

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

CYRIL DAVID DANIEL ORAM, JR.,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2022-1545

Petition for review of the Merit Systems Protection Board in No. DC-3330-22-0003-I-1.

Decided: December 8, 2022

CYRIL DAVID DANIEL ORAM, JR., Bellingham, WA, pro se.

ELIZABETH W. FLETCHER, Office of General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by KATHERINE MICHELLE SMITH.

Before LOURIE, CLEVINGER, and STARK, *Circuit Judges*.
PER CURIAM.

Cyril David Daniel Oram, Jr. seeks review of the final decision of the Merit Systems Protection Board (“Board”) denying his request for corrective action under the Veterans Employment Opportunities Act of 1998 (“VEOA”). *Oram v. Dep’t of the Air Force*, Docket No. DC-3330-22-0003-I-1 (M.S.P.B. Jan. 10, 2022) (*Board Decision*). For the reasons set forth below, we *affirm* the Board’s final decision.

I

The VEOA provides that preference eligibles and other veterans “may not be denied the opportunity to compete for vacant positions for which the agency making the announcement [of a vacancy] will accept applications from individuals outside its own workforce under merit promotion procedures.” 5 U.S.C. § 3304(f)(1). The term “preference eligible” is defined in 5 U.S.C. § 2108(3) to include certain veterans, and it is undisputed that Mr. Oram qualifies as a preference eligible. The VEOA does not guarantee that a preference eligible will win the competition for a vacant position. Instead, it guarantees that a preference eligible has the right to compete for the vacancy, free from any agency action that violates a preference eligible’s rights under “any statute or regulation relating to veterans’ preference.” 5 U.S.C. § 3330a(a)(1)(A). A preference eligible who believes an agency has violated the person’s rights under any statute or regulation relating to veterans’ preference may file a complaint with the Department of Labor; if the Department of Labor does not resolve the complaint, the aggrieved person may appeal the alleged violation to the Board; and if the Board finds a violation, it must order the agency to comply with the relevant veterans’ preference law provisions and award compensation for any loss of wages or benefits suffered by the individual whose veterans’ preference rights were violated. *See* 5 U.S.C. §§ 3330a(a)(1)(A), 3330c(a). But in order for an aggrieved preference eligible to pursue these rights, the complaint to the Secretary of Labor must be timely filed “within 60 days after the date of the alleged violation,” unless an untimely

filing can be excused by application of equitable tolling. 5 U.S.C. § 3330a(a)(2)(A); *Kirkendall v. Dep't of Army*, 479 F.3d 830, 844 (Fed. Cir. 2007).

II

The Department of the Air Force (the “Agency”) conducted a job competition for a GS-2210-12 IT Specialist position at Ramstein Air Force Base in Germany. *Board Decision* at 2. On June 21, 2016, the Agency made a tentative offer to Mr. Oram for said position. *Id.* On September 12, 2016, Mr. Oram accepted the job offer and accepted an entry on duty (“EOD”) date of October 3, 2016. *Id.* On September 26, 2016, Mr. Oram informed the Agency that he could not meet the EOD date because he had to attend a hearing related to a labor dispute with his former employer. *Id.* Two days later, the Agency told Mr. Oram that his EOD date would not be extended and that he would be placed on absent without leave (“AWOL”) status if he failed to report for duty on time. *Id.* Mr. Oram responded by explaining in more detail the pending labor dispute, and in turn the Agency acknowledged his response but informed him that if he failed to report on time, the Agency would rescind the job offer, instead of more severely holding him to his acceptance and charging him with AWOL. *Id.* Mr. Oram did not report for duty on time, and on October 5, 2016, the Agency notified him that the job offer was withdrawn due to his failure to comply with the EOD date. *Id.*

On September 11, 2021, Mr. Oram filed a complaint with the Department of Labor, alleging violation of his VEOA rights in October 2016 when the Agency withdrew its offer of employment. *Board Decision* at 4; Compl. at SAppx. 29 (Sept. 11, 2021).¹ His complaint sought

¹ “SAppx.” citations herein refer to the appendix filed concurrently with Respondent’s brief. Additionally, because the Petitioner’s complaint is not paginated, citations herein are to the version of the complaint included in the aforementioned appendix, which has consistent

corrective action from the Agency. Compl. Form at SAppx. 28. His complaint stated he applied for and was selected for a position advertised to preference eligible veterans and current Federal employees. *Id.* at 29. He averred that the Agency only wanted to hire a current Federal employee for the position, and when the Agency realized he was instead a preference status veteran, “the Agency immediately took actions to invalidate my selection and take actions to influence withdrawal from competition with pretext.” *Id.* According to Mr. Oram, the Agency failed to assist him in making travel arrangements that would have permitted him to meet his EOD date and failed to provide required assistance to bring his dependents to Germany, all being acts that allegedly influenced him to “withdraw” from the job offer by not meeting his EOD date. *Id.* Mr. Oram’s complaint also alleged that in addition to the alleged unlawful acts by the Agency in connection with the October 5, 2016, rescission notice, he discovered on September 7, 2021,² four days before filing his complaint, that the Agency in 2017 “went on to hire an individual without 10-point veterans preference status,” allegedly in further violation of his VEOA rights. Compl. at SAppx. 31.

On September 20, 2021, the Department of Labor notified Mr. Oram that it had closed his complaint because it was not timely filed, and he had not provided any reason to excuse his failure to satisfy the sixty-day filing requirement. Letter from Jordan Saunders, Assistant Dir./Investigator, Dep’t of Lab. to Mr. Oram (Sept. 20, 2021) at SAppx. 35. Mr. Oram timely appealed that September 20, 2021 decision to the Board. MSPB Form 185-2: Appeal of

pagination—e.g., Compl. at SAppx. 29 would be to the first page of Mr. Oram’s complaint.

² Agency File and Motion to Dismiss at 9 (Oct. 24, 2021), *Oram v. Dep’t of the Air Force*, Docket No. DC-3330-22-0003-I-1 (M.S.P.B. Jan. 10, 2022). This document is referenced as “TAB 4 . . . Agency – Agency Representative Addition” on SAppx. 18.

Agency Personnel Action of Decision (Non-retirement) at SAppx. 24. His appeal was assigned to an Administrative Judge in the Washington Regional Office of the Board.

III

On October 24, 2021, the Agency filed a Motion to Dismiss Mr. Oram's appeal.³ Agency File and Motion to Dismiss (Oct. 24, 2021). The Agency argued for dismissal on

³ The Agency's Motion to Dismiss recites that Mr. Oram was hired on May 31, 2017, as an IT Specialist under Vacancy Announcement FY17-BC033-1935010-RB. Agency File and Motion to Dismiss at 3. When told the starting grade and salary for the position would be set at GS-7, Step 1, Mr. Oram expressed his desire for a higher grade and salary. *Id.* The Agency offered to increase the rate of pay to GS-7, Step 10, and in response, Mr. Oram asked if the Agency would pay him a "23% or any recruitment bonus" for the first two to three years of his appointment. *Id.* at 3-4. The Agency rejected his request, and on June 12, 2017, Mr. Oram declined the position citing "personal reasons and salary considerations." *Id.* at 4. Then, on August 9, 2017, Mr. Oram filed a request for corrective action with the Department of Labor alleging the Agency's grade and pay decision violated mandatory pay and grade statutes and regulations. *Id.* The Department of Labor rejected his request for corrective action, and on timely appeal, an administrative judge in an Initial Decision found against Mr. Oram because he failed to prove by a preponderance of the evidence that the Agency violated his rights under a statute or regulation relating to veterans' preference. *Id.* (citing Initial Decision, *Oram v. Dep't of the Air Force*, Docket No. DC-3330-18-0056-I-1 (M.S.P.B. Dec. 22, 2017)). Mr. Oram appealed the adverse Initial Decision to the Board, which issued its Final Order in the case on September 8, 2022, affirming the Initial Decision. Final Order, *Oram v. Dep't of the Air Force*, Docket No. DC-3330-18-0056-I-1 (M.S.P.B. Sept. 8, 2022).

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