
APPENDIX A

NOTE: This disposition is nonprecedential.
United States Court of Appeals
for the Federal Circuit

ROSE ANN KIMBLE-DAVIS,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2023-1881

Petition for review of the Merit Systems Protection
Board in No. PH-0831-16-0365-I-1.

Decided: March 18, 2024

ROSE ANN KIMBLE-DAVIS, Reading, PA, pro se.
IOANA C. MEYER, Commercial Litigation Branch,
Civil
Division, United States Department of Justice,
Washington,
DC, for respondent. Also represented by BRIAN M.
BOYNTON, PATRICIA M. MCCARTHY, CORINNE
ANNE NIOSI.

Before PROST, BRYSON, and STARK, *Circuit
Judges.*

PER CURIAM.

Case: 23-1881 Document: 36 Page: 1 Filed:
03/18/2024
2 DAVIS v. OPM

Rose Kimble-Davis, the ex-wife of Harvey Kimble, a deceased federal employee, appeals the decision of the Merit Systems Protections Board (the “Board”) finding her not entitled to certain retirement benefits. Because substantial evidence supports the Board’s finding that Ms. Kimble-Davis did not establish she is entitled to the benefits, we affirm.

I

Ms. Kimble-Davis and Mr. Kimble married in 1979. Mr. Kimble worked for the United States Postal Service from March 1983 until January 2014, when he passed away. On June 30, 2006, Ms. Kimble-Davis and Mr. Kimble entered into a post-nuptial agreement, and on September 20, 2007 they divorced. Their agreement provided that both waived any right to each other’s pension or retirement plans.

When Mr. Kimble died, Doris Kimble, his daughter, applied for, and received, Mr. Kimble’s lump-sum death benefits under 5 U.S.C. §§ 8342(b)-(d). *See Rose Ann Kimble-Davis v. Off. of Pers.*

Mgmt., No. PH-0831-16-0365-I-1, 2017 WL 2936603, at *2 (M.S.P.B. July 5, 2017) (“*Decision*”).¹

1

Ms. Kimble-Davis also filed an application for death benefits, in which she stated she “may be listed as a beneficiary for benefits and/or a beneficiary by operation of law.” S.A. 1.² The Office of Personnel Management (“OPM”) denied her application because the Kimbles’ divorce agreement did not provide for survivor benefits. Ms. Kimble-Davis requested reconsideration on the grounds that the divorce decree was not valid and, therefore, she was still married to Mr. Kimble. OPM determined the divorce decree was still in effect, according to applicable state law, and that Ms. Kimble-Davis had not shown she was entitled to former spouse survivor benefits. OPM also pointed to the post-nuptial agreement, which provided that each party released its claim to the other party’s pension.

Ms. Kimble-Davis appealed OPM’s decision to the Board, arguing again that her divorce was not valid. She also argued that she had not been mentally competent when she signed the post-nuptial agreement and further speculated that Mr.

¹ Citations to page numbers in the *Decision* correspond to the page numbers of the copy of *Decision* in Ms. Kimble-Davis’ informal appendix.

² References to the S.A. refer to government’s supplemental appendix.

Kimble had likely designated her as a beneficiary in documents held by OPM.

The Board held that Ms. Kimble-Davis had not established she was entitled to a former spouse survivor annuity. First, the Board found there was no evidence that Mr. Kimble had elected any survivor annuity – because he had not applied for retirement – and there were no documents indicating he had otherwise elected a survivor annuity. Second, the Board determined that even if there had been a pre-divorce election, the post-nuptial agreement and divorce decree expressly provided that Ms. Kimble-Davis released all claims to Mr. Kimble’s pension and retirement plans. Third, the Board concluded that it could not set aside the state court’s divorce decree as that matter was governed by state law and, hence, outside the scope of the Board’s authority.

Ms. Kimble-Davis filed a petition for review by the full Board. The Board issued a final decision on March 30, 2023, finding that she “has not established any basis under [5 C.F.R. § 1201.115] for granting the petition for review.” *Kimble-Davis v. Off. of Pers. Mgmt.*, No. PH-0831-16-0365-I-1, 2023 WL 2715688, at *1 (M.S.P.B. Mar. 30, 2023). Ms. Kimble-Davis then timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

II

“We must affirm the Board’s decision unless it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained

without procedures required by law, rule or regulation; or unsupported by substantial evidence.” *Hernandez v. Off. of Pers. Mgmt.*, 450 F.3d 1332, 1334 (Fed. Cir. 2006); *see* 5 U.S.C. § 7703(c).

When a federal employee eligible for retirement dies while still employed, the late employee’s former spouse is eligible for a survivor annuity if (a) the employee elected one pursuant to 5 U.S.C. § 8339(j)(3) within two years of the dissolution of the marriage, or (b) if a court order entered in the context of a divorce – a divorce decree, property settlement agreement, or other – makes specific reference to such benefits, *see* 5 U.S.C. §§ 8341(d)(2)(B), (h)(1). *See also* 5 C.F.R. § 838.912(a); *Dachniwskyj v. Off. of Pers. Mgmt.*, 713 F.3d 99, 102 (Fed. Cir. 2013); *Vaccaro v. Off. Of Pers. Mgmt.*, 262 F.3d 1280, 1284 (Fed. Cir. 2001). “Divorce generally terminates a prior election of spousal survivor benefits.” *Dachniwskyj*, 713 F.3d at 102 (citing 5 U.S.C. § 8339(j)(5)(A)(ii)). The election of a former spouse survivor annuity under 5 U.S.C. § 8341(h)(1) must be “expressly provided for” in the court order entered as part of the divorce. *Downing v. Off. of Pers. Mgmt.*, 619 F.3d 1374, 1377 (Fed. Cir. 2010).

Ms. Kimble-Davis argues on appeal that OPM’s publications indicate that a divorce does not affect a prior designation of a beneficiary for retirement lump sum benefits, and further that no one has shown she was not a designated beneficiary. She relies in part on an OPM publication stating “[a] divorce does not affect a designation of beneficiary

that was filed at some earlier time.” Informal Br. at 6; *id.* at Exhibit A, p. 9. She also contends that OPM treated her case as a surviving spouse case, indicating that she was, in fact, a designated beneficiary.

The Board’s contrary findings, that Ms. Kimble-Davis failed to demonstrate that Mr. Kimble ever designated her as a beneficiary or that she is a surviving spouse, is supported by substantial evidence. As the Board found, there is “no indication in this record that Mr. Kimble made any written election to provide the appellant with a survivor annuity during their marriage.” *Decision*, at *4. We reject Ms. Kimble-Davis’ suggestion that OPM was required to prove she was not Mr. Kimble’s beneficiary. Instead, in an action for a survivor annuity, the “burden of proving entitlement [is] on the applicant for benefits.” *Cheeseman v. Off. of Pers. Mgmt.*, 791 F.2d 138, 141 (Fed. Cir. 1986); *see also Harris v. Dep’t of Veterans Affs.*, 142 F.3d 1463, 1467 (Fed. Cir. 1998) (“The petitioner bears the burden of establishing error in the Board’s decision.”). Ms. Kimble-Davis has at no point identified any evidence demonstrating that she had been designated Mr. Kimble’s beneficiary.³ Instead, she relies entirely on her status as his former spouse, which is insufficient.

³ For this reason, and also because she did not raise the issue with OPM or the Board, the OPM publications do not provide Ms. Kimble-Davis a basis for relief. *See Synan v. Merit Sys. Prot. Bd.*, 765 F.2d 1099, 1101 (Fed. Cir. 1985) (“Petitioner cannot raise

Moreover, even if Mr. Kimble had elected a survivor annuity prior to the divorce, that election would have been terminated by his failure to expressly provide for it in a court order as part of the divorce. *See Warren v. Off. Of Pers. Mgmt.*, 407 F.3d 1309, 1313 (Fed. Cir. 2005). Under the applicable statutory provisions, without a specific election after dissolution of a marriage, a former spouse is not entitled to a survivor annuity except to the extent provided for in a specific court order entered as part of a divorce proceeding. *See* 5 U.S.C. §§ 8339(j)(5)(A)(ii), 8341(h). The record contains no evidence of such an order.

Finally, while Ms. Kimble-Davis does not before us press her contention that her divorce decree is invalid, she offers a related, new argument: because OPM treated this dispute as a surviving spouse case, she should be considered a surviving spouse. Because this argument was not made to the Board, it is forfeited. *See Wallace v. Dep't of Air Force*, 879 F.2d 829, 832 (Fed. Cir. 1989). Regardless, even if OPM had treated this as a surviving spouse case, that mistake would not make up for the absence of a divorce decree providing for a survivor annuity. *See Off. Of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 416-17, 419-20 (1990) (holding that erroneous government advice does not trump statutory language).

before this court an issue which could have been raised below but which was not.”).

III

We have considered Ms. Kimble-Davis' other arguments and find them unpersuasive. For the reasons stated above, we affirm the Board's decision.

AFFIRMED

COSTS

No costs.

APPENDIX B

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
NORTHEASTERN REGIONAL OFFICE

ROSE ANN KIMBLE-DAVIS,
Appellant,

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DOCKET NUMBER
PH-0831-16-0365-I-1
DATE: July 5, 2017

Rose Ann Kimble-Davis, Reading, Pennsylvania, pro
se.

Tynika Faison Johnson, Washington, D.C., for the
agency.

BEFORE
Craig A. Berg
Administrative Judge

INITIAL DECISION

INTRODUCTION

The appellant filed a timely petition appealing OPM's June 2, 2016 final decision finding that she had not established her entitlement to a survivor annuity under the Civil Service Retirement System (CSRS) as the former spouse of Harvey W. Kimble. Initial Appeal File (IAF), Tab 1. The Board has jurisdiction over this appeal under 5 U.S.C. § 8347(d)(1) and 5 C.F.R. § 831.110. The appellant declined a hearing, and therefore this appeal will be decided on the written record. For the reasons discussed below, OPM's final decision is **AFFIRMED**.

ANALYSIS AND FINDINGS

Background

The underlying facts in this case appear largely undisputed:⁴ The appellant and Mr. Kimble were married in 1979, and Mr. Kimble was employed by the U.S. Postal Service beginning in 1983. While Mr. Kimble was employed with the Postal Service, in 2007, the appellant and Mr. Kimble divorced. IAF, Tab 7 (Agency File) at 13. They entered into a Post Nuptial agreement dividing their property, including waiving any right to each other's respective interests in their pension plans. *Id.* at 14-22. In January,

¹ If the appellant disputes any of these facts she should state her disagreement and submit any documents that support her contention.

2014, while still employed with the Postal Service, Mr. Kimble died. *Id.* at 35.

In March, 2014, Mr. Kimble's daughter, Doris Kimble, filed an Application for Death Benefits. Agency File at 31-35. OPM paid her \$84,586.99, all of Mr. Kimble's contributions to CSRS. *Id.* at 30. On March 26, 2014, the appellant also filed an Application for Death Benefits, and in an attached letter she indicated that she believed she had been "listed as a beneficiary for benefits and/or a beneficiary by operation of law." *Id.* at 25-29. OPM denied the appellant's Application, finding that the divorce decree that terminated the marriage between the appellant and Mr. Kimble made no reference to survivor benefits. *Id.* at 11. The appellant requested reconsideration, arguing that she believed that the Judge lacked legal grounds to grant the divorce filed by Mr. Kimble, and therefore the marriage was still in effect on the date Mr. Kimble died. Accordingly, she argued, she would be entitled to benefits as Mr. Kimble's surviving spouse. *Id.* at 24.

In its final decision, OPM found that the appellant had not shown that a qualifying court order granted her former spouse survivor benefits, nor had she shown that Mr. Kimble had otherwise elected such benefits for her. Agency File at 7-9. As to her arguments that the state court Judge should not have granted the divorce, the decision noted that the appellant did not challenge the issue before the Judge, and the divorce decree was signed and remained in effect. Finally, OPM noted that the Post-

Nuptial Agreement the appellant and Mr. Kimble signed stated that each would retain his own pension, and released any claim to the other's pension as husband or wife. *Id.* at 9.

The appellant filed a timely Board appeal, and argues that her divorce from Mr. Kimble should be invalidated because the grounds relied on by the state court judge were incorrect and/or she was not mentally competent at the time she signed the Post-Nuptial Agreement. Further, she contends that she believes Mr. Kimble designated her as a beneficiary of benefits in some other document, filed with OPM.

I initially indicated that the record would close on the merits of the appeal on March 13, 2017, but then extended that deadline until March 31, 2017, at the appellant's request. IAF, Tabs 10, 13. Subsequently, I granted additional extensions and ordered OPM to respond to an additional "discovery" request made by the appellant. *Id.*, Tabs 16, 19, 22, 25, 28. In my final order, I informed the parties that the record would close after May 15, 2017.⁵ *Id.*, Tab 28.

² The appellant's May 10, 2017 submission reiterates her multiple prior filings arguing that OPM did not provide her with all documents in its possession that could show that Mr. Kimble designated her to receive benefits. IAF, Tab 29. Although the appellant made her prior requests for additional documents long after discovery had closed, I ordered OPM to either

Burden of Proof and Applicable Law

The appellant, as the applicant for benefits, bears the burden of proving entitlement to a former spouse survivor annuity by preponderant evidence. *McKenzie v. Office of Personnel Management*, 113 M.S.P.R. 240, ¶ 7 (2010).

The former spouse of a retired federal employee, or a federal employee eligible for retirement who dies while still employed, is entitled to a survivor annuity if the employee expressly provided for one in an election under 5 U.S.C. § 8339(j)(3), or in the terms of any divorce decree, or in any court order or court approved property settlement agreement issued in connection with the divorce decree. 5 U.S.C. §§ 8341(d), (h)(1); *Bleidorn v. Office of Personnel Management*, 111 M.S.P.R. 456, ¶ 6 (2009).

The requirement that such a benefit be “expressly provided” is substantive, and not a mere technicality. *Hokanson v. Office of Personnel Management*, 122 F.3d 1043, 1047

comply or certify that no additional responsive documents existed that were not in the agency file in this appeal. *Id.*, Tabs 22, 25. OPM complied. *Id.*, Tabs 24, 26. To the extent the appellant moves for sanctions, including reversal of OPM’s final decision, her request is DENIED. I have, however, afforded her May 10, 2017 evidence and argument full consideration on the merits of the appeal.

(Fed.Cir.1997). The intent to provide the survivor annuity must be clear, definite, explicit, plain, direct, and unmistakable, not dubious or ambiguous. *E.g., Hahn v. Office of Personnel Management*, 71 M.S.P.R. 154, 156 (1996).

Findings

I find that the appellant has failed to meet her burden to prove that Mr. Kimble expressly provided that she receive a survivor annuity as his former spouse, either in the Post-Nuptial Agreement that ended their marriage or in any other writing.

First, because Mr. Kimble was still a federal employee at the time of his death and apparently never applied for retirement, he could not have elected a survivor annuity as part of any retirement application. Further, there is no indication in this record that Mr. Kimble made any written election to provide the appellant with a survivor annuity during their marriage, and in any event, such election would have terminated upon their divorce. *Hernandez v. Office of Personnel Management*, 450 F.3d 1332, 1334 (Fed. Cir. 2006); *see* 5 U.S.C. § 8339(j)(5)(A). The Post-Nuptial Agreement the parties entered into stated:

5. **PENSIONS:** Husband and Wife shall retain his or her own pension and retirement plans if any with his or her employer, and Husband and Wife hereby release any and all claim which he or she may have against the Husband or Wife as to the ownership

thereof. Agency File at 16. On September 20, 2007, a Decree was entered in the Court of Common Pleas of Berks County, Pennsylvania finalizing the divorce of the appellant and Mr. Kimble and stating that property rights and interests between them were settled by the aforementioned agreement. I find that the Post Nuptial Agreement does not expressly provide for a former spouse survivor annuity.

The appellant argues that she was incompetent at the time she executed the Post-Nuptial Agreement and/or there were no valid grounds upon which the state court judge could grant her divorce from Mr. Kimble, so the release of any rights to Mr. Kimble's retirement annuity was ineffective.³ IAF, Tabs 1, 3, 4, 8. She requests, in essence, that the Board decline to give the Post-Nuptial Agreement effect and find the appellant Mr. Kimble's surviving spouse. However, the Board has found that marriage is within the purview of state law, and it "is without authority to adjudicate the validity of ... a civil marriage." *Hyde v. Office of Personnel Management*, 40 M.S.P.R. 204, 207 (1989). Thus, the Board may not set aside the state court's

³The appellant contends that she and Mr. Kimble had not been living apart for two years at the time the state court judge signed the Decree, nor had they executed affidavits stating the marriage was "irretrievably broken" and therefore the court lacked grounds to grant the divorce. IAF, Tab 1; Agency File at 24; 23 Pa.C.S. § 3301(a).

decree, either because there were insufficient grounds to grant the divorce, or because the appellant lacked capacity to enter into it.

In sum, the appellant has not presented any evidence that Mr. Kimble “expressly provided” her with a former spouse survivor annuity, either through the Post-Nuptial Agreement or any other document.⁴

DECISION

The agency’s reconsideration decision is AFFIRMED.

FOR THE BOARD:

Craig A. Berg
Administrative Judge

APPENDIX C

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ROSE ANN KIMBLE-DAVIS,
Appellant,

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DOCKET NUMBER
PH-0831-16-0365-I-1

DATE: March 30, 2023

THIS FINAL ORDER IS NONPRECEDENTIAL¹

¹ 1 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See 5 C.F.R. § 1201.117(c).

Rose Ann Kimble-Davis, Reading, Pennsylvania, pro
se.

Tanisha Elliott Evans, Washington, D.C., for the
agency.

BEFORE

Cathy A. Harris, Vice Chairman

Raymond A. Limon, Member

FINAL ORDER

¶1 The appellant has filed a petition for review of the initial decision, which affirmed the June 2, 2016 reconsideration decision issued by the Office of Personnel Management (OPM) denying her request for a former spouse survivor annuity. On petition for review, the appellant argues that she is entitled to a survivor annuity as a surviving spouse because the divorce decree and accompanying post-nuptial agreement submitted in the record were invalid. Petition for Review File, Tab 1 at 2. She further argues that the decedent, her former spouse, submitted a form to OPM designating her to receive a survivor annuity and that the administrative judge erred in denying her motion to compel discovery of recordings of telephone conversations she had with OPM that would have confirmed the existence of that document. Id. at 1-2.

¶2 Generally, we grant petitions such as this one only in the following circumstances: the initial decision contains erroneous findings of material fact; the initial decision is based on an erroneous interpretation of statute or regulation or the

erroneous application of the law to the facts of the case; the administrative judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case; or new and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115). After fully considering the filings in this appeal, we conclude that the petitioner has not established any basis under section 1201.115 for granting the petition for review. Therefore, we DENY the petition for review and AFFIRM the initial decision, which is now the Board's final decision. 5 C.F.R. § 1201.113(b).

NOTICE OF APPEAL RIGHTS²

You may obtain review of this final decision. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit

² Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this final decision, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within 60 calendar days of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website; www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (not the U.S. Court of Appeals for the Federal Circuit), within 30 calendar

days after you receive this decision. 5 U.S.C. § 7703(b)(2); see *Perry v. Merit Systems Protection Board*, 582 U.S. _____, 137 S. Ct. 1975 (2017). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the district court no later than 30 calendar days after your representative receives this decision. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. See 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a. Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:
http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within 30 calendar days after you receive this decision. 5 U.S.C. § 7702(b)(1). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the EEOC no later than 30 calendar days after your representative receives this decision.

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations Equal Employment
Opportunity Commission
131 M Street, N.E.
Suite 5SW12G
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D).

If so, and your judicial petition for review “raises no challenge to the Board’s disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D),” then you may file a petition for judicial review either with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction.³ The

³ The original statutory provision that provided for judicial review of certain whistleblower claims by any court of appeals of competent jurisdiction expired on December 27, 2017. The All Circuit

court of appeals must receive your petition for review within review within 60 days of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

Review Act, signed into law by the President on July 7, 2018, permanently allows appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any other circuit court of appeals of competent jurisdiction. The All Circuit Review Act is retroactive to November 26, 2017. Pub. L. No. 115 -195, 132 Stat. 1510.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:
http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

FOR THE BOARD:
Washington, D.C.
/s/ for
Jennifer Everling
Acting Clerk of the Board

APPENDIX D

NOTE: This order is nonprecedential.
United States Court of Appeals
for the Federal Circuit

ROSE ANN KIMBLE-DAVIS,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2023-1881

Petition for review of the Merit Systems Protection
Board in No. PH-0831-16-0365-I-1.

ON PETITION FOR REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, BRYSON¹,
DYK,
PROST, REYNA, TARANTO, CHEN, HUGHES,
STOLL,
CUNNINGHAM, and STARK, *Circuit Judges*.²
PER CURIAM.

ORDER

1 Circuit Judge Bryson participate only in the
decision on the petition for panel rehearing.
2 Circuit Judge Newman did not participate.

On May 1, 2024, Rose Ann Kimble-Davis filed a petition for rehearing en banc [ECF No. 38]. The petition was first referred as a petition to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue June 10, 2024.

June 3, 2024

Date

FOR THE COURT
Janet B. Perlow
Clerk of Court

APPENDIX E - Exhibit 1

STATION OF JURISDICTION: ST. PAUL (336)

FILE NUMBER: Personal Identifier
HARVEY W. KIMBLE

Claim Information

Date of Claim	Type of Claim	End Product	POA	Claimant	Claim Jurisdiction
04/23/2014	PMC-Initial Death Pension	197		Rose Davis	St. Paul (336)

Miscellaneous Data

Net Effect of Awards of Generation	Competent Status	Fiduciary Status
\$0.00	Competent	Pay Direct

Verified Service

Name	Branch	Duty	EOD	RAD	Char Disch
Harvey W. Kimble	Marine Corps	Active Duty	07/18/1976	07/21/1980	Honorable

Veteran Information

Veteran Information		Survivor's Benefit Plan	
Harvey Kimble	Date of Birth: <small>Personal Identifier</small>	Date	Amount
Date of Death: 01/19/2014	Gender: Male SSN: <small>Personal Identifier</small>		

Primary Beneficiary Information

Mailing Address	Payment Address	Date of Birth: <small>Personal Identifier</small>
ROSE DAVIS 1037 CULVERT ST READING PA 19602		Gender: Female SSN: <small>Personal Identifier</small>

CPD Spouse Disallowance

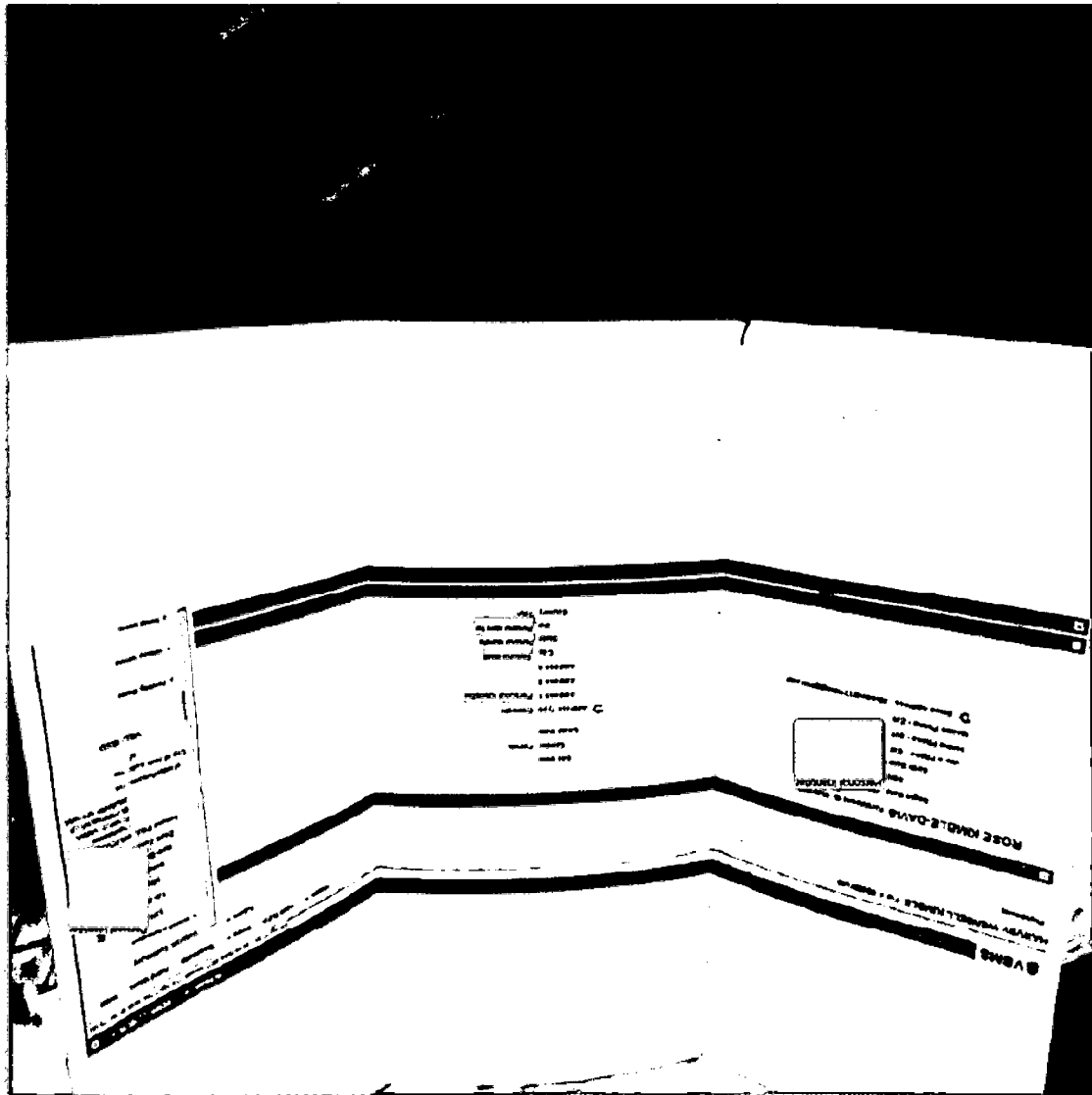
Eff Date	Reason
06/06/2014	On 06/06/2014, the decision was Denied DIC-Death Not Service Connected.
06/06/2014	On 06/06/2014, the decision was Denied-Relationship Cannot be Established.
06/06/2014	On 06/06/2014, the decision was Denied-Not entitled to MOD.
06/06/2014	Remarks were entered as follows: BROKERED CLAIM... Divorced.

Remarks

BROKERED CLAIM ... Divorced

Generated By - 48176549	Authorized By	Date
Julieann Brantseg 4047616 06/06/2014, 03:18PM	<i>J Brantseg</i>	6-7-14

J Brantseg



PMC-Reopened Pension	127	Rose Davis	Thadepine (10/)
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Additional Data

Competent Status	Fiduciary Status
Competent	Pay Direct

Service

Branch	Duty	EOD	RAD	Char Disch
Marine Corps	Active Duty	07/18/1976	07/21/1980	Honorable

Personal Information

ROSEY WIMBLEY	Date of Birth: Personal Identifier
Personal Identifier	Gender: Male
	SSN: Personal Identifier

Primary Beneficiary Information

Payment Address	Date of Birth: Personal Identifier
Personal Identifier	Gender: Female
	SSN: Personal Identifier

APPENDIX E – Exhibit 2

06/29/14																						
LAST NAME			FIRST NAME			MIDDLE NAME			DATE OF BIRTH			OFFICIAL DESIGNATION			AGENCY		PAYROLL OFFICE		LOCATION		PAYROLL OFFICE NO.	
KIMBLE			HARVEY						MO. DAY YR.			SOC. SEC. NO.			USPS		ASC		MINNEAPOLIS		18-00-0009	
(RPT OF DED THRU CY 2014 SUBMITTED WITH SF 2807 OPN C060-001 DATED 03-24-14 PERAN 01-18-14)																						
(CHECKED FOR NAME CHANGE) (SEEN DUTY PHYSICAL BOARD)																						
SERVICE HISTORY																						
FISCAL RECORD																						
EFFCTVE DATE	ACTION	BASE PAY	DO NOT USE	REMARKS	YEAR	CALCULATED SALARY DEDUCTIONS	ACCUMULATED TOTAL SALARY DEDUCTIONS	REMARKS														
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)														
01-18-14	DEATH	57.073	0	A 01 0	2014	92.19	92.19	BEGAN 01-18-14														
DEEDS AND SERVICE CERTIFIED CORRECT									Robert J. Kodella RETIREMENT CERTIFYING OFFICER													
REVISED SICK LEAVE BALANCE = 96.50																						
SF 2806 FOR MILITARY SRVCG FORMRD TO GPM ON REG OF SEP AND TRANSF (SF 2807) NO CORRS DATED 2014																						
SPOUSAL MASTER INDICATOR IN EMF =																						
REGISTER OF SEPARATIONS NUMBER(SF2807) C084 DATED 04-30-14																						

Revised Form 2807, Issued 04-30-14
 Form 2807-120 1401 1400 2014-04

INDIVIDUAL RETIREMENT RECORD
 (FOR SERVICE RETIREMENT ONLY)

SEE OFFICE OF PERSONNEL MANAGEMENT
 FOR SUPPLEMENT 8111

APPENDIX E - Exhibit 3

Patty

LUMP SUM FACE BRIEF			
CSF	CSF 3 555 115 W	DECEASED	HARVEY W. Kimble
DOB		EMPLOYEE	1
DOD	1/11/2014	SSN	
N	1		
REFUNDED CONTRBS ONLY		\$84,586.99	
ACCRUED INTEREST		\$0.00	
HB - EMPLOYEE SHARE		\$0.00	HB CODE
RHB PRIVATE PLAN		\$0.00	GOVT SHARE \$0.00
MEDICAL PAYMENT		\$0.00	
LIFE INSURANCE		\$0.00	LI CODE
OTHER ADD-DEDUCT		\$0.00	
NET PAYABLE		\$84,586.99	
PMT - A	WAIVER - G	DOMFRGN - D	
Doris D Kimble	SHARE	100.00%	this payment is Harvey Kimble's CSRS
	AMOUNT W/ INT	\$84,586.99	funds
	INTEREST	\$0.00	
	FIT WITHHELD	\$0.00	
	CHECK AMOUNT	\$84,586.99	
	STATUS	<input checked="" type="checkbox"/> PAID	VOUCHER # 41550-2014-09-25
CLAIMS EXAMINER NO.	CLAIMS EXAMINER	DATE	
232148			
REVIEW BY	DATE	TRIGGER BY	DATE

APPENDIX E – Exhibit 4

U.S. OFFICE OF PERSONNEL MANAGEMENT

RETIRE FAQ

Question

When I go to log in with my reference # it says it should be 8 digits yet mine is only 7 digits, plus the CSA. SO, I CAN'T LOG ON. I will call someone tomorrow who can maybe give me another number that was left off of the paperwork.

Answer

When logging in to SOL, you must enter nine characters for your claim number, **with both a prefix and suffix**. The following guidelines can be used in **most** cases. If you still cannot log in, please contact us for your nine digit claim number.

- If you are a **retiree**, the claim number begins with an A and ends with a 0. Therefore, you will enter "A" and seven numbers and then the 0 (zero).
- If you are a **surviving spouse**, the claim number begins with an "F" and ends with a "W." Therefore, you will enter "F" and the seven numbers and the suffix, "W". For example: F111111W.
- If you are a **widower**, and have been receiving benefits for many years, your claim number **may** end with a "X." Therefore, you will enter "F" and the seven numbers and the suffix, "X". For example: F111111X.
- If you are an **insurable interest**, the claim number begins with an "F" and ends with a "Y." Therefore, you will enter "F" and the seven numbers and the suffix, "Y". For example: F111111Y.
- If you are an **ex-spouse of a deceased employee**, the claim number begins with an "F" and ends with a "Z." Therefore, you will enter "F" and the seven numbers and the suffix, "Z". For example: F111111Z.

[Return to FAQ Home](#)