

**U.S. Merit Systems Protection Board:
Frequently Asked Questions about the Lack of Quorum Period and
Restoration of the Full Board
UPDATED: July 12, 2023**

1. How are the 3 Board members appointed?

All Board members must be nominated by the President and confirmed by the Senate. Designation as Chairman is a separate nomination by the President which requires confirmation by the Senate. The President can designate a Vice Chairman with no additional Senate action required. In the absence of a confirmed Chairman, the Vice Chairman serves as the Acting Chairman. The Board members serve 7-year staggered terms and the terms continue to run and restart even if there is no incumbent. See [5 U.S.C. §§ 1201](#) and [1202](#); [5 C.F.R. § 1200.2](#).

2. What was the lack of quorum period and what is the current status of the Board?

Between January 7, 2017, and March 3, 2022, the Board did not have a quorum of members and therefore could not vote on any petitions for review.

The quorum was restored on March 4, 2022, when Member Raymond Limon and Member Tristan Leavitt, who were confirmed by the Senate on March 1, 2022, were sworn into their duties as members of the Board. Acting Chairman Cathy Harris, who was confirmed by the Senate on May 25, 2022, was sworn into her duties on June 1, 2022.¹

Member Leavitt departed the Board following the expiration of his term on February 28, 2023.² Effective March 1, 2023, the Board has two members: Acting Chairman Harris and Member Limon. Two members constitute a quorum and the Board has continued to issue decisions.

On July 3, 2023, President Biden [announced his intent](#) to nominate Henry J. Kerner for Member of the Merit Systems Protection Board. Mr. Kerner's nomination was [sent](#) to the Senate on July 11, 2023.

¹ Ms. Harris's separate [nomination](#) as Chairman remains pending in the Senate. On June 6, 2022, the President designated Ms. Harris as Vice Chairman. As such, and until the Senate acts on her nomination as Chairman, Ms. Harris will serve as Acting Chairman.

² The terms of Member Limon and Acting Chairman Harris will expire on February 28, 2025, and February 28, 2028, respectively.

3. What was the impact of a lack of quorum and Board members on MSPB operations?

As to the adjudicatory authorities of the Board, the Board was unable to issue final decisions on petitions for review and other cases requiring Board vote between January 7, 2017, and March 3, 2022. *See generally* [5 U.S.C. § 1204\(a\)](#); [5 C.F.R. § 1200.3](#). General information about the number of petitions for review pending as of time the quorum was restored is available in the [e-FOIA Reading Room](#) of MSPB's website.

As to the executive leadership of the Board, between March 1, 2019, and March 3, 2022, Tristan Leavitt (who served as General Counsel before his confirmation as Member) fulfilled the responsibilities for the executive and administrative functions vested in the Chairman in accordance with MSPB's continuity of operations plan. Effective March 4, 2022, through June 5, 2022, those responsibilities resided with then-Vice Chairman Raymond Limon who served as Acting Chairman. On June 6, 2022, President Biden designated Cathy Harris as Vice Chairman of the Board, and Ms. Harris is currently serving as Acting Chairman with regard to the executive and administrative functions of MSPB.

4. How is the Board handling the inventory of cases that developed during the lack of quorum?

Since the quorum of members was restored effective March 4, 2022, the Board has been issuing final decisions on petitions for review and other cases pending before it. The new Board inherited a case inventory at headquarters of approximately 3,800 cases. The Board began issuing decisions quickly after the quorum was restored and focused initially on issuing a range of decisions in cases that, in its discretion, the Board deemed most critical, including [precedential decisions](#) or [decisions](#) that otherwise could affect many pending cases; decisions dismissing cases as settled; and many of the oldest cases then pending. The Board has issued decisions in more than 1,750 cases since the quorum was restored. Information about the Board's progress in deciding cases at the headquarters level and reducing the inherited inventory is available in the Board's [e-FOIA Reading Room](#).

In Fiscal Year 2023 (October 1, 2022, to September 30, 2023), the Board has committed to issuing decisions in a majority of its 1,000 oldest cases, i.e., cases that were filed with the Board on or before December 21, 2017. The Board also continues to exercise its discretion to decide cases in a way that balances advancement of legal doctrines, efficiency in case processing, and other considerations inherent to adjudicatory decision making.

Information about the Board's progress in Fiscal Year 2022 is available in the [2022 Annual Report](#).

5. Could administrative judges (AJs) issue initial decisions when there was a lack of Board quorum or Board members?

Yes, AJs continued to issue initial decisions during the lack of quorum, pursuant to longstanding [delegated authority](#). If neither party files a petition for review to the MSPB, the AJ's decision becomes the final decision of the Board and may be appealed to an appropriate court or tribunal. *See* [5 U.S.C. § 7703](#). If either party filed a petition for review to the MSPB, a Board decision could not be issued until a quorum of at least two Board members was restored.

6. Could the Board issue decisions on petitions for review without a quorum or Board members?

No. Petitions for review received before January 7, 2017, and for which the voting process was not completed before the Board lost a quorum, could not be issued until a quorum was restored. Petitions for review received after January 7, 2017, have been acknowledged by the Office of the Clerk of the Board and processed according to current Board procedures. The Board could not issue decisions on these petitions until a quorum was restored.

7. Can the Board issue decisions on requests to withdraw petitions for review?

Yes. Pursuant to the June 28, 2022 [Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review \(and its predecessor policy dated May 11, 2018\)](#), and the Board's 2011 Manual on [Organization Functions and Delegations of Authority](#), the Clerk of the Board may exercise its delegated adjudicatory authority to "grant a withdrawal of a petition for review when requested by a petitioner."

8. How were appellants advised of their administrative appellate review or judicial options during the period in which there were no sitting Board members?

A party's administrative and/or judicial appeal rights continued to be listed at the end of every initial decision. If the appellant, the agency, or both filed a petition for review, it was acknowledged and processed by the Board, as explained above. The petition for review filing deadlines were *not* tolled (i.e., stopped) during any lack of quorum. This means that parties to a case who wished to file a petition for review must have done so within 35 days of issuance of the initial decision, as required by the Board's adjudicatory regulations at [5 C.F.R. § 1201.114](#). However, the Board could not issue a decision until a quorum was restored by the nomination and confirmation of at least two Board members (which occurred on March 4, 2022).

If neither party to a case filed a petition for review, the AJ's initial decision became the final decision of the Board. An appellant could choose to exercise his or her review rights, which may include an appeal to the U.S. Court of Appeals for the Federal Circuit, U.S. District Court, an appropriate circuit court of appeal, or the Equal Employment Opportunity Commission, depending on the type of appeal and claims raised. *See* [5 U.S.C. § 7703](#).

The parties were informed of the current Board lack of quorum and members in initial decisions, and in acknowledgment notices issued by the Office of the Clerk of the Board, if either or both parties filed a petition for review with the Board.

9. Is there a point of contact for other questions?

For further information, please contact the Office of the Clerk of the Board via email to mspb@mspb.gov or via phone at 202-653-7200. Additional information about the Board's organizational structure can be found on the website at www.mspb.gov, in its [agency plans and annual reports](#), and in its current [Organization Functions and Delegations of Authority](#).