

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

**2009 MSPB 165**

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Docket No. DC-0752-09-0135-I-1

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**Pamela R. Smith,  
Appellant,**

**v.**

**Department of the Interior,  
Agency.**

August 28, 2009

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Edward Oppenheimer, Reston, Virginia, for the appellant.

Richard R. Fields, Esquire, Washington, D.C., for the agency.

**BEFORE**

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

**OPINION AND ORDER**

¶1 The appellant has filed a petition for review (PFR) of an initial decision (ID) that affirmed the agency's removal action. We DENY the PFR for failure to meet the criteria for review under [5 C.F.R. § 1201.115](#); REOPEN the appeal on the Board's motion pursuant to 5 C.F.R. § 1201.118; REVERSE the ID in PART; and AFFIRM the ID in PART AS MODIFIED, still AFFIRMING the removal.

**BACKGROUND**

¶2 Effective November 5, 2008, the agency removed the appellant from her Secretary position with the U.S. Geological Survey, Branch of Regional Research, Eastern Region, in Reston, Virginia, based on the following charges:

(1) lack of candor; (2) unauthorized absence on April 3 and 14, 2008; and (3) failure to follow leave-request procedures on April 3, 2008. Initial Appeal File (IAF), Tab 8, subtabs 4(a), 4(c), 4(m) at 1-4.

¶3 The appellant appealed the removal action, asserting that the agency removed her while she was on leave under the Family and Medical Leave Act of 1993 (FMLA), and alleging disability discrimination, harmful error, and prohibited personnel practices. IAF, Tab 1 at 3-8. She requested a hearing, and designated a representative. *Id.* at 2, Tabs 3, 5. However, she subsequently withdrew her request for a hearing. IAF, Tab 16; *see* IAF, Tab 17 at 1.

¶4 The administrative judge (AJ) issued an ID affirming the agency's removal action. ID at 1, 16. She found that the agency proved by preponderant evidence its charges of lack of candor, failure to follow leave-request procedures, and unauthorized absence based on the appellant's misconduct on April 14, 2008, but that it failed to prove the specifications arising from the appellant's alleged misconduct on April 3, 2008. ID at 5-6, 7-12. The AJ also found that the appellant failed to prove her affirmative defense of disability discrimination, and determined that the penalty of removal fell within the tolerable limits of reasonableness. ID at 12-16. The appellant has filed a PFR of this decision. Petition for Review File (PFRF), Tab 1. The agency has not responded.

### ANALYSIS

#### 1. We reverse the charge of failure to follow leave-request procedures.

¶5 The statute at [5 U.S.C. § 7513\(b\)\(1\)](#) provides that an employee must receive advance written notice stating the specific reasons for the proposed adverse action. The Board has consistently held that a party must know of the claims with which she is being charged so that she may adequately prepare and present a defense before the agency. *Brown v. U.S. Postal Service*, [47 M.S.P.R. 50](#), 57 (1991). In order to satisfy this notice requirement, an agency is required to state the specific reasons for a proposed adverse action in sufficient detail to

allow the employee to make an informed reply. *Id.* The Board will not technically construe the wording or specifications of a charge, but the Board cannot consider or sustain charges or specifications that are not included in the notice of a proposed adverse action, because the appellant must have full notice of the charges against her. *Id.* Advance written notice of the charges and an opportunity to reply before a final agency decision is made are fundamental procedural due process rights. *Id.*; see *Cleveland Board of Education v. Loudermill*, [470 U.S. 532](#), 546 (1985) (an agency's failure to provide a tenured public employee with an opportunity to present a response, either in person or in writing, to an appealable agency action that deprives her of her property right in her employment constitutes an abridgement of her constitutional right to minimum due process of law, i.e., prior notice and an opportunity to respond).

¶6 In its response to the acknowledgment order, the agency argued that “the fact that Appellant has completely failed to provide any evidence demonstrating that she had obtained authorization for absences on April 14-15, 2008[,] sufficiently establish[es] that she failed to follow leave request procedures.”<sup>1</sup> IAF, Tab 8 at 10. However, neither the proposal notice, nor the decision notice informed the appellant of this purported specification of a failure to follow leave-request procedures on April 14, 2008. See *id.*, subtabs 4(c), 4(m). In the proposal notice, the agency charged the appellant with failure to follow leave-request procedures solely based on her alleged misconduct on April 3, 2008. *Id.*, subtab 4(m) at 3-4. It only specified the appellant’s alleged misconduct on April

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<sup>1</sup> The agency’s response to the acknowledgment order also referred to the appellant’s unauthorized absence and failure to follow leave-request procedures on April 15, 2008, but it never charged the appellant with this alleged misconduct. IAF, Tab 8 at 10. It is undisputed that the agency retroactively placed the appellant on leave without pay status for her April 15, 2008 absence. *Id.*, subtab 4(r), Tab 24 at 4. The appellant did not raise this issue on appeal below or on review, and the AJ did not sustain specifications of unauthorized absence and failure to follow leave-request procedures on April 15, 2008. See PFRF, Tab 1; ID at 11.

14, 2008, in support of its charges of lack of candor and unauthorized absence. *See id.* at 1-3. We therefore find that the agency failed to provide the appellant with advance notice of the purported specification of failure to follow leave-request procedures on April 14, 2008. The agency thereby prejudiced the appellant's procedural due process rights in denying her the opportunity to respond to the purported April 14, 2008 specification.

¶7 As a result of the agency's own apparent confusion regarding its charges and specifications, the AJ improperly considered the purported specification that the appellant failed to follow leave-request procedures on April 14, 2008. ID at 7 n.2, 12. Upon finding that the agency failed to prove the specification regarding the appellant's alleged misconduct on April 3, 2008, ID at 10-11, the AJ determined that "the remaining proven specification of unscheduled absence and failure to follow established leave requesting procedures is sufficient to sustain these charges," and found that:

[T]he appellant failed to follow these procedures on April 14, 2008, as it is undisputed that she failed to receive authorization in advance for this absence. I further find that, because the appellant failed to request leave and receive approval by her supervisor, her absence on April 14, 2008, was unauthorized. I therefore find that the agency proved its charges of failure to follow established leave requesting procedures and unauthorized absences by preponderant evidence.

ID at 12. The AJ should not have considered or sustained this purported specification, as it was not set forth in the proposal or decision notice.

¶8 On review, neither party challenges the AJ's findings that the agency failed to prove the sole specification in the proposal notice of failure to follow leave-request procedures on April 3, 2008. *See* PFRF, Tab 1; ID at 9-12. Based on our review of the record, we discern no basis to disturb the AJ's explained decision not to sustain this April 3, 2008 specification. Consequently, the agency failed to prove its charge of failure to follow leave-request procedures. We therefore REVERSE the ID regarding this charge.

2. The AJ properly sustained the charges of unauthorized absence and lack of candor.

*a. Unauthorized Absence*

¶9 The agency has the burden of proving by preponderant evidence that the appellant engaged in the conduct with which she was charged. [5 C.F.R. § 1201.56\(a\)\(1\)\(ii\)](#). In order to prove a charge of unauthorized absence, the agency must show by preponderant evidence that the employee was absent, and that her absence was unauthorized or that her request for leave was properly denied. *Wesley v. U.S. Postal Service*, [94 M.S.P.R. 277](#), ¶ 14 (2003). As a general rule, an agency's approval of leave for unscheduled absences precludes it from taking adverse action on the basis of such absences. *Id.*

¶10 The appellant has consistently alleged that her April 3 and 14, 2008 absences were covered by the FMLA.<sup>2</sup> PFRF, Tab 1 at 6-8; IAF, Tab 1 at 6, Tab 18 at 13-14. The appellant requested FMLA leave and submitted medical certificates from her health care provider dated May 2, and June 25, 2008, which confirmed that she began suffering from a mononucleosis-like illness on approximately April 12, 2008, and from Hepatitis C as early as April 1, 2008. IAF, Tab 8, subtabs 4(n), 4(s).

¶11 The FMLA allows an employee to take up to 12 weeks of leave per year (paid or unpaid) for various purposes, including an employee's own serious health condition. *See* [5 U.S.C. § 6382\(a\)\(1\)](#). A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves, among other things, continuing treatment by a health care provider.

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<sup>2</sup> The appellant contends that she invoked FMLA leave commencing April 12, 2008, and presented a medical certificate from her health care provider that her mononucleosis-type illness had a likely duration of 4 to 6 weeks. IAF, Tab 8, subtab 4(s). However, it appears that the appellant did not invoke FMLA leave for the full duration of her condition, or the appellant would not have called her supervisor, Assistant Chief of the National Research Program Harry L. Jenter, regarding her absences on April 3, 14 and 15, 2008, which indicates that she had been scheduled to work on those dates.

[5 U.S.C. § 6381](#)(5)(B). An agency may require that a request for such leave be supported by certification from a health care provider and that the employee must submit this certification to the agency in a timely manner. [5 U.S.C. § 6383](#)(a). The certification “shall be sufficient” if it states the date the serious health condition began, the probable duration of the condition, the appropriate medical facts known by the health care provider, and a statement that the employee is unable to perform her position’s functions, or that she will require intermittent leave or leave on a reduced schedule, including the dates for and duration of the expected treatment. [5 U.S.C. § 6383](#)(b). The Board has held that an agency has the burden of proving that it properly denied FMLA leave in charging an appellant with unauthorized absence. *Williams v. Department of the Air Force*, [89 M.S.P.R. 484](#), ¶ 21 (2001). Where the facts, either specifically raised by the appellant or otherwise shown by the record evidence, implicate the FMLA relative to a leave-related charge, the Board will consider and apply the FMLA without shifting the burden of proof to the appellant. *Id.*

(i) April 3, 2008

¶12 On review, neither party challenges the AJ’s findings that the agency failed to prove its specification of unauthorized absence on April 3, 2008. *See* PFRF, Tab 1. The AJ found that the appellant’s April 3, 2008 absence was covered by the FMLA. *See* ID at 10-11. The record establishes that on April 3, 2008, the appellant notified the agency that she had been at the doctor’s office, and was in bed with cramps. IAF, Tab 8, subtabs 4(o) at 9, 4(u)-4(v); *see Gross v. Department of Justice*, [77 M.S.P.R. 83](#), 88 (1997) (the Board has held that an employee is not required to explicitly invoke the FMLA in requesting covered leave). Although the medical certification indicated that her mononucleosis-like illness did not commence until April 12, 2008, her symptoms on April 3, 2008, appeared to be consistent with that illness, which produced symptoms of fever, nausea, vomiting, and malaise. IAF, Tab 8, subtab 4(s). Moreover, the appellant’s Hepatitis C commenced on April 1, 2008. *Id.*, subtab 4(n). We take

administrative notice that Hepatitis C can cause nausea, vomiting, and abdominal pain. *See* <http://www.cdc.gov/hepatitis/C/cFAQ.htm>. We therefore find that the AJ properly did not sustain the specification that the appellant's April 3, 2008 absence was unauthorized.

(ii) April 14, 2008

¶13 The appellant contends that her April 14, 2008 absence was also covered by the FMLA because she informed Mr. Jenter that she was disoriented and confused, and was “losing my mind trying to find [my badge and keys],” which were “adverse symptoms of her disease.” PFRF, Tab 1 at 7-8; IAF, Tab 8, subtab 4(o) at 7, IAF, Tab 26 at 5. On appeal, the appellant also alleged that because she called in to report an illness on April 15, 2008, that should have been sufficient to show that her April 14, 2008 absence was related to her illness. IAF, Tab 26 at 5. These arguments are without merit.

¶14 In her April 14, 2008 voicemails to Mr. Jenter, the appellant expressly stated that she was unable to report for duty because she was moving, and subsequently lost her identification badge and keys. IAF, Tab 8, subtab 4(o) at 3-4, 7. Nowhere in the April 15, 2008 voicemail message did the appellant assert that she was unable to report for duty on April 14, 2008, because of illness. *Id.* at 5-6. She merely stated that she was unable to report for duty on April 15, 2008, because of a back injury that she had sustained while moving on the prior day. *Id.*

¶15 Even if the appellant had asserted that she was unable to report for duty on April 14, 2008, because she was disoriented and confused, this absence is not covered by the FMLA because the appellant had only invoked FMLA leave for her Hepatitis C and her mononucleosis-like illness. *See* IAF, Tab 8, subtabs 4(n), 4(s). Neither of the medical certificates supporting the appellant's FMLA request document symptoms of disorientation or confusion that would establish a connection between her April 14, 2008 absence, and her Hepatitis C or mononucleosis-like illness. *See id.* We therefore agree with the AJ's findings

that the appellant's April 14, 2008 absence was not covered by the FMLA, and consequently, her absence was unauthorized. ID at 11-12. Thus, the AJ properly sustained the specification of unauthorized absence on April 14, 2008, and sustained the charge of unauthorized absence. We therefore AFFIRM the AJ's findings regarding this charge.

*b. Lack of Candor*

¶16 The Federal Circuit has held that lack of candor is a “concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete.” *Ludlum v. Department of Justice*, [278 F.3d 1280](#), 1284 (Fed. Cir. 2002).

¶17 As set forth above, on April 14, 2008, the appellant left voicemails for Mr. Jenter, stating that she was unable to report for duty because she was moving, and that she lost her identification badge and keys. IAF, Tab 8, subtab 4(o) at 3-4, 7. It is undisputed that the following day, the appellant left another voicemail message for Mr. Jenter, stating that she was “sick as a dog from moving everything and my back is killing me. I think I – I don't know, I think I threw something out on my back.” *Id.* at 5. It is further undisputed that unbeknownst to the appellant, the voicemail system recorded the following conversation between the appellant and an unidentified person:

SPEAKER B: Man you come up with some good ones. I want to hear –

(Laughing.)

SPEAKER A: Because I came up with – remember yesterday? Yeah, I found the bag and the bag came home and now I am, like, can't walk, I can't walk, and the bag came home but I can't walk.

SPEAKER B: (unintelligible)

SPEAKER A: It's pretty bad-ass.

*Id.* at 5-6 (emphasis added). On review and on appeal, the appellant merely argues that both the AJ and the agency should have credited her statement over

the “uttering of an anonymous individual of unknown reputation in an unknown context.” IAF, Tab 18 at 14; *see* PFRF, Tab 1 at 9-10. We disagree. The appellant’s – not the unidentified individual’s – candor, is at issue in this appeal. The undisputed evidence demonstrates that moments after the appellant left a voicemail message for her supervisor stating that she was unable to report for duty, background laughter ensued, and the appellant admitted that she “came up with” excuses both on April 14 and 15, 2008. IAF, Tab 8, subtab 4(o) at 5-6. These actions by the appellant undermined the credibility of her statements to Mr. Jenter regarding her absences, and thereby demonstrated her lack of candor. Consequently, the AJ properly found that the agency proved by preponderant evidence that the appellant demonstrated lack of candor, and sustained the charge. ID at 6. Thus, we AFFIRM these findings.

3. The appellant did not prove her affirmative defense.

¶18 Where as here, the record is complete, the Board will examine whether an appellant has proven her disability discrimination claim by preponderant evidence. *Harris v. Department of the Air Force*, [100 M.S.P.R. 452](#), ¶ 5 (2005); *see* 5 C.F.R § 1201.56(a)(2)(iii). It appears that the appellant in this matter is asserting a disparate treatment, rather than a failure to accommodate claim. An appellant may establish a disability discrimination claim based on disparate treatment by showing that: (1) she is a member of a protected group; (2) she was situated similarly to an individual who was not a member of the protected group; and (3) she was treated more harshly than the individual who was not a member of her protected group. *Hardy v. U.S. Postal Service*, [104 M.S.P.R. 387](#), ¶ 33, *aff'd*, 250 F. App’x 332 (Fed. Cir. 2007). For other employees to be deemed similarly situated, the Board has held that all relevant aspects of the appellant’s employment situation must be “nearly identical” to those of the comparative employees. *Id.*

¶19 A disabled person is one who has a “physical or mental impairment” that “substantially limits” one or more “major life activities,” who has a record of

such an impairment, or who is regarded as having such an impairment. *Davis v. Department of Veterans Affairs*, [106 M.S.P.R. 654](#), ¶ 8 (2007); [29 C.F.R. § 1630.2\(g\)](#). The term “major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. *Davis*, [106 M.S.P.R. 654](#), ¶ 8; [29 C.F.R. § 1630.2\(i\)](#). A person who is “substantially limited” in the major life activity of working is “significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. *Davis*, [106 M.S.P.R. 654](#), ¶ 8; [29 C.F.R. § 1630.2\(j\)\(3\)](#). A medical diagnosis of an impairment, by itself, is insufficient to prove disability; an appellant must offer evidence “that the extent of the limitation caused by the impairment is substantial, in terms of the employee’s own experience.” *Davis*, [106 M.S.P.R. 654](#), ¶ 8 (citing *Burgess v. Department of the Interior*, [95 M.S.P.R. 134](#), ¶¶ 23-25 (2003)).

¶20 An individual may also qualify as disabled under the “perceived as” or “regarded as” definition when she:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation; (2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (3) Has none of the impairments defined in paragraph (h) (1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.

[29 C.F.R. § 1630.2\(l\)](#); see *Carter v. Department of Justice*, [88 M.S.P.R. 641](#), ¶ 24 (2001). In each of these scenarios, “it is necessary that [the employer] entertain misperceptions about the individual. . . .” *Carter*, [88 M.S.P.R. 641](#), ¶ 24.

¶21 Here, the appellant alleges that the agency discriminated against her based on her disability in taking the following actions: (1) requiring her to telephone Mr. Jenter upon her arrival and departure from the office on a daily basis; (2) taking prior disciplinary action for lack of candor; and (3) removing her for

unauthorized absences on April 3 and 14, 2008, although the absences were covered by the FMLA. *See* PFRF, Tab 1 at 10; IAF, Tab 1 at 7, Tab 7 at 4-5, Tab 18 at 7-11. However, she failed to establish that her Hepatitis C and mononucleosis-like illnesses substantially limited one or more of her major life activities or impaired her ability to perform either a class of jobs or a broad range of jobs, or that the agency perceived her as disabled. *See* IAF, Tabs 1, 7, Tab 8, subtabs 4(n), 4(s), Tab 18 at 15. Thus, we agree with the AJ that the appellant failed to prove that she was a disabled individual entitled to the protection of disability discrimination laws. ID at 13-14. Consequently, the AJ properly found that there was no evidence of disability discrimination. ID at 14; *see Davis*, [106 M.S.P.R. 654](#), ¶ 10 (where the appellant failed to prove that she was a disabled individual, the Board found that the agency did not discriminate against her on the basis of disability when it removed her for the charged misconduct). We AFFIRM the AJ's findings.

4. The AJ correctly found that the penalty of removal was reasonable.

¶22 On review, neither party expressly disputes the AJ's nexus and penalty determinations. *See* PFRF, Tab 1. Although we reverse the portion of the ID that sustained the charge of failure to follow leave-request procedures, we find that the AJ's nexus and penalty determinations were proper based on the proven charges of lack of candor and unauthorized absence.

¶23 The AJ properly found that a nexus existed between the appellant's proven misconduct and the efficiency of service. ID at 14; *see Ludlum v. Department of Justice*, [87 M.S.P.R. 56](#), ¶ 28 (2000) (the appellant's lack of candor strikes at the very heart of the employer-employee relationship, and thus, directly impacts the efficiency of service), *aff'd*, [278 F.3d 1280](#) (Fed. Cir. 2002); *Crutchfield v. Department of the Navy*, [73 M.S.P.R. 444](#), 448 (1997) (the appellant's unauthorized absence, by its very nature, disrupts the efficiency of service); *Merritt v. Department of Justice*, [6 M.S.P.R. 585](#), 596 (1981), *modified by Kruger v. Department of Justice*, [32 M.S.P.R. 71](#), 75 n.2 (1987).

¶24 The Board will review an agency-imposed penalty only to determine if the agency considered all of the relevant factors and exercised management discretion within the tolerable limits of reasonableness. *Douglas v. Veterans Administration*, [5 M.S.P.R. 280](#), 306 (1981). When the Board sustains fewer than all of the agency's charges, the Board may mitigate the agency's penalty to the maximum reasonable penalty so long as the agency has not indicated in either its final decision or in proceedings before the Board that it desires that a lesser penalty be imposed on fewer charges. *Lachance v. Devall*, [178 F.3d 1246](#), 1260 (Fed. Cir. 1999).

¶25 Here, the agency has not stated a desire that a lesser penalty be imposed on fewer charges. *See* IAF, Tabs 8, 20. The AJ found that the deciding official considered the *Douglas* factors and found that the penalty of removal was reasonable based on the following: he lost confidence in the appellant's integrity, truthfulness, and her ability to exercise good judgment; the agency issued prior warnings and notices to the appellant regarding unauthorized absences; the appellant received prior discipline for lack of candor; the appellant did not demonstrate a potential for rehabilitation; and the penalty of removal was consistent with the Table of Penalties. ID at 15-16; *see* IAF, Tab 8, subtab 4(c) at 2-5.

¶26 The Board has found that the penalty of removal is appropriate where the appellant has demonstrated lack of candor and has taken unauthorized absences. *See Kamahale v. Department of Homeland Security*, [108 M.S.P.R. 666](#), ¶¶ 2, 15 (2008) (the Board found that the penalty of removal was reasonable where the appellant demonstrated lack of candor and inappropriate conduct); *Dunn v. Department of the Air Force*, [96 M.S.P.R. 166](#), ¶¶ 2, 12-18 (2004) (removal was a reasonable penalty where the employee engaged in conduct unbecoming and exhibited a lack of candor), *aff'd*, 139 F. App'x 280 (Fed. Cir. 2005); *Crutchfield*, 73 M.S.P.R. at 449-51 (the Board found that the penalty of removal was reasonable in light of the appellant's unauthorized absences); *Mitchell v. U.S.*

*Postal Service*, [19 M.S.P.R. 120](#), 122-23 (1984) (where the appellant received prior discipline for unauthorized absences, the Board found that the penalty of removal was reasonable where the appellant had two further incidents of absence without leave). Thus, we agree with the AJ that the penalty of removal for the charges of lack of candor and unauthorized absence is not beyond the tolerable limits of reasonableness. *See* ID at 15-16.

¶27 Accordingly, we AFFIRM the agency's removal action.

#### ORDER

¶28 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 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 Codes, 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.cafc.uscourts.gov](http://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.