# Merit Board Explains Impact of Leadership Void

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The MSPB has issued a policy statement on the impact on its operations now that it has no confirmed members of its governing board, saying that hearing officers will continue to issue decisions in disciplinary and other cases, and that appeals to the board from those decisions will have to await the confirmation of at least two members.

Mark Robbins, left his position as the lone MSPB member March 1 when his one-year temporary extension expired; the Senate did not act on a House-passed bill to allow him to stay pending a replacement. He has now returned to his former role as general counsel at OPM. The other two seats have been vacant since January 2017 and without a quorum of two members, the board is unable to issue decisions on appeals.

MSPB is now being run on an acting basis by its general counsel, who is not authorized to write opinions on pending appeals as Robbins did while he was awaiting at least one other member to join him—opinions that will now have to be discarded. The agency also has said that as before, regular filing deadlines and other procedural requirements for cases at the hearing officer level will continue to apply. Similarly, employees will continue to have the option of appealing those decisions either directly into federal court or to MSPB—joining a backlog there of some 2,000 cases.

Concerns were raised at a House hearing last week just before Robbins left about possible legal challenges to any actions the agency now takes. MSPB has not been in this situation before in its 40-year history, so there is no precedent.

The situation could remain unchanged for some time. Two nominees have cleared the Senate committee level but a vote in the full Senate is being held up pending a nomination for the third seat—a previous nominee withdrew just before the committee vote—who would likely face a months-long consideration process even after being named.