

NOTE: This order is nonprecedential.

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

DEAN T. HARA,
Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent.

2009-3134

Petition for review of the Merit Systems Protection Board in No. PH0831080099-I-2.

ON MOTION

Before LOURIE, O'MALLEY, AND REYNA, *Circuit Judges*.
O'MALLEY, *Circuit Judge*.

O R D E R

When Gerry E. Studds retired as a Congressman from the state of Massachusetts, he was married to petitioner Dean Hara under Massachusetts law. After the Congressman died in 2006, petitioner filed with the Office of Personnel Management (OPM) a request for spousal

survivor annuity benefits based upon the Congressman's federal service.

In its initial and reconsideration decisions, OPM denied that request. On review, an administrative law judge of the Merit Systems Protection Board affirmed OPM's ruling. The Board's administrative judge held that while Congressman Studds clearly wished for petitioner to receive a spousal survivor annuity the petitioner was not recognized as the Congressman's "spouse" under § 3 of the Defense of Marriage Act, and petitioner was thus barred from receiving such benefits.

Petitioner sought review of that decision in this court. We held the case in abeyance pending the Supreme Court's review of the constitutionality of § 3 of DOMA. On June 26, 2013, the Supreme Court issued its opinion in *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013), holding that § 3 of DOMA "is unconstitutional as a deprivation of liberty of the person protected by the Fifth Amendment of the Constitution."

In light of the Supreme Court's decision in *Windsor*, the parties agree that the Board's decision should be vacated and the matter remanded for proceedings consistent with the Supreme Court's decision.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The decision of the Board is vacated and the matter remanded for further proceedings consistent with *Windsor*.
- (2) Each side shall bear its own costs.

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FOR THE COURT

/s/ Daniel E. O'Toole
Daniel E. O'Toole
Clerk

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ISSUED AS MANDATE: September 16, 2013