

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD**

AGIM BAJRAMI,  
Appellant,

DOCKET NUMBER  
CH-0752-14-0376-I-1

v.

DEPARTMENT OF VETERANS  
AFFAIRS,  
Agency.

DATE: September 20, 2016

**THIS FINAL ORDER IS NONPRECEDENTIAL \***

Jonathan Bell, Esquire, and Susan Tylar, Esquire, Garden City, New York,  
for the appellant.

Amber Groghan, Esquire, and Lisa M. Clark, Esquire, Akron, Ohio, for the  
agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Mark A. Robbins, Member

**FINAL ORDER**

¶1 The agency has filed a petition for review of the initial decision, which mitigated the appellant's removal to a 5-day suspension. For the reasons set forth

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See [5 C.F.R. § 1201.117\(c\)](#).

below, the petition for review is DISMISSED as untimely filed without good cause shown. [5 C.F.R. § 1201.114](#)(e), (g).

¶2 On February 12, 2016, the administrative judge issued an initial decision in which she mitigated the appellant's removal to a 5-day suspension. Initial Appeal File, Tab 60, Initial Decision (ID) at 26-34. The initial decision informed the parties that it would become the final decision of the Board on March 18, 2016, unless a petition for review were filed by that date. ID at 36.

¶3 Thereafter, the agency timely requested an extension of time until April 8, 2016, to file a petition for review, which the Clerk of the Board granted. Petition for Review (PFR) File, Tabs 1-2. On May 2, 2016, the agency filed its petition for review, 24 days late. PFR File, Tab 3. The Clerk of the Board informed the agency that its petition for review appeared to be untimely filed and instructed it to submit evidence and argument showing that the petition for review was timely filed or that good cause existed for the delay in filing. PFR File, Tab 4. In response, the agency submitted a pleading titled Motion to Accept Filing as Timely and/or Ask the Board to Waive or Set Aside the Time Limit in which it asserted, inter alia, that it was understaffed, counsel carried a heavy workload, counsel had been required to travel a number of days, and the agency's newly designated corepresentative of record is a new hire who had to spend much of her time in training. PFR File, Tab 7. The appellant responds in opposition to the agency's motion and to the petition for review. PFR File, Tab 10.

¶4 The Board will waive the time limit for filing a petition for review only upon a showing of good cause for the delay in filing. [5 C.F.R. § 1201.114](#)(g). To establish good cause for the untimely filing of an appeal, a party must show that it exercised due diligence or ordinary prudence under the particular circumstances of the case. *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980). To consider whether a party has shown good cause, the Board will consider the length of the delay, the reasonableness of its excuse and its showing of due diligence, whether it is proceeding pro se, and whether it has presented evidence

of the existence of circumstances beyond its control that affected its ability to comply with the time limits or of unavoidable casualty or misfortune that similarly shows a causal relationship to its inability to timely file its petition. *Moorman v. Department of the Army*, [68 M.S.P.R. 60](#), 62-63 (1995), *aff'd*, 79 F.3d 1167 (Fed. Cir. 1996) (Table).

¶5 The agency offers several reasons for its failure to meet the extended filing deadline in this case. Some of these reasons concern the new counsel first designated as the agency corepresentative on May 12, 2016. PFR File, Tab 8. The agency contends that this attorney joined the agency on April 17, 2016, and thereafter had to spend time on the usual array of new-employee activities, such as orientation, mandatory training, addressing computer access problems, and obtaining her identification credentials before she could devote herself to her substantive duties. PFR File, Tab 7 at 7-8. By the time she began working for the agency, however, the extended deadline already had passed. Therefore, her activities do not explain why the agency could not have filed its petition for review or requested an extension of time *before* the deadline passed. *Grant v. Department of Defense*, [59 M.S.P.R. 386](#), 389 (1993), *aff'd*, 34 F.3d 1079 (Fed. Cir. 1994) (Table), *Menchaca v. U.S. Postal Service*, [56 M.S.P.R. 479](#), 483, *aff'd*, 11 F.3d 1073 (Fed. Cir. 1993) (Table).

¶6 Similarly, the agency's original representative asserts that she has been on work-related travel for 16 days "in the past six weeks," or since approximately April 6, 2016. PFR File, Tab 7 at 7. Again, however, because the extended filing deadline was April 8, 2016, and, at best, nearly all of this travel would have had to occur after the deadline already had passed, it is not a valid reason why the agency could not have filed a petition for review or requested an extension of time before the deadline passed. *Grant*, 59 M.S.P.R. at 389; *Menchaca*, 56 M.S.P.R. at 483.

¶7 The agency also asserts that it has been chronically understaffed since 2012, and has had five attorney vacancies until the new agency corepresentative started

working there. PFR File, Tab 7 at 6-7. The agency does not explain how large its office is, however. For example, there is a great deal of difference between an office with 5 out of 8 positions vacant, and 5 out of 20 positions vacant, or 5 out of 100 positions vacant. Therefore, the agency's argument that it is understaffed by an abstract number without providing any context for that number is not informative.

¶8 Aside from stating that it is understaffed, the agency proffers no reason why it could not have filed its petition for review or requested an extension of time before April 8, 2016, except that the agency representative bore a heavy caseload. The Board has held, however, that the "press of business," an attorney's heavy workload, and a shortage of staffing does not establish good cause. *Lands v. Department of the Air Force*, [95 M.S.P.R. 593](#), ¶ 7 (2004); *Murphy v. Department of the Treasury*, [91 M.S.P.R. 239](#), ¶ 8 (2002); *Averella v. U.S. Postal Service*, [64 M.S.P.R. 441](#), 443 (1994).

¶9 Accordingly, we dismiss the agency's petition for review as untimely filed. This is the Board's final decision regarding the timeliness of the petition for review. The initial decision remains the final decision of the Board regarding the removal action.

### ORDER

¶10 We ORDER the agency to cancel the removal action, substitute a 5-day suspension, and restore the appellant effective March 22, 2014. *See Kerr v. National Endowment for the Arts*, [726 F.2d 730](#) (Fed. Cir. 1984). The agency must complete this action no later than 20 days after the date of this decision.

¶11 We also ORDER the agency to pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Office of Personnel Management's regulations, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to calculate the amount of back pay, interest, and benefits due, and to

provide all necessary information the agency requests to help it carry out the Board's Order. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to pay the appellant the undisputed amount no later than 60 calendar days after the date of this decision.

¶12 We further ORDER the agency to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and of the actions it took to carry out the Board's Order. The appellant, if not notified, should ask the agency about its progress. See [5 C.F.R. § 1201.181\(b\)](#).

¶13 No later than 30 days after the agency tells the appellant that it has fully carried out the Board's Order, the appellant may file a petition for enforcement with the office that issued the initial decision on this appeal if the appellant believes that the agency did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes that the agency has not fully carried out the Board's order, and should include the dates and results of any communications with the agency. [5 C.F.R. § 1201.182\(a\)](#).

¶14 For agencies whose payroll is administered by either the National Finance Center of the Department of Agriculture (NFC) or the Defense Finance and Accounting Service (DFAS), two lists of the information and documentation necessary to process payments and adjustments resulting from a Board decision are attached. The agency is ORDERED to timely provide DFAS or NFC with all documentation necessary to process payments and adjustments resulting from the Board's decision in accordance with the attached lists so that payment can be made within the 60-day period set forth above.

**NOTICE TO THE APPELLANT REGARDING  
YOUR RIGHT TO REQUEST  
ATTORNEY FEES AND COSTS**

You may be entitled to be paid by the agency for your reasonable attorney fees and costs. To be paid, you must meet the requirements set out at title 5 of the U.S. Code (5 U.S.C.), sections 7701(g), 1221(g), or 1214(g). The regulations

may be found at [5 C.F.R. §§ 1201.201](#), 1201.202, and 1201.203. If you believe you meet these requirements, you must file a motion for attorney fees WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION. You must file your attorney fees motion with the office that issued the initial decision on your appeal.

**NOTICE TO THE APPELLANT REGARDING  
YOUR FURTHER REVIEW RIGHTS**

You have the right to request further review of this final decision.

Discrimination Claims: Administrative Review

You may request review of this final decision on your discrimination claims by the Equal Employment Opportunity Commission (EEOC). *See* title 5 of the U.S. Code, section 7702(b)(1) ([5 U.S.C. § 7702\(b\)\(1\)](#)). If you submit your request by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations  
Equal Employment Opportunity Commission  
P.O. Box 77960  
Washington, D.C. 20013

If you submit your request via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations  
Equal Employment Opportunity Commission  
131 M Street, NE  
Suite 5SW12G  
Washington, D.C. 20507

You should send your request to EEOC no later than 30 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with EEOC no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time.

### Discrimination and Other Claims: Judicial Action

If you do not request EEOC to review this final decision on your discrimination claims, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate U.S. district court. *See* [5 U.S.C. § 7703\(b\)\(2\)](#). You must file your civil action with the district court no later than 30 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the district court no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* [42 U.S.C. § 2000e-5\(f\)](#) and 29 U.S.C. § 794a.

FOR THE BOARD:

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Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.



## DFAS CHECKLIST

### INFORMATION REQUIRED BY DFAS IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES OR AS ORDERED BY THE MERIT SYSTEMS PROTECTION BOARD

AS CHECKLIST: INFORMATION REQUIRED BY IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT  
CASES

### **CIVILIAN PERSONNEL OFFICE MUST NOTIFY CIVILIAN PAYROLL OFFICE VIA COMMAND LETTER WITH THE FOLLOWING:**

1. Statement if Unemployment Benefits are to be deducted, with dollar amount, address and POC to send.
2. Statement that employee was counseled concerning Health Benefits and TSP and the election forms if necessary.
3. Statement concerning entitlement to overtime, night differential, shift premium, Sunday Premium, etc, with number of hours and dates for each entitlement.
4. If Back Pay Settlement was prior to conversion to DCPS (Defense Civilian Pay System), a statement certifying any lump sum payment with number of hours and amount paid and/or any severance pay that was paid with dollar amount.
5. Statement if interest is payable with beginning date of accrual.
6. Corrected Time and Attendance if applicable.

### **ATTACHMENTS TO THE LETTER SHOULD BE AS FOLLOWS:**

1. Copy of Settlement Agreement and/or the MSPB Order.
2. Corrected or cancelled SF 50's.
3. Election forms for Health Benefits and/or TSP if applicable.
4. Statement certified to be accurate by the employee which includes:
  - a. Outside earnings with copies of W2's or statement from employer.
  - b. Statement that employee was ready, willing and able to work during the period.
  - c. Statement of erroneous payments employee received such as; lump sum leave, severance pay, VERA/VSIP, retirement annuity payments (if applicable) and if employee withdrew Retirement Funds.
5. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.



## **NATIONAL FINANCE CENTER CHECKLIST FOR BACK PAY CASES**

Below is the information/documentation required by National Finance Center to process payments/adjustments agreed on in Back Pay Cases (settlements, restorations) or as ordered by the Merit Systems Protection Board, EEOC, and courts.

1. Initiate and submit AD-343 (Payroll/Action Request) with clear and concise information describing what to do in accordance with decision.
2. The following information must be included on AD-343 for Restoration:
  - a. Employee name and social security number.
  - b. Detailed explanation of request.
  - c. Valid agency accounting.
  - d. Authorized signature (Table 63)
  - e. If interest is to be included.
  - f. Check mailing address.
  - g. Indicate if case is prior to conversion. Computations must be attached.
  - h. Indicate the amount of Severance and Lump Sum Annual Leave Payment to be collected. (if applicable)

### **Attachments to AD-343**

1. Provide pay entitlement to include Overtime, Night Differential, Shift Premium, Sunday Premium, etc. with number of hours and dates for each entitlement. (if applicable)
2. Copies of SF-50's (Personnel Actions) or list of salary adjustments/changes and amounts.
3. Outside earnings documentation statement from agency.
4. If employee received retirement annuity or unemployment, provide amount and address to return monies.
5. Provide forms for FEGLI, FEHBA, or TSP deductions. (if applicable)
6. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.
7. If employee retires at end of Restoration Period, provide hours of Lump Sum Annual Leave to be paid.

NOTE: If prior to conversion, agency must attach Computation Worksheet by Pay Period and required data in 1-7 above.

The following information must be included on AD-343 for Settlement Cases: (Lump Sum Payment, Correction to Promotion, Wage Grade Increase, FLSA, etc.)

- a. Must provide same data as in 2, a-g above.
- b. Prior to conversion computation must be provided.
- c. Lump Sum amount of Settlement, and if taxable or non-taxable.

If you have any questions or require clarification on the above, please contact NFC's Payroll/Personnel Operations at 504-255-4630.