

# Six Years of Appeals...and Counting

By [Susan Smith](#)

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Most agencies have experienced one or a few personnel removal cases that have dragged on seemingly forever in the appeals process. Thanks to a new decision by the Federal Circuit, the Interior Department will be dealing with one such case for many more months or perhaps years.

The latest court decision in this saga is [Chambers v. Department of the Interior](#), C.A.F.C. No. 2009-3120, 4/21/10.

Chambers was the Chief of the United States Park Police at the time she was fired by the agency in July 2004. The removal was based on six charges. Four of the charges stemmed from Chambers' public statements (to a *Washington Post* reporter and a congressional staffer) to the effect that underfunding of the agency posed risks to the public in areas patrolled by the U.S. Park Police. The other two charges—failing to obey a supervisor's instructions and failing to follow the chain of command-- involved unrelated earlier incidents of alleged misconduct. (Opinion pp. 2-3)

Chambers appealed to the Merit Systems Protection Board, a hearing was held, and the Board sustained four of the charges. It concluded that the agency would have removed Chambers based on the four sustained charges, and upheld the agency's action. (p. 4)

Chambers took her case to the appeals court. On the first go-around the court held that the MSPB had applied the wrong standard in weighing Chamber's argument that she was protected by the whistleblowing statute and sent the case back to the Board. (p. 5)

When her case arrived back at the Board, it rejected her whistleblowing claims. While the two members of the Board considering her case (there was a vacancy for the third Board member at the time) agreed on this result, they disagreed on the reasoning for it. (pp. 5-6)

Chambers headed right back to the appeals court. This time the court has held that because one of the sustained charges was grounded in a WPA-protected disclosure, "the charge cannot stand." (p. 14) Because one of the four sustained

charges has been struck down, the court concluded that the case now boils down to "whether the agency has proved by clear and convincing evidence that it would have taken the same personnel actions against Chambers in the absence of the protected disclosures." (pp. 15-16)

Wait for it.....

Yes, the court has now remanded the case back to the MSPB for another go. The court instructs the Board to look again at the penalty indicating it "must consider on remand whether the agency's penalty of removal was reasonable in light of the three remaining sustained charges..." (p. 17). The court also holds out the possibility that the MSPB should remand the case to the Administrative Judge for further fact finding: "Before rendering a final decision on the ... questions we have set out, the Board should receive briefing from the parties and should consider whether, for any reason, a remand to the AJ is appropriate." (p. 19)

It looks like several more months will be added onto this timeline. No doubt the MSPB will request briefs as the court has instructed. And—given the court's strong hint—don't be surprised if the Board kicks this case back to square one for another hearing before the AJ.

[Chambers09-3120](#)