

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
2009 MSPB 16**

Docket No. AT-0752-06-0350-R-1

**Kenneth M. Pedeleose,
Appellant,**

v.

**Department of Defense,
Agency,**

and

**Office of Personnel Management,
Petitioner.**

February 12, 2009

Andres M. Grajales, Esquire, Washington, D.C., for the appellant.

Gary E. Jencson, Esquire, Bratenahl, Ohio, for the agency.

Becky C. Ronayne, Esquire, Washington, D.C., for the Office of Personnel Management.

BEFORE

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

OPINION AND ORDER

¶1 Pursuant to [5 U.S.C. § 7703](#)(d), the Director of the Office of Personnel Management (OPM) seeks reconsideration of the Board's decision in *Pedeleose v. Department of Defense*, [107 M.S.P.R. 191](#) (2007). For the reasons set forth

below, the Board grants OPM's petition for reconsideration, vacates the decision and upholds the agency's action suspending the appellant.¹

BACKGROUND²

¶2 The appellant was employed as an Industrial Engineer by the Defense Contract Management Agency (DCMA or agency), Lockheed Martin Marietta (LMM), when the agency suspended him for 30 days effective January 25, 2006, based on three related charges: 1) refusal to cooperate in an agency investigation; 2) insubordination; and 3) failure to follow instructions. [107 M.S.P.R. 191](#), ¶ 2. The investigation was initiated by the DCMA, LMM Commander, Colonel Nicole Plourde, in response to a rumor that certain employees of the DCMA were being targeted for termination from federal service. *Id.* at ¶¶ 2, 7, 16. One of the allegedly targeted employees, Gerry Sawyer, was so upset by the rumor that on June 20, 2005, she submitted a retirement application, telling her supervisor that she had decided to retire rather than be removed. Learning of this, Col. Plourde met with Sawyer and told her that the rumor was false. *Id.* at ¶ 8. After the meeting, Col. Plourde decided to begin an investigation into the source of the rumor because, she said, she believed it was having a negative effect on employee morale. She also expressed concern that one of her supervisors was feeding the rumor by discussing confidential information with subordinates. *Id.* at ¶ 10.

¶3 On June 21, 2005, Col. Plourde appointed Stacy Scantlebury to conduct the investigation. She also ordered Sawyer to identify the person who informed her that she was going to be fired, and in response Sawyer named the appellant. When Scantlebury then attempted to interview the appellant about the rumor, he

¹ Douglas K. Kinan has submitted what appears to be a motion to intervene or file an amicus brief. The Board denies the motion because Kinan fails to show that he will be affected directly by the outcome of the proceeding. *See* [5 C.F.R. § 1201.34\(c\)](#).

² The factual background of this case is set forth in greater detail in the Board's previous decision. *See* [107 M.S.P.R. 191](#), ¶¶ 6-25.

questioned her credentials as an investigator. Later, when Plourde showed him Scantlebury's appointment letter and directed him to cooperate with the investigation, the appellant refused, stating that her directive was an illegal order. *Id.* at ¶¶ 11-13. In refusing to answer the investigator's questions, the appellant also relied on his belief that the agency's investigation would interfere with an investigation into related matters that he believed would be conducted by the Department of Defense's Inspector General (IG). *Id.* at ¶ 14.

¶4 The appellant had submitted a report to the IG concerning safety problems in the C-130J aircraft and waste in the program developing it.³ DCMA supervised LMM's performance on its contract for producing the aircraft. The May 16, 2005 report was developed by the appellant and other DCMA employees who had been disclosing problems of the C-130J to the Congress and other authorities for a number of years. The appellant's involvement in disclosing such problems was widely known at the DCMA. An IG report issued in July 23, 2004, had concluded that the aircraft did not meet contract specifications at that time. *Id.* at ¶ 6.

¶5 On June 6, 2005, the appellant notified the IG that another DCMA engineer, Susan VanDerbeck, had informed him of additional safety problems of the C-130J. Initial Appeal File (IAF), Tab 28, Exhibit E at 1-2. VanDerbeck then sent a list of alleged safety violations on the aircraft to the IG. *Id.* at 3-6. During this period, the appellant spoke with a former DCMA employee, DeAngeles Davis, who told him of a meeting at which Plourde suggested the termination of VanDerbeck. On June 15, the appellant sent the IG his account of what Davis reported: that another employee, Shelton-Thomas, had told Davis about a meeting attended by Col. Plourde, Henrietta Snow, and Myra Tate, and

³ The appellant sent the report to various individuals in the IG's office. As used in this opinion, "IG" generally refers to the IG's Daniel P. Meyer, Director – Civilian Reprisal Investigations, who most often represented the IG in communications with the appellant and with agency officials concerning the appellant.

said that, after a discussion of safety issues raised by VanDerbeck, Plourde had said that since VanDerbeck was a probationer, they could fire her. *Id.*, Exhibit F at 1-2, 6-8. On June 16, Davis emailed the appellant a written summary of their June 11 conversation that he had requested. It did not mention VanDerbeck's disclosure of safety issues, but rather stated that her informant, Shelton-Thomas, said VanDerbeck was targeted for firing because of inappropriate conduct affecting DCMA's relationship with LMM employees. The email also identified three other employees as targeted for firing according to Shelton-Thomas, but it made no mention of whistleblowing in connection with them. *Id.* at 26-27. When the appellant forwarded this email to the IG on June 20, 2005, he admitted that, two days before, Davis had told him that, contrary to his recollection, she had not stated that C-130J safety issues were discussed at the meeting where firing VanDerbeck was discussed. *Id.* at 29.

¶6 In refusing to cooperate with the agency's investigation, the appellant stated that he had already provided the information that he had to the IG. [107 M.S.P.R. 191](#), ¶ 18. However, in communications with Leigh Owens, the DCMA's attorney, the IG representative, Dan Meyer, stated that he had urged the appellant to cooperate with the agency's investigation and to refer to the IG any questions which he feared could compromise the IG's investigation. Meyer told Owens that this would permit the two of them to resolve the matter, rather than have witnesses set IG policy. The IG also approved the questions that Scantlebury expected to ask the appellant, stating that he saw on their face no conflict between his investigation and hers. *Id.* at ¶ 19. Although the agency did not inform the appellant of this discussion between the agency and the IG, the appellant on his own consulted with the IG, who told him to cooperate with lawful agency investigations. However, the IG declined to address the appellant's questions about the legal authority of the agency to conduct its investigation. Based on his doubts about the lawfulness of the investigation and his belief that it could compromise the IG investigation into related matters, the

appellant continued to refuse to answer any questions of the agency investigator concerning the rumored targeting of employees for firing. *Id.* at ¶¶ 21-24. Based on this conduct, the agency suspended him for 30 days based on refusal to cooperate with its investigation; insubordination; and failure to follow instructions. *Id.* at ¶ 26.

¶7 The appellant appealed his 30-day suspension to the Board, contending that the action was in retaliation for his whistleblowing. The appellant cited several alleged protected disclosures in his initial appeal, including his disclosures that Plourde's threatening to fire VanDerbeck and the rumor investigation that Plourde initiated were violations of law and abuses of authority. He also claimed that his suspension was retaliation for earlier equal employment opportunity activity and was based on an improper agency belief that he had created a hostile work environment in his office. The appellant withdrew his initial request for a hearing, and the administrative judge decided the case on the written record. In his initial decision, the administrative judge found that the agency proved its charges, that the penalty of a 30-day suspension was reasonable, and that the appellant failed to establish his affirmative defenses. *Id.* at ¶¶ 3-4. The appellant filed a petition for review of the decision in which he reasserted the affirmative defenses he raised below. *Id.* at ¶ 5.

¶8 In its decision, a majority of the Board determined that the agency failed to prove the charges on which the suspension was based and that its action was in retaliation for whistleblowing. In addressing the agency's charges of refusal to cooperate with its investigation, the Board reaffirmed the general rule that, except in certain limited circumstances, an employee may not disregard an order merely because there is substantial reason to believe the order is not proper, but must comply with the order and then challenge it through a complaint or grievance. The Board noted the recognized exceptions to this rule, situations where complying would clearly place the employee in a dangerous situation or would cause him irreparable harm, but it determined that the Board must consider

whether an exception is warranted in other circumstances where the employee doubts the legality of the instruction. *Id.* at ¶ 27. The Board stated that this determination should take into account the considerations it found to underlie the rule: the need to avoid harm to the agency and its mission from the employee's failure to comply and the fact that the employee may be mistaken in his belief. *Id.* at ¶ 28.

¶9 The Board held that an exception to the rule requiring obedience to an agency order should be recognized in the circumstances of this case. The Board found that the agency's investigation involved only rumor spreading, not serious misconduct, and that therefore the agency failed to show any harm to the agency's mission from the appellant's lack of cooperation. The Board also cited evidence that the appellant may not have been mistaken in believing that the agency investigation might conflict with that of the IG. *Id.* at ¶ 29. The Board also found that the appellant made an effort to comply by seeking the advice of the IG and providing the IG the information sought and that the agency's "disingenuous" failure to inform him of its coordination with the IG and of the IG's approval of its questions was significantly responsible for the appellant's failure to cooperate. *Id.* at ¶¶ 30-31. The Board concluded that under these circumstances an exception to the rule requiring obedience to an agency order should be recognized and that the agency therefore failed to prove its charges of failure to cooperate and insubordination. *Id.* at ¶ 32.

¶10 The Board also found that the appellant established that his suspension was in retaliation for his whistleblowing. Based on the evidence that the appellant submitted, the Board determined that the alleged protected disclosure at the heart of his retaliation claim was contained in his emails to the IG stating that Plourde threatened to fire VanDerbeck because of her disclosures regarding the safety of the C-130J program and that Plourde thereby abused her authority and violated the Whistleblower Protection Act (WPA). *Id.* at ¶ 33. The Board found that the appellant reasonably believed that VanDerbeck made protected disclosures of

which Plourde was aware, that Plourde was correctly quoted regarding firing VanDerbeck, and that her statement exhibited a violation of the WPA and an abuse of authority. *Id.* at ¶ 39. Because the agency's rumor investigation began soon after the appellant sent his June 2005 email to the IG, because the email was copied to Plourde, who proposed his suspension, and because the deciding official also knew of his allegation concerning Plourde, the Board found that the appellant satisfied the knowledge/timing test for establishing that his disclosure was a contributing factor in the agency's action. *Id.* at ¶ 40.

¶11 Finally, the Board determined that the agency failed to rebut the appellant's prima facie case of reprisal for whistleblowing because it did not show by clear and convincing evidence that it would have suspended him in the absence of his protected disclosure. In reaching this conclusion, the Board relied on the agency's failure to prove its charges against the appellant and on the strength of the evidence that Plourde had a motive to retaliate because she was the alleged wrongdoer, the reasons she gave for the agency's investigation were inconsistent, and she was aware of the appellant's objections to the investigation, yet failed to inform him of the IG's approval of the agency's proposed questions. *Id.* at ¶¶ 43-46. The Board also cited the absence of evidence of similar agency actions against non-whistleblowers who were otherwise similarly situated. *Id.* at ¶ 47.

¶12 Chairman McPhie dissented from the Board's decision. The Chairman would not have made an exception to the obey-now-grieve-later principle in this case, noting that an exception has been recognized only in unusual circumstances, such as where obedience would put the employee in danger of serious harm or where the order was a clearly unlawful one. He would have found that the appellant was mistaken in thinking the agency had no right to investigate who was spreading upsetting rumors that certain employees were being targeted to be fired and that the appellant could not reasonably have concluded that the investigation into rumor spreading would interfere with an IG investigation into his allegation that an employee was going to be fired for illegitimate reasons. In

addition, the Chairman noted that by the time of the agency's second effort to question the appellant, he was aware that the IG knew of his concerns but had not shut down the agency's investigation. The Chairman would have found that the appellant was not an agent of the IG and was not free to decide for himself that he must protect the IG's prerogatives by continuing to refuse to answer questions. [107 M.S.P.R. 191](#), dissenting opinion ¶¶ 1-5.

¶13 The Chairman also would not have found reprisal for whistleblowing. He concluded that the appellant's report to the IG that Plourde threatened to fire VanDerbeck because she had disclosed safety violations to the IG was not a protected disclosure. He found that the appellant's assertion was based on fourth-hand information about what was said at a meeting he did not attend and that the appellant's informants in subsequent communications with him cast doubt on the information they provided. *Id.* at ¶¶ 6-9. Finally, the Chairman would have found that, even if the appellant's disclosure was protected and contributed to the agency's action, the agency easily established its affirmative defense, considering the strength of its case and the state of the law when it acted. *Id.* at ¶¶ 10-11.

¶14 OPM filed a petition for reconsideration of the Board's decision in which it contends that the Board erred in establishing an exception to the obey-now-grieve-later principle that vastly expanded the recognized exceptions, which apply only in extreme situations where compliance would involve the employee in clear physical danger, the surrender of constitutional rights, or irreparable harm. OPM argues that the case law does not support the Board's finding that the employee's disobedience to the agency's order must be shown to have caused tangible harm to its mission or that legitimate concerns about the lawfulness of the agency's order can excuse the employee's non-cooperation where the agency failed to address them to the employee's satisfaction. OPM also disputes the Board's finding of reprisal for whistleblowing. It contends that the Board erred in finding a protected disclosure in the appellant's allegations concerning statements at a meeting where the allegations were based on an unsubstantiated

fourth-hand report that a disinterested observer could not reasonably believe on such a basis. The Board also erred, OPM asserts, in concluding that the agency did not show that it would have taken the same action absent the appellant's disclosure. OPM argues that this conclusion is based on the finding that the agency did not prove its case because of a newly recognized exception and that this exception cannot properly be applied retroactively to the issue of whether the agency proved its affirmative defense based on what it would have done at the time.

¶15 In response to OPM's reconsideration request, the appellant argues that the Board has discretion to establish a new exception to the general rule that requires employees to obey agency orders and bring objections later. Disagreeing with OPM's contention concerning the exception recognized by the Board, the appellant characterizes it as a narrow one, highly dependent on the specific facts of this case. The appellant contends that the Board properly found that the agency cannot complain of his insubordination where he made efforts to learn from the IG whether he should comply to no avail and that it was the disingenuous conduct of the agency that deprived him of the information that would have allowed him to obey. The appellant argues that the agency's investigation was initiated by Plourde in bad faith because it was unnecessary to dispel the rumor about employees targeted for firing, that its direction was inconsistent with the stated goal of identifying a management leak, and that its real goal was to entrap him into non-cooperation so that he could then be punished for his disclosures. The appellant also argues that OPM's opposition to the Board's finding of whistleblowing reprisal merely disputes the Board's fact findings and does not constitute an appropriate basis for seeking reconsideration. In any event, he contends that the report he received from Davis concerning Plourde's threat to fire VanDerbeck was definite and specific and that the timing of her report and her knowledge of VanDerbeck's disclosures made it reasonable for him to believe that it was true. He also disputes OPM's challenge to the

Board's affirmative defense finding, arguing that the record shows that the decision to discipline him was intertwined with his disclosures and that, in the absence of comparable agency actions against similarly situated non-whistleblowers, OPM's argument has no factual basis.

ANALYSIS

The appellant was required to cooperate with the agency's investigation, and the agency proved its charges that he failed to do so.

¶16 The rule involved in this case has long been recognized as one that is necessary to an agency's ability to effectively manage the workplace. The rule generally requires an employee to comply with an agency order, even where the employee may have substantial reason to question it, while taking steps to challenge its validity through whatever channels are appropriate. *See Bigelow v. Department of Health & Human Services*, [750 F.2d 962](#), 965 (Fed. Cir. 1984); *Gragg v. United States Air Force*, [13 M.S.P.R. 296](#), 299 (1982). The rule reflects the fundamental management right to expect that its decisions will be obeyed and its instructions carried out. *See Nagel v. Department of Health & Human Services*, [707 F.2d 1384](#), 1387 (Fed. Cir. 1983) (permitting employees to refuse to do work because of disagreements with management violates the first law of the work place, namely that it is a place for doing work).

¶17 There is no dispute that the recognized exceptions to the requirement that agency orders be obeyed apply in extreme or unusual circumstances. *See, e.g., Gragg v. U.S. Air Force*, 13 M.S.P.R. at 299 (order placing employee in dangerous situation); *Fleckenstein v. Department of the Army*, [63 M.S.P.R. 470](#), 474 (1994) (order to make disclosure that could cause irreparable harm)⁴. In its

⁴ In *Fleckenstein*, the Board modified *Gragg* to the extent the decision in *Gragg* could be read to exclude the irreparable harm exception. *See Cooke v. U.S. Postal Service*, [67 M.S.P.R. 401](#), 407-408 (1995).

petition, OPM challenges the Board's determination that an additional exception to the rule should be recognized in the circumstances of this case. OPM contends that there is no support in the case law for the exception created by the Board, and it argues that it will vastly expand the circumstances when the rule will not apply. The appellant counters that the exception here is narrowly tailored to very specific and limited circumstances. The Board made its decision to create the exception after taking into account the two considerations that it found to underlie the rule, harm to the agency and the possibility that the employee is wrong. The Board determined there was no harm to the agency from the appellant's non-cooperation because the investigation that the appellant resisted was not directed at serious misconduct, and it found that the appellant had a legitimate concern that answering the agency's questions might interfere with an IG investigation.

¶18 As OPM points out, the Board cited no precedent in the case law for this approach to the applicability of the obey-now-grieve-later rule, which has been applied to a broad range of agency orders. While the decision cited cases in which the rule was invoked to discipline employees for refusing to cooperate with investigations into criminal or other serious misconduct, these cases do not state the limitation inferred by the Board.⁵ The rationale for the rule, as noted above, is that an employee's failure to obey supervisory instructions is inherently harmful to the orderly accomplishment of work. There is no requirement in the cases that the agency must demonstrate harm from non-cooperation in a particular case. Similarly, while there is an exception for clearly unlawful orders, *see Harris v. Department of the Air Force*, [62 M.S.P.R. 524](#), 529 (1994), the

⁵ The decision also cited *Brown v. Department of Justice*, [31 M.S.P.R. 211](#) (1986), as support for recognizing a new exception to the rule based on the surrounding circumstances. However, this case did not address the applicability of the rule, but the factors bearing on the appropriate penalty for a violation of it, finding there that the appellant's removal should be mitigated to a 30-day suspension.

appellant has cited no law or regulation that the agency's investigation on its face violated. Other exceptions to the rule are not based on the correctness of the employee's objections to the order, but apply in situations where there could be a significant adverse impact on the employee from cooperation with an order that may be improper. *See Cooke v. U.S. Postal Service*, 67 M.S.P.R. at 408 (the appellant was not entitled to disobey a reassignment order, despite the Board's ultimate agreement that it was not effected properly, because his conduct was not protected by a privilege or by a concern that it would cause him irreparable harm). The appellant showed nothing comparable in his situation.

¶19 In determining that the appellant's non-cooperation was based on a legitimate concern, the Board relied on a finding that, after the appellant made an effort to comply by seeking advice from the IG's office, the agency's withholding of information from the appellant about its contacts with the IG was responsible in part for the appellant's non-cooperation. In these contacts, the IG approved the agency investigator's proposed questions as not interfering with the IG investigation and stated that he saw no conflict between the two investigations. We believe the decision erred in finding that the IG failed to give the appellant clear advice. The IG advised the appellant to cooperate and to refer any questions he felt would compromise the IG investigation to the IG. While the appellant was dissatisfied because the IG declined to address the lawfulness of the agency investigator's appointment, he knew that the IG did not tell him that a blanket refusal to answer any of the investigator's questions was necessary to protect the integrity of the IG's investigation. The appellant also must have been aware that the IG himself took no action to prevent the agency from questioning him. The appellant's situation is not distinguishable from that of others who are required to obey a lawful order and challenge it later, even an order they have substantial questions about. It was not the appellant's responsibility or right to take whatever actions he thought appropriate to protect the IG's investigation when the IG himself took no action to prevent the supposed harm. Excusing the

appellant from obeying the agency's order here broadens the exception in a way that threatens to make the exception the rule.

¶20 Thus, we find that the Board erred in recognizing an exception to the obey and grieve later principle in the circumstances of this case. In light of the advice that the appellant received from the IG, we cannot find that the agency's withholding of information about its contacts with the IG was responsible for his refusal to cooperate. The appellant questions the need for the agency's investigation, its authorization, and inconsistencies he perceives in the reasons given for it. However, the purpose of the agency investigation was a legitimate one on its face, and the appellant was required to cooperate with it while raising his objections through appropriate channels. The appellant argues that the agency's actions show that the investigation was a bad faith effort to manipulate his refusal so that he could be disciplined. The only specific impermissible motive advanced by the appellant for this alleged agency action is his claim of reprisal for whistleblowing, which is addressed below.⁶

The appellant did not establish reprisal for whistleblowing.

¶21 The Board's decision held that the appellant established that his suspension was a reprisal for his disclosure that Plourde threatened to fire VanDerbeck because of her disclosure to the IG of safety violations on the C-130J and that Plourde thereby abused her authority and violated the WPA. The appellant's disclosure was made in communications sent to the IG on June 15, 2005, that repeated what the appellant said he was told by former employee Davis concerning a threat allegedly made at a meeting at which VanDerbeck's disclosure of safety violations was discussed. On further examination, we agree with OPM that the Board misapplied the test for determining whether the appellant's report was a protected disclosure. While a disinterested observer who

⁶ The appellant did not pursue his initial claim of retaliation for EEO activity.

was aware of the information asserted could reasonably conclude that Plourde's alleged threat was an abuse of authority, as the Board found, we cannot agree with the Board's finding that the appellant reasonably believed in the factual truth of his report of what happened at the meeting. [107 M.S.P.R. 191](#), ¶ 39.

¶22 There are several reasons to doubt the accuracy of the report. Davis, the appellant's informant, was not present at the meeting where the alleged threat was made, and neither was Shelton-Thomas, Davis's informant. Moreover, the appellant stated in his affidavit that Shelton-Thomas, when he spoke with her about the matter on June 15, 2005, refused to discuss it with him, dismissing it as a rumor. IAF, Tab 28, Exhibit F at 7. Furthermore, the summary of their conversation that Davis sent the appellant at his request a few days later made no mention of VanDerbeck's disclosures as the reason for Plourde's suggestion that she be fired. *Id.* at 26-27. Finally, the appellant acknowledged in his June 20, 2005 email forwarding the summary to the IG that two days earlier Davis had informed him that, contrary to his recollection, she had not told him that VanDerbeck's safety violation allegations were discussed at the meeting. *Id.* at 29. Under these circumstances, the appellant lacked a reasonable basis for his assertion that Plourde violated the WPA and abused her authority by threatening to fire VanDerbeck on account of VanDerbeck's disclosure of safety violations. Thus, we find that the appellant's report of this alleged threat to the IG was not a protected disclosure for purposes of the WPA.

¶23 In its prior decision, the Board found that this disclosure was protected and that the appellant made a prima facie case that it contributed to the agency's decision to suspend him. The Board then considered the agency's argument that it would have suspended the appellant in the absence of the disclosure, and it concluded that the agency did not establish its defense because the evidence for its action was weak and Plourde had a strong motive to retaliate. Finding that the appellant therefore established his primary whistleblowing reprisal claim, the Board determined that it was unnecessary to address other protected disclosures

alleged by the appellant - that agency management violated the law and abused its authority by targeting employees other than VanDerbeck for firing and by conducting an investigation into rumors that certain employees were being targeted for termination. [107 M.S.P.R. 191](#), ¶ 40, n.8. These allegations are intertwined with the appellant's primary disclosure that we have found not to be protected. The appellant's sources for the targeting of other employees are the same as his sources for the targeting of VanDerbeck, and reliable evidence for his belief that termination of these employees was threatened because of their whistleblowing is equally lacking. We find that the appellant had no reasonable basis for making these allegations or for asserting that the agency's investigation of the targeting rumor was retaliatory in nature.

¶24 The only other alleged protected disclosure raised by the appellant was the May 16, 2005 report titled "Cover-up in the Department of Defense."⁷ The report by the appellant and other employees covers the C-130J program over a number of years and criticizes agency management for wasteful expenditures, safety problems, and their alleged concealment. This report was not the focus of the appellant's appeal. Assuming, however, that the report makes protected disclosures, we find that the agency established by clear and convincing evidence that it would have suspended the appellant in the absence of such disclosures. In making this determination, the Board has considered the strength of the agency's evidence in support of its action and the strength of any motive to retaliate by those involved in the decision. We have found that the agency proved the charges on which the appellant's suspension was based, and we find that the agency had strong evidence to support its action. Indeed, the content of the charged conduct was not disputed, but rather was held justified by our prior

⁷ See [107 M.S.P.R. 191](#), ¶ 33, n.7. The other disclosures listed in footnote 7 address the alleged targeting of VanDerbeck and other employees for termination, the investigation of the targeting rumor, and related matters.

decision recognizing an exception to the general duty to obey agency orders. We have now determined that such an exception is unwarranted. The lengthy report, which largely concerns actions and events that preceded Plourde's employment by the agency, makes few references to her and articulates no specific criticism of her that could constitute a protected disclosure. It thus presents no basis for inferring a strong motive on her part to retaliate against the appellant. Thus, we conclude that, in light of the strong case in support of the agency's action and the absence of a strong motive to retaliate by the officials responsible for the action, the agency has shown by clear and convincing evidence that it would have taken the action in the absence of the other alleged protected disclosures raised by the appellant in the May 2005 report.

ORDER

¶25 Accordingly, the Board grants the Director of OPM's petition for reconsideration, vacates its previous decision, and upholds the agency's action suspending the appellant for 30 days. This is the final decision of the Merit Systems Protection Board in this appeal.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. 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.cafc.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.