NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

NEIL D. SURTI,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2025-1746

Petition for review of the Merit Systems Protection Board in No. PH-0752-25-0136-I-1.

Decided: September 9, 2026

NEIL SURTI, Absecon, NJ, pro se.

STEPHEN FUNG, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by KATHERINE MICHELLE SMITH.

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

PER CURIAM.

Neil Surti petitions for review of a final decision of the Merit Systems Protection Board ("Board"). The Board dismissed Mr. Surti's appeal of his paid suspension, concluding that it lacked jurisdiction to adjudicate a paid suspension as an adverse action and that Mr. Surti had not made nonfrivolous allegations of protected whistleblowing activity. We *affirm*.

BACKGROUND

Mr. Surti is an electronics engineer employed by the Federal Aviation Administration ("agency") within the Department of Transportation. On July 27, 2024, the agency notified Mr. Surti that it was placing him on paid administrative leave. The agency imposed the leave in connection with an allegedly threatening email Mr. Surti sent to a supervisor, and Mr. Surti's subsequent failure to report for an investigatory interview. Following a 30-day unpaid suspension period (which is not challenged in this petition for review), the agency again placed Mr. Surti on paid administrative leave beginning November 15, 2024.

Mr. Surti filed an appeal with the Board challenging his placement on administrative leave. According to Mr. Surti, it was improper to discipline him based on his supervisors' subjective impressions of his email without a determination that his email would be objectively viewed as threatening. Mr. Surti claimed that his continuing placement on leave since November 15, 2024, amounted to a constructive suspension appealable to the Board. Mr. Surti also asserted that his placement on leave was in retaliation for protected whistleblowing disclosures.

An administrative judge ("AJ") of the Board issued an initial decision dismissing Mr. Surti's appeal for lack of jurisdiction. The AJ concluded Mr. Surti had not pled facts supporting constructive suspension because he had not alleged that the leave was unpaid or that the agency had required him to use sick leave or annual leave. The AJ

construed Mr. Surti's allegation of whistleblower retaliation as an individual right of action ("IRA") appeal but determined that Mr. Surti failed to nonfrivolously allege whistleblower retaliation.

Neither party filed for review of the initial decision by the full Board, and the initial decision became the final decision of the Board on April 4, 2025. Mr. Surti timely petitions for review by this court, and we have jurisdiction under 28 U.S.C. § 1295(a)(9).

DISCUSSION

The Board's determination of its jurisdiction is a question of law that we review de novo. *Tavakkol v. Merit Sys. Prot. Bd.*, 175 F.4th 1360, 1365 (Fed. Cir. 2026). A petitioner must make nonfrivolous allegations that, if proven, would establish jurisdiction. *Coradeschi v. Dep't of Homeland Sec.*, 439 F.3d 1329, 1332 (Fed. Cir. 2006).

Mr. Surti first argues that his being placed on paid administrative leave amounts to a constructive suspension. However, placement on paid administrative leave is not an adverse action appealable to the Board under 5 U.S.C. § 7512 where, as here, the employee was not required to use sick or annual leave. *Henry v. Dep't of Navy*, 902 F.2d 949, 954 (Fed. Cir. 1990).[1] The Board did not err in concluding that Mr. Surti failed to nonfrivolously allege constructive suspension.

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[1] According to Mr. Surti, the Board "has jurisdiction to review claims of constructive suspension where an employee is barred from duty for more than 14 days, even if in a paid status [and] even if not forced to use 'enforced leave' when that absence is not voluntary." Appellant's Informal Br. 5 (citing *Abbott v. U.S. Postal Serv.*, 121 M.S.P.R. 294 (2014); *Perez v. Dep't of Just.*, 480 F.3d 1309 (Fed. Cir.

Mr. Surti next argues that he nonfrivolously alleged retaliation for protected whistleblowing disclosures.[2] *See* 5 U.S.C. § 2302(b)(8). Before the Board, Mr. Surti identified three alleged protected whistleblower disclosures: (1) an EEOC complaint alleging discrimination; (2) a 2022 union grievance; and (3) a 2024 investigatory interview.

As to the EEOC complaint, the Board concluded that Mr. Surti's EEOC complaint regarding discrimination was not protected whistleblowing activity. IRA jurisdiction includes allegations of retaliation for whistleblowing or for whistleblowing-related grievances but excludes retaliation for other grievances, such as grievances alleging discrimination. *Young v. Merit Sys. Prot. Bd.*, 961 F.3d 1323, 1329 (Fed. Cir. 2020). The Board correctly determined that the EEOC complaint could not be the basis of IRA jurisdiction.[3]

As to the 2022 union grievance and 2024 investigatory interview, the Board concluded that Mr. Surti made only conclusory assertions that he made protected disclosures.

2007)). However, *Abbott* involved a petitioner who was required to take leave during the period of her suspension, 121 M.S.P.R. at 297–98 ¶¶ 6, 9, and in *Perez*, the petitioner was suspended without pay, 480 F.3d at 1310, 1313 (leaving open the question whether petitioner was entitled to back pay for his indefinite suspension). Neither case supports Mr. Surti's contention that paid leave without requiring the use of leave time is a constructive suspension.

[2] Though not an adverse action under section 7512, placement on paid administrative leave is a personnel action for the purposes of an IRA appeal. 5 U.S.C. § 2302(a)(2)(A); *see Chambers v. Dep't of Interior*, 602 F.3d 1370, 1382 n.11 (Fed. Cir. 2010).

[3] Mr. Surti waives his claims of discrimination as required to proceed with review at this court. Dkt. No. 21.

The Board looked to Mr. Surti's settlement agreement related to the 2022 union grievance and determined that the agreement provided "no detail about the allegations raised in the grievance." S. App'x 5 (citing S. App'x 141).[4] The Board also examined an "agent statement" regarding the 2024 investigatory interview and observed that it did not describe the nature of the interview. S. App'x 5–6 (citing S. App'x 149). We agree with the Board that Mr. Surti failed to supply any information on the content of either the 2022 union grievance or the 2024 investigatory interview and failed to establish a nonfrivolous allegation of protected disclosures. As Mr. Surti identifies no relevant evidence that the Board overlooked, we see no error in the Board's conclusion that he failed to establish IRA jurisdiction.

We have considered Mr. Surti's remaining arguments and find them unpersuasive.

AFFIRMED

COSTS

No costs.

[4] Citations to "S. App'x" refer to the Supplemental Appendix submitted by the Respondent. Dkt. No. 28.