

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

2008 MSPB 197

Docket No. SF-0752-08-0062-I-1

**Linda D. Edwards,
Appellant,**

v.

**Department of Transportation,
Agency.**

August 6, 2008

Ronald P. Ackerman, Esquire, Culver City, California, for the appellant.

Lierre M. Green, Esquire, Los Angeles, California, for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman

OPINION AND ORDER

¶1 The appellant has petitioned for review of the initial decision sustaining her removal. For the reasons stated below, we GRANT the petition and REVERSE the initial decision. The appellant's removal is NOT SUSTAINED.

BACKGROUND

¶2 The appellant was appointed to her position of air traffic control specialist (ATCS) in the Federal Aviation Administration (FAA) on October 2, 2005. Appeal File, Tab 6, Subtab 4g. The appointment was made pursuant to an agreement settling a civil action the appellant had filed against the agency some time earlier. *See id.*, Subtabs 4z, 4aa. Consistent with that agreement, the

appellant's duties were modified to accommodate her medical restrictions. *See id.*, Subtab 4z at 2; *id.*, Subtab 4aa at 1. Specifically, the appellant was to be assigned to a facility accessible to physically restricted individuals; her lifting, walking, and standing were to be restricted; and she was not to be required to bend, climb, descend stairs, or stoop. *See id.*, Subtab 4aa at 1. Because she was hired as a "developmental" ATCS, she was expected to complete a lengthy training program before becoming a certified ATCS. *See* Hearing Transcript (HT) at 6-8.

¶3 On or about October 6, 2005, shortly after she reported to work at her new job, the appellant injured her knees while climbing stairs at the facility where she was employed. *See* Appeal File, Tab 6, Subtab 4cc at 12; H.T. at 11. For about 4 months after her injury, she continued with her training program. *See* H.T. at 11-13. In early February 2006, however, she informed her supervisor that the Office of Workers' Compensation Programs (OWCP) had approved her claim for compensation, and that she would be absent for surgery beginning near the end of the month. *See id.* at 12-13. Because her absence was expected to be lengthy, her supervisor decided to suspend the training. *See id.* at 13. Until she left for her surgery, therefore, the appellant performed administrative duties. *See id.*

¶4 The appellant began an extended absence from work on or about February 26, 2006, and on February 27, she had surgery on her left knee. *See id.* at 13, 126; Appeal File, Tab 6, Subtab 4cc at 10. She was diagnosed with breast cancer on April 24; she had surgery for that condition on May 15, 2006; and on May 30, she had surgery on her right knee. *See* H.T. at 126, 139, 145; Appeal File, Tab 6, Subtab 4cc at 6. Although she was scheduled to begin radiation therapy the following month, that therapy was canceled after the appellant learned that she was pregnant. *See* H.T. at 148.

¶5 In the fall of 2006, the appellant contacted her air traffic manager to ask about returning to work. *See id.* at 19, 141. That official advised her, however, that the restrictions on her activity that had been described by her orthopedist did

not permit her to return to work. *See id.* at 19, 141. The orthopedist continued to prescribe the same restrictions after further treatment and examination; pregnancy-related complications further restricted the appellant's ability to work after November; the appellant gave birth on February 26, 2007; and on June 1, 2007, she began chemotherapy for her cancer. *See id.* at 141-44, 146-49. The chemotherapy was discontinued after its initial administration caused a serious adverse reaction, but, for some time afterward, the appellant was treated for the effects of the treatment she had received. *See id.* at 149-52, 156-57, 159.

¶6 On March 27, 2007, before the appellant had been administered the chemotherapy mentioned above, the air traffic manager sent her a letter expressing concern about her ability to perform her duties. Appeal File, Tab 6, Subtab 4o at 1. He stated that the appellant had not been at work since about February 27, 2006, that she had not submitted any documentation indicating that she would be able to perform her duties, and that her absence created a hardship. *Id.* The air traffic manager described the kind of medical documentation he needed to receive in order to assess the appellant's ability to return to her position, and he stated that steps would be taken to separate the appellant for unavailability for duty if she failed to submit documentation meeting that description, or if the documentation she submitted indicated that she would remain unavailable. *Id.* at 1-2.

¶7 The appellant responded by letter in which she stated that her physician had advised her that she would remain "totally disabled" until her next appointment on April 3, 2007. Appeal File, Tab 6, Subtab 4p at 1. She also indicated in her letter she had been attempting to obtain documentation from her orthopedist and her oncologist, and that she would forward that documentation when she received it. *Id.*

¶8 On May 4, 2007, the air traffic manager issued a letter proposing the appellant's removal for unavailability for duty. *Id.*, Subtab 4d at 1. In his letter, he stated that the appellant had been unable to perform her duties as an ATCS

since her October 2005 injury, and that she had been unable to provide acceptable documentation indicating that she would be able to return to those duties. *Id.* at 1-2. On May 30, however, after receiving further information concerning the appellant's medical condition, he issued a letter to the appellant, finding that her orthopedist's restrictions were consistent with the duties she had been assigned before her injury, and ordering the appellant to report to work within 2 days after her receipt of the letter. Agency Prehearing Submission at 2 & Exhibit 2, Appeal File, Tab 10. The appellant did not return as ordered. *See* H.T. at 26. Instead, she submitted written and oral responses to the proposal, requested leave, and advised the agency that she was still receiving workers' compensation and was still unable to return to work. Appeal File, Tab 6, Subtabs 4c, 4d; *id.*, Subtab 4w at 7-8; *id.*, Subtab 4bb at 3-5.

¶9 On July 18, 2007, the air traffic manager issued a decision to remove the appellant effective August 19, 2007, stating that the appellant had failed to provide evidence indicating her ability to return to her regular duties. *Id.*, Subtab 4b. This decision was never put into effect, evidently because the appellant had returned to work on August 13, the day on which her workers' compensation benefits were terminated. *See* H.T. at 161, 170. After she had worked 9 days, however, performing administrative duties, she learned that her daughter had died, and she took the "bereavement leave" provided under the applicable collective bargaining agreement. *See id.* at 168-69; Appeal File, Tab 6, Subtab 4w at 5. Although she advised an agency supervisor in late September that she hoped to return to work on Monday, October 2, after obtaining medical clearance from her oncologist, she learned just before then that her cancer had returned. *See* Appeal File, Tab 6, Subtab 4bb at 27; H.T. at 172. On Sunday, October 1, she provided this information to the supervisor; she stated that she was to have further surgery for that condition; and she said that she would be unable to return until December 1. *See* Appeal File, Tab 6, Subtab 4w at 3; H.T. at 173.

¶10 On October 2, 2007, after learning that the appellant had not reported to work that day, the air traffic manager issued an amended decision notice indicating that the appellant had remained unavailable to perform her regular ATCS duties. Appeal File, Tab 4, Subtab 4a at 1-2; HT at 69. He noted that the appellant had not been permitted to work at all when she initially reported to work in August; that she had later been permitted to perform only administrative duties later that month, in light of restrictions described in her medical documentation; that she was currently on leave without pay; that the medical documentation she had presented indicated that she remained unable to perform her regular duties; and that she would be removed effective October 13. Appeal File, Tab 4, Subtab 4a at 1. Although the appellant's representative provided the air traffic manager on October 10 with a statement, dated October 5, indicating that she was expected to be able to resume her ATCS duties by January 2, 2008, she was removed as stated in the amended decision notice. Appeal File, Tab 6, Subtabs 4e, 4bb at 32 (statement by D. Kohl, Oct. 5, 2007); H.T. at 76, 198.

¶11 The appellant appealed her removal to the Board's Western Regional Office. Appeal File, Tab 1. Following a hearing on the matter, the administrative judge assigned to the case issued an initial decision sustaining the charge of unavailability; finding that the appellant had failed to substantiate her claims of disability discrimination, disparate treatment, and harmful procedural error; and sustaining the removal. Initial Decision at 15-22, Appeal File, Tab 19.

¶12 The appellant has filed a timely petition for review of the initial decision. Petition for Review (PFR), PFR File, Tab 3. Although she does not challenge the administrative judge's findings on her claims of disability discrimination and disparate treatment, she argues that the initial decision is inconsistent with case

law governing removals for absences such as hers. PFR at 2-6, PFR File, Tab 3. The agency has filed a timely response to the petition.¹

ANALYSIS

¶13 In her initial decision, the administrative judge noted that adverse actions generally could not be based on an employee's use of approved leave. Initial Decision at 7. She also noted, however, that the Board recognized an exception to this rule. Initial Decision at 7. Specifically, she noted that, under *Cook v. Department of the Army*, 18 M.S.P.R. 610, 611-12 (1984), an adverse action based on the excessive use of approved leave could be sustained if the agency showed that the following three criteria had been met: (1) The employee was absent for compelling reasons beyond her control so that the agency's approval or disapproval of the leave was immaterial to the employee's presence on the job; (2) the absence continued beyond a reasonable time, and the agency warned the employee that an adverse action could be taken if the employee continued to be unavailable for duty; and (3) the employee's position needed to be filled by an employee available for duty. *Id.* After finding that the criteria had been met, the administrative judge sustained the charge against the appellant. *Id.* at 8-15.²

¹ The appellant also argues that the administrative judge erred in failing to find that the agency had committed harmful procedural error in removing her. PFR at 6-7. In light of our findings and conclusion below, we see no need to address this issue.

² The *Cook* exception applies only to "unscheduled" absences. *See Holderness v. Defense Commissary Agency*, 75 M.S.P.R. 401, 404 (1997). It also is applicable only to absences on leave without pay, and not to absences on paid leave. *See id.* (overturning removal that was based on employee's absence on sick leave). Moreover, the Board has held that, if an employee has sufficient sick leave to cover the period of absence in question, the agency must grant the request when the employee provides administratively acceptable evidence of incapacitation. *Wesley v. U.S. Postal Service*, 94 M.S.P.R. 277, 286 (2003); *see also Wade v. Department of the Navy*, 829 F.2d 1106, 1109 (Fed. Cir. 1987) (5 C.F.R. § 630.401 mandates the granting of sick leave when an employee is incapacitated for the performance of duties by sickness). The record indicates that the appellant may have had accrued sick leave, annual leave, or both during the period of absence covered by the proposal notice. *See, e.g., Appeal File,*

¶14 In her petition for review, the appellant argues that the *Cook* criteria have not been met. PFR at 2-6. As we have indicated above, however, *Cook* applies to cases in which an employee is charged with excessive approved absences. While the agency's use of the term "unavailability for duty" may suggest, when considered by itself, that the appellant was removed based on her absence from work, a closer reading of the proposal and decision notices shows that she was in fact removed for her apparent physical inability to perform her duties. Those notices, as we have indicated above, all focus on the appellant's apparent inability to perform her regular duties, and on the restrictions her physicians had recommended in medical documentation the appellant had submitted. Furthermore, as we also have indicated above, the agency repeatedly requested and obtained medical documentation from the appellant concerning her ability to work; it repeatedly found that the documentation included restrictions that prevented the appellant from performing her ATCS duties; and it refused at least twice to permit the appellant to return to work when she attempted to do so. We find, therefore, that the basis for the appellant's removal is the agency's determination that the appellant was not physically able to perform the duties of her regular position.³

Tab 6, Subtab 4bb at 1 (e-mail message of Sept. 6, 2007, in which an agency supervisor told the appellant that she "wanted to confirm that you want to use leave you currently have on the books until it exhausts before going to Leave Without Pay . . ."). In light of our findings below, however, we need not address the effect of this evidence on the merits of the appellant's removal. We also need not determine whether the appellant's absence was "unscheduled," as that term is used in connection with the *Cook* exception.

³ In *Johnson v. General Services Administration*, 46 M.S.P.R. 630, 632-33, *aff'd*, 944 F.2d 913 (Fed. Cir. 1991) (Table), the Board found unpersuasive the agency's argument that holdings related to charges of physical inability should have been applied in analyzing a charge of unavailability for duty. In that case, however, the agency "merely stated that the appellant was unavailable for work," and, instead of determining that the appellant was physically unable to perform his duties, it found only that the medical evidence available to it provided an insufficient basis on which to determine the appellant's medical status. *Id.* at 633. This case therefore is clearly distinguishable from *Johnson*.

¶15 An agency may remove an employee if he is unable, because of a medical condition, to perform the duties of his position. *Bullock v. Department of the Air Force*, 88 M.S.P.R. 531, 534, ¶ 7 (2001), *review dismissed*, 32 F. App'x 538 (Fed. Cir. 2002). There is ample evidence that, at the time the agency proposed the removal at issue here, the appellant's medical conditions prevented her from performing her ATCS duties. We have indicated above that the appellant was recovering from repeated surgical operations for months after her absence began in February 2006, and that she was unable to work later that year because of complications relating to her pregnancy. Furthermore, although she indicated that she was able to work before her pregnancy complications incapacitated her, the air traffic manager determined, as we noted previously, that the restrictions her orthopedist had imposed precluded her from working as an ATCS. The appellant does not appear to challenge this determination. Moreover, OWCP evidently did not believe the appellant's medical condition during this time permitted her to work. As we have noted previously, it did not terminate her benefits until August 13, 2007, well after the proposal notice was issued. *See Camenisch-Felts v. Department of Agriculture*, 47 M.S.P.R. 493, 496 (1991) (while not binding on the Board, OWCP decisions concerning an employee's medical ability to work in her position constitute evidence meriting consideration). Perhaps most important, the appellant has acknowledged, in effect, that she was unable to return to work at the time the agency proposed her removal. *See* Appeal File, Tab 6, Subtab 4n at 13, 15 (letter of May 14, 2007, by which the appellant submitted medical evidence from her oncologist).

¶16 As we have noted above, however, the appellant sent the air traffic manager a document in which her physician stated that she was expected to recover sufficiently to perform the duties of her regular position as of January 2, 2008, just over 2-1/2 months after the scheduled effective date of her removal. The air traffic manager has acknowledged that he received this evidence prior to that effective date, H.T. at 75-76, and neither he nor the agency representative

appears to challenge the basis for the appellant's physician's statement.⁴ Instead, the air traffic manager has asserted that the evidence was insufficient because it indicated that the appellant was still currently unable to return to work. H.T. at 77.

¶17 In finding removal warranted based on employees' unavailability for duty due to their incapacitation, the Board has relied on the absence of any foreseeable end to the unavailability. *See, e.g. Social Security Administration v. Mills*, 73 M.S.P.R. 463, 467-69 (1996) (finding that an administrative law judge's physical incapacitation, which had no foreseeable end, constituted good cause for removal), *aff'd*, 124 F.3d 228 (Fed. Cir. 1997) (Table); *Department of Health & Human Services v. Underwood*, 68 M.S.P.R. 24, 25-26 (1995). In light of the un rebutted evidence of her expected recovery that the appellant submitted prior to her removal, the absence at issue here cannot accurately be described as having had no foreseeable end at the time of the removal. We also see nothing in the record that suggests that the agency had such an urgent need to replace the appellant that it could not have waited an additional 2-1/2 months for her to recover. In fact, it had already waited about 20 months for her to return; the record indicates that the agency had ATCS vacancies when it removed the appellant; and it indicates that the existence of such vacancies was common. *See* H.T. (testimony of air traffic manager). Under somewhat similar circumstances, the Board has held that removal was not justified. *See Walker v. Department of the Air Force*, 24 M.S.P.R. 44, 45-47 (1984) (the agency failed to show that the employee's absence constituted a burden on it or its employees that was sufficient

⁴ There appears to have been no substantial basis on which to challenge the prognosis given in the statement. As indicated above, the orthopedic condition that initially caused the appellant's absence no longer interfered with her performance of her regular duties; the appellant's workers' compensation benefits had ceased; no further surgery was expected; and plans to administer chemotherapy to the appellant had been abandoned.

to justify the employee's removal, when it was aware that the employee had applied for disability retirement, when the employee's absence of almost a year had been covered by leave and leave without pay until about a month before removal was proposed, when the agency had been able to assign the employee's duties to other employees, and when it had not filled the employee's position as of 4-1/2 months after the effective date of the removal).

¶18 The air traffic manager also testified that the medical statement of October 5, 2007, was inadequate because the responsibility for determining whether the appellant was in fact able to perform her ATCS duties lay with agency medical officials, and because personnel in the office that made such determinations had indicated to him that they had not received from the appellant the information they had "requested in order for her to progress toward getting her . . . medical [certification] reinstated." H.T. at 76-78. We note that the appellant visited the agency's medical office on June 20, 2007, after her receipt of the notice proposing her removal, and that she subsequently was found to be incapacitated as of June 25, 2007. *See* Appeal File, Tab 6, Subtab 4m at 1. The appellant does not argue, however, that she was able to perform her regular duties then; in fact she has testified that she was suffering at that time from the adverse effects of the chemotherapy that was administered to her on June 1, 2007. H.T. at 156-57, 159. Nothing in the record indicates that the appellant was on notice of the need to support the October 5 statement with any additional documentation, and the air traffic manager himself testified repeatedly that he did not know what information the appellant was expected to provide. H.T. at 79; *see id.* at 78 (air traffic manager's testimony that he had "no idea what they've asked for"). Moreover, the agency's deputy regional flight surgeon, the appellant's union representative, and an agency official who had supervised the appellant and other ATCSs testified that it was management, and not the employees themselves, who scheduled physical examinations, H.T. at 104-05, 115, 198-99, 201, 205, 218; and the same agency supervisor testified further that employees absent on extended

leave would not be scheduled for physical examinations until they returned to work, *id.* at 105, 116. The fact that the appellant had not yet demonstrated, by the time of her removal, that her medical certificate should be reinstated therefore provides no support for a finding that her removal was warranted.

¶19 Finally, we note that the Board has held that a removal for physical disability cannot be sustained when the employee diligently obtains and presents new medical evidence showing that he has recovered from the condition that previously prevented him from performing the duties of his position. In *Street v. Department of the Army*, 23 M.S.P.R. 335, 342 (1984), the Board referred to the provision, in 5 U.S.C. § 7513(a), that a removal may be effected “only for such cause as will promote the efficiency of the service.” It then found that evidence of the recovery of an employee removed for physical disability – even when the evidence was obtained and submitted only on appeal, after the employee’s removal had been effected – was relevant and material to the “efficiency of the service” requirement. *Street*, 23 M.S.P.R. at 342. Although the Board expressly declined to “impugn the judgment of the agency based on the facts that it knew at the time it effected [the employee’s] removal,” it concluded that the removal in that case could not be sustained in light of the newly submitted evidence of recovery. *Id.* at 343; *see also Morgan v. U.S. Postal Service*, 48 M.S.P.R. 607, 609-13 (1991) (the employee’s removal for physical inability did not meet the “efficiency of the service” standard, and therefore could not be sustained, in light of evidence submitted on appeal, indicating that the employee’s condition had improved and that she had been reinstated).

¶20 We have held recently that 5 U.S.C. chapter 75, which includes the “efficiency of the service” requirement addressed above, does not apply to the FAA. *Hart v. Department of Transportation*, 2008 MSPB 149, ¶ 10. The FAA’s own Personnel Management System, however, includes the same requirement. FAA Personnel Management System, chapter III, ¶ 3(b) (“all actions covered by this paragraph [governing disciplinary and removal actions] will be taken only for

such cause as will promote the efficiency of the Federal service”), Appeal File, Tab 6, Subtab 4gg. The appellant’s removal cannot be sustained, therefore, if it has not been shown to have met this standard.

¶21 In the present case, the appellant not only submitted the October 2007 document mentioned above, in which her physician stated that she was expected to be able to perform her regular duties by January 2, 2008, but she also submitted on appeal a document dated January 15, 2008, in which the same physician indicated that the appellant was in fact currently able to perform those duties. Appeal File, Tab 16 at 5.⁵ These documents, like the recovery-related evidence in *Street*, are “directly material to the . . . charge on which” the removal was based. Moreover, the accuracy of the physician’s January 15 statement is unrebutted.

¶22 We recognize that the appellant’s lengthy absence from her regular position, along with continued uncertainty about whether or when she would be able to return to that position, may have imposed a significant burden on the agency. In light of the medical evidence the appellant submitted to the agency on October 10, 2007, however, in light of the evidence of her recovery that she submitted on appeal, and in light of the other circumstances described above, we find that the appellant’s removal was not taken for such cause as would promote the efficiency of the service. The action therefore is NOT SUSTAINED.

ORDER

¶23 We ORDER the agency to cancel the appellant's removal and to restore the appellant effective October 13, 2007. *See Kerr v. National Endowment for the*

⁵ The document the appellant submitted on appeal includes limitations on the appellant’s physical activities. Appeal File, Tab 16 at 5. Those limitations, however, are no more restrictive than the ones under which the appellant was hired in 2005. *Compare id. with* Appeal File, Tab 6, Subtab 4aa at 1.

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.⁶

¶24 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 to describe 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).

¶25 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 in 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).

¶26 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

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 United States 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

⁶ Because the appellant was an FAA employee, we are unable to award back pay. *See Ivery v. Department of Transportation*, 102 M.S.P.R. 356, ¶¶ 12-16 (2006), *dismissed*, 240 F. App'x 413 (Fed. Cir. 2007).

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 the Equal Employment Opportunity Commission (EEOC) to review this final decision on your discrimination claims. *See* Title 5 of the United States Code, section 7702(b)(1) (5 U.S.C. § 7702(b)(1)). You must send your request to EEOC at the following address:

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

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 United States 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. § 2000e5(f); 29 U.S.C. § 794a.

Other Claims: Judicial Review

If you do not want to request review of this final decision concerning your discrimination claims, but you do want to request review of the Board's decision without regard to your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review this final decision on the other issues in your appeal. 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 60 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 court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, www.ca9.uscourts.gov. Of particular relevance is the court's

"Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board
Washington, D.C.