

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

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JOHN J. KARPOVICH,  
Appellant,

v.

DEPARTMENT OF THE NAVY,  
Agency.

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) DOCKET NUMBER  
) DC07528810154  
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)

DATE: SEP 30 1988

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John J. Karpovich, Vienna, Virginia, pro se.

Stefanie G. Weldon, Esquire, Washington, D.C, for the  
agency.

BEFORE

Daniel R. Levinson, Chairman  
Maria L. Johnson, Vice Chairman

OPINION AND ORDER

The appellant has submitted a petition for review of an initial decision issued on March 22, 1988, dismissing his appeal as untimely filed. The petition is DENIED because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. For the reasons discussed in this Opinion and Order, the Board REOPENS this case on its own motion under 5 C.F.R. § 1201.117, however, and AFFIRMS the initial decision as MODIFIED by this Opinion and Order. The appeal is DISMISSED for lack of jurisdiction.

BACKGROUND

Effective November 23, 1987, the appellant, a GM-14, Supervisory Printing Specialist with the Navy Supply Systems Command, was suspended. He did not appeal the agency's action to the Board until December 24, 1987. The administrative judge found that the agency suspended the appellant for fifteen days, and that the Board, therefore, had jurisdiction. He dismissed the appeal, however, as untimely filed.

The appellant has submitted a petition for review contending that there is good cause for his delay in filing the appeal. We do not reach the timeliness issue, however, because, as detailed below, we find that the Board otherwise lacks jurisdiction over the appeal.

ANALYSIS

The Board does not have jurisdiction over suspensions of fourteen days or less. See 5 U.S.C. § 7512(2). As found by the administrative judge, it is the nature of the agency's action against the appellant at the time an appeal is filed that is determinative of the Board's jurisdiction. See Initial Decision at 2; *Howard v. U.S. Postal Service*, 25 M.S.P.R. 132, 133 (1984).

The administrative judge found that the appellant had been subjected to a 15-day suspension at the time he filed his appeal with the Board, and therefore, concluded that the Board had jurisdiction over the appeal. See Initial Decision at 2. The administrative judge did not explain his

finding that the appellant was subjected to a 15-day suspension, and our review of the record shows that finding to be erroneous.

The agency contended below that it only intended to suspend the appellant for ten working days, or fourteen calendar days. See Notice of Final Decision to Suspend, November 16, 1987, Appeal File, Tab 4, Subtab 4c. Due, however, to an error in its calculation because of the Thanksgiving holiday, it scheduled the suspension from November 23rd through December 7th, which would have been fifteen calendar days. On December 2nd, however, it issued a standard form (SF) 50 correcting the appellant's return to duty date to December 7th, and on December 30th, it issued an SF-50 effecting the suspension from November 23rd through December 6th, fourteen calendar days. See Standard Form 50s, Appeal File, Tab 4, Subtabs 4a and b; Agency Motion to Dismiss, Tab 6.

Thus, the agency took action to terminate the suspension and return the appellant to duty after fourteen days. In contrast to *Howard* and the case on which it relied, the agency never intended to impose a 15-day suspension; nor did the appellant serve a suspension of that duration. Moreover, the agency effected no change in the suspension after the appeal was filed. The appellant, who bears the burden of proof on the issue of jurisdiction, has neither alleged nor shown that he was unaware of the agency's action in returning him to duty on December 7th.

Further, he has neither alleged nor shown that he did not, in fact, report for duty on that date. Consequently, there is no evidence that the suspension continued through December 7th. Therefore, the action appealed to the Board was a suspension of fourteen days and is not within the Board's jurisdiction. See *Clark v. Department of State*, 2 M.S.P.R. 575, 576 (1980) (where the agency's decision letter referred to a 14-day suspension, but established a termination date effecting a longer suspension, and where it amended, in writing, the computational error prior to the expiration of the fourteen calendar day period, and such action was communicated to the appellant during that time frame, a 14-day suspension was effected).

ORDER

Accordingly, the appeal is DISMISSED for lack of jurisdiction. This is the final decision of the Merit Systems Protection Board in this appeal. See 5 C.F.R. § 1201.113(c).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board