

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL J. JOHNEN,

Petitioner,

v.

U.S. MERIT SYSTEMS PROTECTION  
BOARD; UNITED STATES  
DEPARTMENT OF THE ARMY,

Respondents.

No. 16-73427

MSPB No.  
SF-1221-14-0338-W-2

MEMORANDUM\*

On Petition for Review of an Order of the  
Merits Systems Protection Board

Argued and Submitted December 8, 2017  
San Francisco, California

Before: GRABER and N.R. SMITH, Circuit Judges, and SIMON,\*\* District Judge.

Petitioner Michael Johnen alleges that the United States Department of the Army terminated him and barred him from his work site because he had made complaints that are protected under the Whistleblower Protection Act. In an

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Michael H. Simon, United States District Judge for the District of Oregon, sitting by designation.

opinion filed this date, pertaining to other issues, we dismiss the petition in part and deny it in part. This disposition concerns only the question whether Petitioner exhausted administrative remedies with the Office of Special Counsel with respect to his oral complaint made to supervisors on July 25, 2013, as required by 5 U.S.C. § 1214(a)(3), so as to give the United States Merit Systems Protection Board jurisdiction over his appeal to that body. On de novo review, Daniels v. Merit Sys. Prot. Bd., 832 F.3d 1049, 1054 (9th Cir. 2016), we grant and remand.

Petitioner's 2014 written complaint, fairly read, encompassed the oral complaint that Petitioner had made on July 25, 2013, to Deputy Garrison Commander Mark Hamelin and General Donna Williams, concerning nepotism. Petitioner stated that an Army official had engaged improperly in nepotism and had retaliated against him because he had opposed her actions. We conclude that the written complaint gave sufficiently detailed and clear notice and, thus, that the Board erred in holding that it lacked jurisdiction over this claim. When the Board reconsiders this claim on remand, it also must reconsider the related evidentiary rulings that precluded evidence concerning the July 25, 2013 oral complaint and concerning nepotism and other related issues.

**Petition DISMISSED as to the United States Merit Systems Protection Board; as to the United States Department of the Army, petition DENIED in**

**part, GRANTED in part, and REMANDED.** The parties shall bear their own costs on appeal.