UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2009 MSPB 80

Docket No. DA-0353-08-0174-B-1

David Q. Tat,

Appellant,

v.

United States Postal Service,

Agency.

May 13, 2009

David Q. Tat, Houston, Texas, pro se.

Tonya E. Savage, Dallas, Texas, for the agency.

BEFORE

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

OPINION AND ORDER

¶1 The parties in this matter reached a settlement agreement, and in a January 13, 2009 initial decision, the administrative judge found that the Board had jurisdiction over the appeal, that the agreement appeared lawful on its face, the parties freely entered into it, and the parties understood the terms of the agreement. IAF, Tab 18. Based on the language of the agreement, the administrative judge retained jurisdiction over the appeal for purposes of enforcement. *Id.*, Tabs 17 and 18.

¶2 On February 19, 2009, the Dallas Regional Office received the appellant's petition for review of the initial decision, and on February 20, 2009, that office

forwarded the appellant's submission to the Clerk of the Board. Petition for Review File (PFRF), Tab 1. In that document, among other things, the appellant complained about the agency's purported breach of the terms of the settlement agreement. *Id*. at 5.

¶3 Thereafter, the appellant filed a letter stating his desire to withdraw his petition for review and requested that the Board forward his submission to the administrative judge as a petition for enforcement. *Id*. at 5. The letter includes a statement signed by the agency's representative declaring that the agency has no objection to the withdrawal of the petition for review and the forwarding of the appellant's allegations of noncompliance to the administrative judge. *Id*.

¶4 It is well settled that allegations of noncompliance should be heard in the first instance by the administrative judge. *Rivera v. U.S. Postal Service*, 107 M.S.P.R. 542, ¶ 10 (2007); *Owen v. U.S. Postal Service*, 87 M.S.P.R. 449, ¶ 9 (2000). Accordingly, we DISMISS the appellant's petition for review as withdrawn and FORWARD the appellant's allegations of noncompliance to the administrative judge as a timely filed petition for enforcement.

¶5 The initial decision of the administrative judge is final. This is the Board's final decision in this matter. Title 5 of the Code of Federal Regulations, section 1201.113 (5 C.F.R. § 1201.113).

NOTICE TO THE APPELLANT REGARDING 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:

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