

66 Fed.Appx. 887

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. Fed. Cir. Rule 32.1.

United States Court of Appeals,
Federal Circuit.

Geral W. **SOSBEE**, Petitioner,

v.

MERIT SYSTEMS PROTECTION
BOARD, Respondent.

No. 03–3057.

I

June 5, 2003.

Synopsis

Employee appealed initial decision by Office of Personnel Management (OPM) rejecting his request that OPM include credit for service as law enforcement officer in computing his retirement annuity. OPM moved to dismiss appeal for lack of jurisdiction. The Merit Systems Protection Board (MSPB), 93 M.S.P.R. 307, granted motion. Employee sought review. The Court of Appeals held that because employee had not requested reconsideration, OPM decision was not final and appealable.

Affirmed.

West Headnotes (2)

[1] **Public Employment** 🔑 Finality;
interlocutory review

United States 🔑 Administrative Proceedings

While Office of Personnel Management (OPM) decision relating to retirement is appealable to Merit Systems Protection Board (MSPB), under OPM's implementing regulations, MSPB cannot entertain appeal unless and until OPM has issued final reconsideration decision. 5 U.S.C.A. § 8347(d)(1); 5 C.F.R. §§ 831.109, 831.110.

[2] **Public Employment** 🔑 Finality;
interlocutory review

United States 🔑 Administrative Proceedings

Merit Systems Protection Board (MSPB) lacked jurisdiction over employee's appeal from Office of Personnel Management (OPM) decision rejecting his request that credit for his service as law enforcement officer be included in computing his retirement annuity; OPM had issued letter ruling which it described as its "initial decision" and had explained to employee the procedure for seeking reconsideration and told him it would issue final decision after it received his request for reconsideration, but employee had not made such a request. 5 U.S.C.A. § 8347(d)(1); 5 C.F.R. §§ 831.109, 831.110.

*888 Before **NEWMAN**, Circuit Judge, **FRIEDMAN**, Senior Circuit Judge, and **SCHALL**, Circuit Judge.

DECISION

PER CURIAM.

**1 The decision of the Merit Systems Protection Board ("Board"), dismissing for lack of jurisdiction a petition to review a decision of the Office of Personnel Management ("OPM"), is affirmed.

OPINION

I

The petitioner Geral W. **Sosbee** requested OPM to include credit for service as a law enforcement officer in computing his retirement annuity. In a letter, which it described as its "initial decision," OPM rejected his claim. It told **Sosbee**, however:

If you wish to dispute our findings, you may request reconsideration.... After receipt of your request for reconsideration[], OPM will issue a final decision in this

matter. If you disagree with OPM's final decision, you can appeal to the Merit Systems Protection Board (MSPB). You may appeal to the MSPB only after OPM has issued a final decision.

Sosbee did not request reconsideration. Instead, he appealed OPM's initial decision to the Board. OPM moved to dismiss the appeal for lack of jurisdiction, because the agency had not issued a final decision. In its motion to dismiss, OPM stated: "Once the appeal is dismissed OPM will issue a reconsideration decision."

In an initial decision, which became final when the Board refused to review it, the Board's administrative judge dismissed the appeal for lack of jurisdiction. *Sosbee v. Office of Pers. Mgmt.*, No. SF-0831-02-0133-I-1, 2002 WL 31189315 (M.S.P.B. Jan.2, 2002). He ruled:

Under 5 C.F.R. § 831.110, only *final* Office of Personnel Management decisions regarding retirement matters may be appealed to the Board. Here, the appellant has not established that the agency has issued a final, reconsideration decision in this matter.

Id. at *2.

The administrative judge stated that although **Sosbee** alleged that "OPM issued a final decision/order but did so in secret and never notified Appellant [,]' [h]e submitted nothing in support of that statement." *Id.*

II

[1] Under the governing statute, the Board's jurisdiction is limited to reviewing "any action which is appealable to [it] under any law, rule or regulation." 5 U.S.C. § 7701(a) (2000). An OPM decision relating to retirement is appealable to the Board. *Id.* § 8347(d)(1). Under OPM's implementing regulations, the Board cannot entertain an appeal under

that provision unless and until OPM has issued a final reconsideration decision. See 5 C.F.R. §§ 831.109, 831.110 (2002); *Preece *889 v. Dep't of the Army*, 50 M.S.P.R. 222, 226 (1991); *Dragonette v. Office of Pers. Mgmt.*, 71 M.S.P.R. 384, 386 (1996).

[2] The record shows that OPM has issued only an initial, but not a final decision on **Sosbee's** claim for law enforcement officer credit. In its letter ruling to **Sosbee**, which it described as its "initial decision," OPM explained to him the procedure for seeking reconsideration and told him that "after it received" his "request for reconsideration," "OPM will issue a final decision in this matter. If you disagree with OPM's final decision, you can appeal to the Merit Systems Protection Board (MSPB). You may appeal to the MSPB only after OPM has issued a final decision." **Sosbee** does not contend that he requested such reconsideration. Although he stated in an amendment to his petition for review that "OPM issued a final decision/order but did so in secret and never notified Appellant," he provided no factual basis or support for that contention. Since OPM had not issued a final decision on his claim, the Board properly dismissed his appeal for lack of jurisdiction.

2 **Sosbee makes a number of other contentions, including that the Board failed to consider his claims of violation of the Americans with Disabilities Act and "prima facie evidence of bad faith and criminal retaliation against Petitioner by the FBI as set forth in Petitioner's website." The only issue before this court, however, is whether the Board properly dismissed **Sosbee's** appeal because OPM had not yet issued a final decision on his claim for law enforcement officer credit. **Sosbee's** alternative arguments are irrelevant to that claim, and we therefore do not consider them.

All Citations

66 Fed.Appx. 887, 2003 WL 21297188

Filings (1)


Title	PDF	Court	Date	Type
1. Docket 03-3057 SOSBEE v. MSPB	—	C.A.Fed.	Nov. 25, 2002	Docket

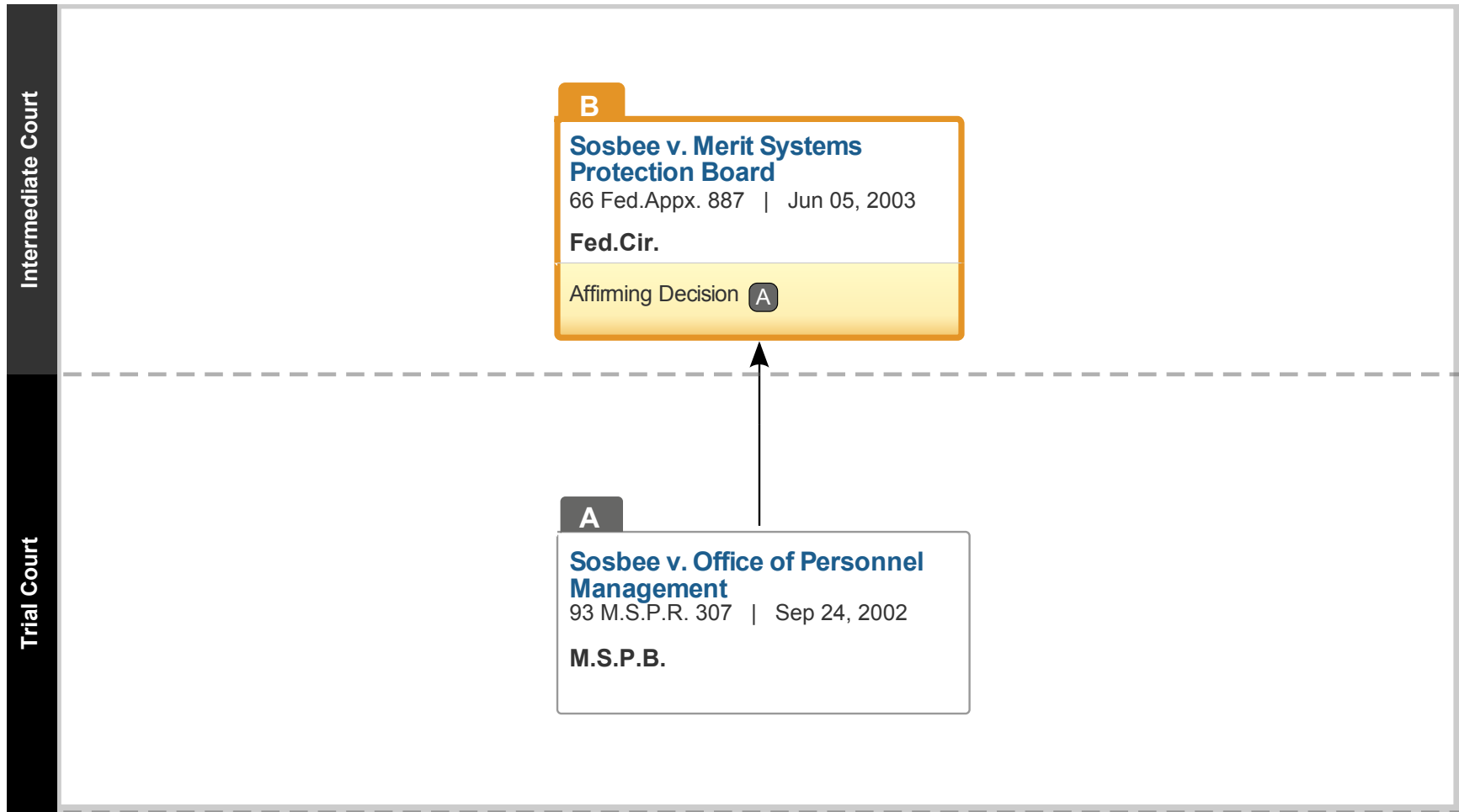
History (2)

Direct History (2)

1. [Sosbee v. Office of Personnel Management](#)
93 M.S.P.R. 307 , M.S.P.B. , Sep. 24, 2002

Decision Affirmed by




2. [Sosbee v. Merit Systems Protection Board](#) 
66 Fed.Appx. 887 , Fed.Cir. , June 05, 2003



Citing References (1)

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<p>1. Westlaw MSPB Compliance Newsletter MSPB Compliance Newsletter July 2003 The U.S. Office of Special Counsel (OSC) announced on June 20, 2003 that -- on the basis of the results of an OSC investigation -- the...</p>	2003	Other Secondary Source	—	—

Table of Authorities (3)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Mentioned	<p>1. Dragonette v. Office of Personnel Management 71 M.S.P.R. 384, M.S.P.B., 1996 Office of Personnel Management (OPM) petitioned for review of initial decision that reversed its reconsideration decision. The Merit Systems Protection Board held that order...</p>	Case			889
Mentioned	<p>2. Preece v. Department of Army 50 M.S.P.R. 222, M.S.P.B., 1991 Employee filed petition for appeal of decision of the Office of Personnel Management (OPM) granting disability retirement application initiated by agency. The administrative...</p>	Case			888
Decision Affirmed	<p>3. Sosbee v. Office of Personnel Management 93 M.S.P.R. 307, M.S.P.B., 2002 Denied.</p>	Case			888+

Negative Treatment

There are no Negative Treatment results for this citation.