

**U.S. Merit Systems Protection Board:
Frequently Asked Questions about the Lack of Board Quorum
January 25, 2017**

1. How are Board members appointed?

Board members are nominated by the President and confirmed by the Senate. The Chairman is nominated by the President and confirmed by the Senate. The Vice Chairman is designated by the President. 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 consists of Mark A. Robbins whom President Trump designated as Vice Chairman on January 23, 2017. The Board has operated without a Chairman since January 7, 2017, when Susan Tsui Grundmann resigned. The Vice Chairman position had been vacant since March 2015, when Anne M. Wagner's term expired.

2. What is the impact of a lack of quorum on MSPB operations?

As to the executive leadership of the Board, Vice Chairman Robbins assumes the responsibilities for the functions vested in the Chairman. See [5 U.S.C § 1203\(c\)](#).

As to the adjudicatory authorities of the Board, because there will be only one Board member, the Board will be unable to issue decisions that require a majority vote. See generally [5 U.S.C. § 1204\(a\)](#); [5 C.F.R. § 1200.3](#).

3. Can administrative judges (AJs) issue initial decisions when there is a lack of Board quorum?

Yes, AJs may continue to issue initial decisions. If neither party files a petition for review, the AJ's decision will become the final decision of the Board and may be appealed to an appropriate court or tribunal. If either party files a petition for review, a Board decision cannot be issued until a quorum is restored.

4. Can the Board issue decisions on petitions for review without a quorum?

MSPB has issued decisions on appeals then pending before the Board for which the voting process was completed while a quorum was present.

Petitions for review for which the voting process was not completed before the Board lost a quorum cannot be issued until a quorum is restored, i.e., when the President nominates and the Senate confirms at least one additional Board member.

Any petitions for review received after January 7, 2017, will be acknowledged by the Office of the Clerk of the Board and processed according to current Board procedures. However, the Board cannot issue decisions on these petitions until a quorum is restored.

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

No. Because a request to withdraw a petition for review would require a Board decision, such decisions must be made by a majority vote of the Board, i.e., when a quorum is present.

6. How does a lack of quorum affect stay requests filed by the Office of Special Counsel (OSC)?

Pursuant to [5 U.S.C. § 1214](#)(b)(1)(A), “*any member of the Board*” (emphasis added) may grant or deny a 45-calendar-day stay of a personnel action requested by the Special Counsel. Thus, Vice Chairman Robbins can continue to issue initial stay requests of 45 calendar days.

However, because [5 U.S.C. § 1214](#)(b)(1)(B) requires that “[*t*]he Board may extend the period of any stay granted under [1214(b)(1)(A)] . . .” (emphasis added), a quorum must be present for the Board to consider OSC’s request for an extension of an initial stay request.

7. How will appellants be advised of their administrative appellate review or judicial options during the period in which there is only one sitting Board member?

A party’s administrative and/or judicial appeal rights will continue to be listed at the end of every initial decision. If the appellant, the agency, or both file a petition for review, it will be acknowledged and processed by the Board, as explained above. The petition for review filing deadlines will *not* be tolled (i.e., stopped) during any lack of quorum. This means that parties to a case who wish to file a petition for review must do 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 cannot issue a decision until a quorum is restored by the nomination and confirmation of at least one additional Board member.

If neither party to a case files a petition for review, the AJ’s initial decision will become the final decision of the Board. An appellant may choose to exercise his or her review rights, which may include an appeal to the U.S. Court of Appeals for the Federal Circuit, an appropriate U.S. Court of Appeals, U.S. District Court, or the Equal Employment Opportunity Commission, depending on the type of appeal and claims raised.

8. How long does the Board anticipate not having a quorum?

It is not possible at this time to estimate the length of time during which there will be only one sitting member of the Board. Based on the length of time required for previous nomination and confirmation proceedings for Board members, we believe that this situation could be in effect for several months, perhaps until fall 2017 or later. For example, Chairman Grundmann was nominated by President Obama to be a member and Chairman of the Board on July 31, 2009. She was confirmed by the Senate on November 5, 2009—a period of about 4½ months. Similarly, Mr. Robbins was nominated by President Obama to be a member of the Board on December 5, 2011, and confirmed by the Senate on April 26, 2012—again, a period of about 4½ months. After the President nominates new Board members, even if a confirmation process moves quickly, it can be a considerable length of time before a quorum is restored to the Board.

9. Has the Board previously experienced a lack of quorum?

Yes. The Board was briefly without a quorum in 2003. The lack of quorum only lasted a few weeks before a quorum was restored with the Senate confirmation of Neil A.G. McPhie.

10. How will the parties know when a quorum is present?

We will post information on the [MSPB website](#), issue a [press release](#), and place an announcement on [Twitter](#). We may communicate this information in other ways, as appropriate.

11. 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](#).