

FILED

APR 19 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RALPH JAMES COPPOLA,

Petitioner,

v.

DEPARTMENT OF VETERANS  
AFFAIRS; ROBERT WILKIE, Secretary,  
Department of Veterans Affairs,

Respondents,

MERIT SYSTEMS PROTECTION  
BOARD,

Intervenor.

No. 20-70361

MEMORANDUM\*

On Petition for Review of an Order of the Merit Systems Protection Board,  
MSPB No. SF-1221-17-0027-M-1  
Submitted April 19, 2022\*\*  
Las Vegas, Nevada

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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 panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: KLEINFELD, D.M. FISHER,<sup>\*\*\*</sup> and BENNETT, Circuit Judges.

We dismiss the petition for review because it is moot. Petitioner argues that the administrative judge in his case was defectively appointed under *Lucia v. Securities Exchange Commission*, 138 S. Ct. 2044 (2018). He also moves for injunctive relief. We dismiss the petition as moot and deny the motion for injunctive relief for lack of jurisdiction.

Though the MSPB lacked a quorum from January 6, 2017 to March 4, 2022, it now has a quorum, and has duly appointed a new administrative judge in Coppola's case, who undertakes to adjudicate the case anew, without reliance on any rulings or decisions made by the putatively defectively appointed judge. Accordingly, Coppola's challenge to the appointment of the administrative judge previously assigned is now moot. Likewise, the previous judge's dismissal without prejudice subject to automatic reinstatement, if it was subject to review, no longer is, because Coppola's case has been reinstated.

The petition for review is **DISMISSED**.

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<sup>\*\*\*</sup> The Honorable D. Michael Fisher, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.