

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

74 M.S.P.R. 4

Docket Number DE-0752-95-0588-I-2

**BRIAN K. CALLAGAN, Appellant,
DEPARTMENT OF AGRICULTUREv.
, Agency.**

Date: FEB 26, 1997

Allen R. Ferguson, Jr., Esquire, El Prado, New Mexico, for the appellant.

Joe Sedillo, Albuquerque, New Mexico, for the agency.

BEFORE

Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Antonio C. Amador, Member

ORDER

After full consideration, we DENY the agency's petition for review of the initial decision issued on September 19, 1996, because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. We REOPEN this case on our own motion under 5 C.F.R. § 1201.117, however, to inform the appellant of his right to file a request for compensatory damages. 42 U.S.C. § 1981a.

We ORDER the agency to cancel the appellant's removal and to restore the appellant effective July 11, 1995. See *Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 1984). The agency must accomplish this action within 20 days of the date of this decision.

We also ORDER the agency to issue a check to the appellant for the appropriate 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 compute the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it comply. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to issue a check to the appellant for the undisputed amount no later than 60 calendar days after the date of this decision.

We further ORDER the agency to inform the appellant in writing of all actions taken to comply with the Board's Order and of the date on which the agency believes it has

fully complied. If not notified, the appellant should ask the agency about its efforts to comply.

Within 30 days of the agency's notification of compliance, the appellant may file a petition for enforcement with the regional office to resolve any disputed compliance issue or issues. The petition should contain specific reasons why the appellant believes that there is insufficient compliance, and should include the dates and results of any communications with the agency about compliance.

As an individual prevailing on a finding of discrimination, the appellant has a right to seek compensatory damages under 42 U.S.C. § 1981a. In documents submitted below, the appellant indicated a desire to pursue this remedy by stating that he seeks "compensatory damages" for a "black mark on [his] record from [his] termination," loss of pay and benefits, emotional stress, loss of future earnings, and loss of opportunities for promotion. Refiled Appeal File, Tabs 1, 5. Because the appellant was not notified of his right to seek compensatory damages or of the time for doing so, he may file a request for such relief with the administrative judge within 30 days of the date of this decision, if he so desires. See *Yates v. U.S. Postal Service*, 70 M.S.P.R. 172, 180-81 (1996); cf. *Currier v. U.S. Postal Service*, 72 M.S.P.R. 191, 198 n.8 (1996).

This is the final order of the Merit Systems Protection Board in this appeal.
5 C.F.R. § 1201.113(c).

NOTICE TO THE APPELLANT REGARDING FEES

You may be entitled to be reimbursed by the agency for your reasonable attorney fees and costs. To be reimbursed, you must meet the criteria set out at 5 U.S.C. § 7701(g) or 1221(g), and 5 C.F.R. § 1201.37(a). If you believe you meet these criteria, you must file a motion for attorney fees WITHIN 35 CALENDAR DAYS OF THE DATE OF THIS DECISION. Your attorney fee motion must be filed with the regional office or field office that issued the initial decision on your appeal.

NOTICE TO APPELLANT

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You have the right to request further review of the Board's final decision in your appeal.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review the Board's final decision on your discrimination claims. See 5 U.S.C. § 7702(b)(1). You must submit your request to the EEOC at the following address:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, DC 20036

You should submit your request to the EEOC 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. § 7702(b)(1).

Discrimination and Other Claims: Judicial Action

If you do not request review of this order on your discrimination claims by the EEOC, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States district court. See 5 U.S.C. § 7703(b)(2). You should file your civil action with the district court 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)(2). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a handicapping 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. § 2000e5(f); 29 U.S.C. § 794a.

Other Claims: Judicial Review

If you choose not to seek review of the Board's decision on your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review the Board's final decision on other issues in your appeal if the court has jurisdiction. See 5 U.S.C. §§ 7703(b)(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,
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
Robert E. Taylor, Clerk
Washington, D.C.