

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-3039

JANICE A. ZGONC,

Petitioner,

v.

DEPARTMENT OF DEFENSE,

Respondent.

Janice A. Zgonc, of Arlington, Virginia, pro se.

Patrick B. Bryan, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With him on the brief were Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, and Todd M. Hughes, Assistant Director.

Appealed from: United States Merit Systems Protection Board

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DECIDED: March 13, 2007

Before PROST, Circuit Judge, PLAGER, Senior Circuit Judge, and MOORE, Circuit Judge.

PER CURIAM.

Janice Zgonc petitions for review of a final decision by the Merit Systems Protection Board (“MSPB” or “Board”) dismissing her appeal based on her having raised the same issues in an earlier appeal. Zgonc v. Dep’t of Defense, No. DC1221060306-W-1 (M.S.P.B. Oct. 20, 2006). Because we find the decision in accordance with law, supported by substantial evidence, and not arbitrary, capricious, or an abuse of discretion, we affirm.

The question raised by this case is whether the Board should consider a second appeal raising issues that it considered and disposed of in an earlier appeal. The Board affirmed the decision by the administrative judge in this case based on the doctrine of

res judicata. It relied on the fact that Zgonc raised the same claim in an earlier appeal, which the Board has reviewed. Zgonc timely appealed to this court, and we have jurisdiction under 28 U.S.C. § 1295(a)(9).

On appeal, Zgonc argues that the Board erred in considering her first appeal to encompass a claim based on whistleblower reprisal. As we held when reviewing her first appeal, however, whistleblower reprisal was indeed an issue Zgonc raised and the Board properly adjudicated. Zgonc v. Dep't of Defense, No. 06-3265 (Fed. Cir. Nov. 9, 2006).

The Board here correctly recited the standard for res judicata. As our precedent states, “[t]his form of res judicata applies if (1) the prior decision was rendered by a forum with competent jurisdiction; (2) the prior decision was a final decision on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases.” Carson v. Dep't of Energy, 398 F.3d 1369, 1375 (Fed. Cir. 2005). Here, Zgonc only reasserts issues decided by the Board’s holding in the first appeal, which we affirmed.

We must affirm the Board’s decision unless we find it arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulations having been followed; or unsupported by substantial evidence. 5 U.S.C. § 7703(c). Because Zgonc raises no new issues in this appeal, and because the first appeal decided each issue with finality, we must affirm the Board’s dismissal. We have considered each of Zgonc’s remaining arguments and find them without merit.

No costs.