



# Supreme Court Clarifies Appeals Rights For Federal Employees

Insights

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On December 10, 2012, the Supreme Court handed down a critical victory to federal employees in a highly technical case. This decision now gives federal employees a simpler and less confusing process for appealing discrimination cases that have been dismissed by the Merits Systems Protection Board (MSPB). Federal appellate courts previously were divided on which court should handle cases that were dismissed by the MSPB on procedural grounds. This Supreme Court decision gave a final answer to that question. *Kloeckner v. Solis*

The Court held that in a “mixed case” – one involving both a wrongful-termination claim and a discrimination claim – where the MSPB does not decide the merits of the discrimination claim, and dismisses the wrongful termination claim on procedural grounds, the employee may seek judicial review in federal district court, rather than with the U.S. Court of Appeals for the Federal Circuit.

This Supreme Court decision essentially will allow courts to hear more discrimination cases by allowing employees who receive an unfavorable decision by the MSPB to go file their claims directly in district court.

## Background

Carolyn Kloeckner worked as a Senior Investigator for the Employment Benefits Security Administration of the Department of Labor (DOL). In June 2005, Kloeckner left work, purportedly on medical leave, and filed a charge with DOL’s civil rights office alleging a hostile work environment and discrimination based on age and gender. While that claim was pending, the DOL charged Kloeckner with being absent without leave for a six-week period in which she allegedly was using paid and unpaid leave. She then amended her charge to allege that the DOL retaliated against her for engaging in protected activity.

In July 2006, DOL fired Kloeckner, allegedly because of her six-week absence without leave. This converted Kloeckner’s dispute into a “mixed case,” because it involved allegations of wrongful termination within the jurisdiction of the MSPB, as well as her original allegations of discrimination. In an effort to avoid overlapping administrative proceedings – involving the EEOC and MSPB – Kloeckner moved to dismiss her appeal to the MSPB so that she could amend and pursue her EEOC Complaint.

The MSPB granted the motion and ordered her to refile her appeal, if necessary, by January 18, 2007. However, proceedings in the EEOC were still ongoing as a result of delays in the discovery process, so she did not refile by the MSPB deadline. In April 2007, the EEOC Administrative Law Judge canceled the proceedings as a sanction for Kloeckner's discovery misconduct, and the case was returned to the DOL for a Final Agency Decision. In October 2007, the DOL in its Final Agency Decision, upheld the dismissal of her discrimination claims.

Kloeckner then had two options: 1) she could appeal the DOL's final decision to the MSPB or, 2) having exhausted her remedies before the EEOC, she could file suit in federal district court. She chose the former. But the ALJ for the MSPB dismissed her appeal as being untimely – thereby dismissing it on procedural grounds, and not deciding the substantive issues of her discrimination claim.

Then, instead of appealing to the U.S. Court of Appeals for the Federal Circuit, Kloeckner filed a civil action in federal district court. The district court dismissed the action for lack of subject matter jurisdiction, and the U.S. Court of Appeals for the 8th Circuit affirmed.

Acknowledging a split among the circuits, the 8th Circuit held that because the MSPB dismissed Kloeckner's appeal on procedural grounds, and did not decide the merits of her discrimination claim, the district court lacked jurisdiction. Therefore, Kloeckner could only seek judicial review of the MSPB decision in the Federal Circuit, and only for the wrongful-termination claim, not the discrimination claims, because the Federal Circuit lacks authority to hear discrimination claims.

The Supreme Court took this case with the intent of resolving the complex interpretation of the statute at issue – the Civil Service Reform Act (CSRA). At issue before the Supreme Court, was whether the Federal Circuit or a district court has jurisdiction over an appeal from MSPB decision in a "mixed case" containing claims of both wrongful termination and employment discrimination where the MSPB ruled only on procedural issues and did not reach the merits of the discrimination claim.

### **Court Rules In Favor Of Clarity**

In a unanimous decision, the Supreme Court reversed the 8th Circuit's ruling and held that even if the MSPB dismisses a "mixed motive" case on purely procedural grounds, a district court would still have jurisdiction to hear the case because it involved a discrimination claim.

The Court reviewed this intersection of federal civil rights law and civil service law reading it to conclude that employees like Kloeckner's only option is to file their claims in district court. The Court reasoned that it was undisputed that Kloeckner had brought a "mixed case" involving discrimination and wrongful-termination claims.

Because the applicable administrative law – the CSRA – required "cases of discrimination" to be filed in district court, then naturally a "mixed case" must also be filed in district court even after they are dismissed by the Board on procedural grounds. Furthermore, even if the MSPB had

they are dismissed by the Board on procedural grounds. Furthermore, even if the MSPB had dismissed Kloeckner's claims on the merits, the Supreme Court concluded that Kloeckner would have still been permitted to file her claims in district court.

Thus, the Court held that because Kloeckner alleged discrimination, this immediately triggered district court review under the CSRA, which in turn divested the Federal Circuit of any authority to review the appeal from the Board's decision.

### **Significance To Employers**

The Court's decision dispelled the notion that the Federal Circuit has exclusive jurisdiction over "mixed cases" decided by the MSPB. This is significant for federal employers in particular, because federal employees now have the option of appealing a final agency decision that is a "mixed case" to the MSPB, and then file directly in district court if they disagree with the Board's decision, regardless of whether the MSPB decided the case on the merits or threw the case out for being untimely. That means that federal employers might have to defend against more of these types of claims in the future.

In addition, this decision could also have an indirect effect on non-federal employers as well. It is clear based on this decision, that the Court was adamant about protecting employee's rights, and not having an employee's discrimination case dismissed on obscure hyper-technical grounds. Therefore, we could see a trend in future Supreme Court decisions where the Court interprets confusing statutes that could diminish an employee's rights, in favor of the employees.

For more information on whether, and how this decision might apply to your organization, contact your regular Fisher Phillips attorney.

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