

Government Executive

With MSPB Hamstrung, Congress Clears Appeals Extension Bill

By Eric Katz

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The House on Thursday unanimously passed a bill that would give federal employees more time to have their personnel cases heard, clearing a legislative fix required by a lack of political appointments.

The bill has now gone from introduction to passing both the House and Senate in just two weeks, an unusual timeframe in the typically snail-paced Congress. The measure would allow employees to receive a 45-day stay on a personnel action before the Merit Systems Protection Board if one is requested by the Office of Special Counsel. MSPB cannot currently approve OSC's requests because it does not have a quorum; [just one](#) of the three positions on MSPB's central board is currently filled, leaving it capable only of performing administrative and executive functions.

"Without a quorum, OSC cannot seek extensions of formal stays (beyond an initial 45 day period)," the agency previously [told Government Executive](#). "OSC also cannot ask for MSPB review of initial decisions."

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Separately, on an issue the bill does not address, OSC said federal employees "exercising an individual right of action will not be able to appeal initial decisions by administrative judges to the board."

Tom Devine, legal director for the Government Accountability Project, said without the ability to stay decisions, agencies can simply drag out cases to run out the clock.

"The full MSPB board has been an essential check on rogue administrative judges, who are often more hostile to whistleblowers than the federal appeals courts," he said. "Without that full board, the pressure to conform with statutory boundaries will vanish."

The Congress-backed bill would, if signed into law by President Trump, during any period in which the board does not have a quorum allow any one of its members to unilaterally grant a stay.

Charles S. Clark contributed to this report.

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