UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2010 MSPB 173

Docket No. CH-0831-09-0791-C-1

Laura A. Hunt,

Appellant,

v.

Office of Personnel Management,

Agency.

August 24, 2010

Laura A. Hunt, Chicago, Illinois, pro se.

Roxann Johnson, Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

OPINION AND ORDER

¶1 The appellant has filed a petition for review of the June 11, 2010 compliance initial decision that denied her petition for enforcement. For the reasons set forth below, we DENY the petition for review, REOPEN this enforcement proceeding on our own motion under 5 C.F.R. § 1201.118, VACATE the compliance initial decision, and DISMISS the petition for enforcement for lack of jurisdiction.

BACKGROUND

¶2 The appellant filed an appeal of the Office of Personnel Management's (OPM's) May 15, 2009 reconsideration decision dismissing her request to recalculate the amount of her Civil Service Retirement System retirement annuity that commenced on May 29, 2000. Initial Appeal File (IAF), Tab 1, Tab 4 at 4-7, 23. The appeal was ultimately dismissed for lack of jurisdiction when OPM informed the Board that it had completely rescinded its reconsideration decision. IAF, Tab 4 at 1, Tab 9. The October 9, 2009 initial decision dismissing the appeal for lack of jurisdiction informed the appellant that she could file an appeal after OPM had issued its new reconsideration decision. IAF, Tab 9 at 2.

¶3 The appellant thereafter filed a May 27, 2010 petition for enforcement of the initial decision that had dismissed her appeal for lack of jurisdiction. Compliance File (CF), Tab 1. The appellant asked for the Board's assistance in obtaining a reconsideration decision from OPM. *Id.* at 1. Based on evidence that OPM had issued a June 1, 2010 reconsideration decision,[*] the administrative judge issued a compliance initial decision that denied the appellant's petition for enforcement. CF, Tabs 4-5. The appellant has filed a timely petition for review of the compliance initial decision, and OPM has filed a response in opposition. Petition for Review File, Tabs 1, 4.

ANALYSIS

¶4 We reopen this appeal on our own motion to consider the Board's jurisdiction over this compliance matter. *See Edwards v. Department of State*, 98 M.S.P.R. 481, ¶ 4 (2005); 5 C.F.R. § 1201.118. The existence of the Board's jurisdiction is a threshold issue in adjudicating an appeal, and the Board may

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[*] The appellant filed a separate appeal regarding OPM's June 1, 2010 reconsideration decision. That appeal, MSPB Docket No. CH-0831-10-0708-I-1, is pending in the Board's Central Regional Office.

raise the issue of jurisdiction at any time during a Board proceeding. *Edwards*, 98 M.S.P.R. 481, ¶ 4.

¶5 For the reasons set forth below, we find that the administrative judge erred in ruling on the merits of the appellant's petition for enforcement, and we find that the petition should have been dismissed for lack of jurisdiction. As the administrative judge correctly found in the initial decision on the appellant's appeal of OPM's first reconsideration decision, if OPM completely rescinds a reconsideration decision, its rescission divests the Board of jurisdiction over the appeal in which the reconsideration decision is at issue, and the appeal must be dismissed for lack of jurisdiction. IAF, Tab 9 at 2; *see Frank v. Office of Personnel Management*, 113 M.S.P.R. 164, ¶¶ 7-8 (2010).

¶6 Because the appellant's appeal of OPM's original reconsideration decision was dismissed for lack of jurisdiction, the appellant's petition for enforcement of the initial decision in that appeal should also have been dismissed for lack of jurisdiction. The Board derives its enforcement authority from 5 U.S.C. § 1204(a)(2), which authorizes the Board to order any federal agency or employee to comply with the Board's decisions and orders issued under its jurisdiction. *See* 5 C.F.R. § 1201.181(a). The Board has no authority to order enforcement if it lacks jurisdiction over the underlying appeal. *See Haskins v. Department of the Navy*, 106 M.S.P.R. 616, ¶ 17 (2007). The evidence and argument contained in the appellant's petition for review generally pertains to the merits of OPM's treatment of her claims and is wholly immaterial to the threshold issue in this matter concerning the Board's authority to order the agency to do anything to comply with the October 9, 2009 initial decision. Petition for Review File, Tab 1. The appellant has a separate appeal pending regarding OPM's June 1, 2010 reconsideration decision. *See supra* ¶ 3 n.*.

ORDER

¶7 Accordingly, we VACATE the compliance initial decision, and DISMISS the petition for enforcement for lack of jurisdiction. This is the final decision of the Merit Systems Protection Board regarding the appellant's petition for enforcement. 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 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.