

**U.S. Merit Systems Protection Board:
Frequently Asked Questions about the Lack of Quorum Period and
Restoration of the Full Board
UPDATED: June 7, 2022**

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. The Board members serve 7-year staggered terms. See [5 U.S.C. §§ 1201 and 1202](#); [5 C.F.R. § 1200.2](#).

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

2. 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 between January 7, 2017, and March 3, 2022. See generally [5 U.S.C. § 1204\(a\)](#); [5 C.F.R. § 1200.3](#). 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. 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

¹ Ms. Harris's separate nomination as Chairman remains pending for vote in the Senate. On June 6, 2022, the President designated Ms. Harris as Vice Chairman. As such, and until the U.S. Senate acts on her nomination as Chairman, Ms. Harris will serve as Acting Chairman

Vice Chairman of the Board, and Ms. Harris will serve as Acting Chairman with regard to the executive and administrative functions of MSPB.

3. 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.

4. 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.

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

Yes. Pursuant to the May 11, 2018 [Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review](#), 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."

6. 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.

7. 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](#).