efficiency of the service; (3) removal was a reasonable penalty; (4) the agency would have removed Ms. Wilson even in the absence of her protected disclosures and activity; and (5) Ms. Wilson was not removed due to retaliation for her union activity in violation of 5 U.S.C. § 2302(b)(9)(A). We find all of Ms. Wilson's challenges unpersuasive.

First, Ms. Wilson argues that her access and disclosure of information was authorized. She states that every individual whose record she accessed was the subject of a request. However, the Board's contrary finding is supported by substantial evidence. The AJ noted that there was a lack of support for Ms. Wilson's assertions—the agency's search yielded no documented requests for any of the eOPFs accessed during the relevant time frame. J.A. 2222–23. Further, the AJ found that Ms. Wilson's testimony "strained credulity," and that she "offered conflicting and often tortuous explanations for her actions in terms of having accessed the eOPF records contained in the agency's specifications." *Id.* at 2220, 2222. These credibility determinations are "virtually unreviewable on appeal." *Briley v. Nat'l Archives & Recs. Admin.*, 236 F.3d 1373, 1377 (Fed. Cir. 2001) (internal quotations omitted).

Second, Ms. Wilson challenges the AJ's finding of a nexus between her misconduct and the efficiency of service. To demonstrate nexus, it must be shown that the employee's misconduct is likely to have an adverse impact on the agency's performance of its functions. *Brown v. Dep't of the Navy*, 229 F.3d 1356, 1358 (Fed. Cir. 2000). The AJ reasonably found that it was "abundantly clear" that Ms. Wilson's "actions directly related to her job duties" and "adversely affect[ed] the agency's mission." J.A. 2241. The AJ explained an inherent nexus exists between misuse of government resources, like the eOPF system, and the efficiency of service. *Id.*

Third, Ms. Wilson argues that the penalty of removal was not appropriate. She states that the Board failed to strike a responsible balance of the *Douglas* factors within tolerable limits of reasonableness. *See Douglas v. Veterans Admin.*, 5 M.S.P.R. 280, 305–06 (1981). We disagree. The AJ credited testimony of Ms. Martorana, who described Ms. Wilson's unauthorized 95 searches within 10 months as "quite troubling." J.A. 2243. In light of the misconduct and "extreme lack of judgment," Ms. Martorana testified that she could no longer trust Ms. Wilson to access sensitive information or the secure OCIO systems. *Id.* at 2244. Ms. Martorana considered lesser penalties, but ultimately concluded that they would be inadequate to address Ms. Wilson's "severe and pervasive" misconduct. *Id.* Considering this record, we discern no reversible error in the Board's analysis of the *Douglas* factors.

Fourth, Ms. Wilson challenges the Board's finding that the agency would have removed Ms. Wilson even in the absence of her protected disclosures and activities. Ms. Wilson claims that the Board improperly assessed the *Carr* factors. *See Carr v. Soc. Sec. Admin.*, 185 F.3d 1318, 1323 (Fed. Cir. 1999). However, the AJ's analysis of the *Carr* factors was supported by substantial evidence. The AJ found *Carr* factor 1, the strength of the agency's action, to weigh in favor of the agency, due to the evidence demonstrating the seriousness and breadth of Ms. Wilson's misconduct. J.A. 2236. Under *Carr* factor 2, the AJ reasonably found the retaliatory motive of the agency to be limited, as none of the agency officials involved in the removal decision were directly implicated by Ms. Wilson's disclosures or activities. *Id.* at 2237. The AJ found no relevant evidence of *Carr* factor 3, comparator evidence, so that factor was neutral. *Id.* at 2238. The AJ reasonably found that on balance, the *Carr* factors demonstrated by clear and convincing evidence that the agency would have removed Ms. Wilson even in the absence of her protected disclosures and activities. *Id.* Ms. Wilson further takes issue with her removal,

claiming that she was "completely exonerated" in an investigation by the Office of Inspector General (OIG). But as the AJ noted, the OIG report was "deeply flawed," and in fact, its severe deficiencies were testified to by two agency employees. *Id.* at 2245.

Finally, Ms. Wilson claims that the Board erred in determining that she was not removed for union activity, arguing that she established a nexus between her union activity and the removal decision. Ms. Wilson states that her supervisors were aware of her union activity, and her removal decision repeatedly referenced her union activities. Yet the AJ found nothing in the record to adequately support the conclusion that Ms. Wilson's union activity played a role in the decision-making of her removal. The AJ credited testimony that demonstrated Ms. Wilson's removal was "wholly unrelated to any union activity" but instead due to Ms. Wilson "ha[ving] accessed sensitive . . . information within the eOPF system on multiple occasions." *Id.* at 2240.

We conclude that the Board's findings are supported by substantial evidence.

CONCLUSION

We have considered Ms. Wilson's remaining arguments and find them unpersuasive.[1] For the foregoing reasons, we affirm the decision of the Board.

AFFIRMED

COSTS

No costs.

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[1] This includes arguments submitted by Ms. Wilson in her Memorandum in Lieu of Oral Argument. ECF No. 43.