HOLLEY C. BARNES v. OFFICE OF PERSONNEL MANAGEMENT
Docket # DC-0731-09-0260-R-1
Appellant's Brief in Support of Petition for Review on Remand
Summary Page

Case Title : HOLLEY C. BARNES v. OFFICE OF PERSONNEL MANAGEMENT

Docket Number : DC-0731-09-0260-R-1

Pleading Title : Appellant's Brief in Support of Petition for Review on Remand

Filer's Name : Joseph V. Kaplan, Esq.

Filer's Pleading Role : Private Attorney

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Table of Contents

Pleading Interview	3
Uploaded Pleading Text Document	4
Certificate of Service	19

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Online Interview

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U.S. MERIT SYSTEMS PROTECTION BOARD

HOLLEY C. BARNES, Appellant, v. OFFICE OF PERSONNEL MGMT, Agency.	MSPB Docket Number DC-0731-09-0260-R-1 DATE: August 31, 2010

APPELLANT'S BRIEF IN SUPPORT OF HER PETITION FOR REVIEW ON REMAND

I. INTRODUCTION

The Appellant, Holley Barnes, by and through undersigned counsel, hereby submits this brief in support of her Petition for Review to address the questions posited by the Board in its September 3, 2009, Opinion and Order, to-wit: 1) Whether the Appellant is entitled to appeal her removal to the Board as an adverse action under 5 U.S.C. chapter 75, subchapter II; and 2) if the Board's adverse-action jurisdiction attaches, whether the other actions on appeal, *i.e.*, debarment and cancellation of eligibilities, remain within the Board's jurisdiction under 5 C.F.R. § 731.501.

For the reasons set forth below, the Board should hold that OPM's regulations at 5 C.F.R. Subpart 731, as applied to non-probationary employees, are invalid and that the Appellant is entitled to the substantive and procedural adverse action protections of 5 U.S.C. Chapter 75.

II. BACKGROUND

The essential facts are undisputed. Appellant Barnes was hired by the Department of Homeland Security, Citizenship and Immigration Services (CIS) effective November 12, 2006. By letter dated December 1, 2008 -- more than two years after the Appellant commenced employment --

the U.S. Office of Personnel Management (OPM) found Ms. Barnes unsuitable for her position.[1] OPM directed CIS to remove Appellant from her position, canceled Appellant's eligibility on any existing registers, canceled any pending applications she may have had, and debarred her from another competitive service position for a period of three years, ending December 2, 2011. (*See* Initial Decision, April 27, 2009, at 2). The Appellant's appointment with CIS was subject to a 1-year probationary period. (*See* Opinion and Order, September 3, 2009, at 2). At the time CIS removed Ms. Barnes at OPM's direction, she occupied a competitive service position and had completed her 1-year probationary period. *Id.* at 3. Consequently, at the time of her removal, the Appellant satisfied the definition of "employee" under 5 U.S.C. § 7511(a)(1)(A). *Id.*

Ms. Barnes removal and debarment were sustained by an administrative judge, pursuant to Board jurisdiction conferred by OPM at 5 C.F.R. § 731.501(a).[2] On Petition for Review, the Board found no error in the administrative judge's initial decision. However, *sua sponte*, the Board reopened and remanded the case to address the viability of OPM's suitability regulations, as they apply to non-probationary employees, set out above. OPM moved to reopen the instant appeal, along with the appeal in *Aguzie v. OPM*, No. DC-0731-09-0260-B-1, arguing that due to the legal significance of the issues of first impression presented, the Board itself should decide the issue without remand to the administrative judge. The Board granted OPM's Motion to Reopen on October 15, 2009.

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[1] OPM's unsuitability determination was based on an allegation that the Appellant provided false information on her employment documents with respect to her education background.

[2] Under 5 C.F.R. § 731.501, MSPB's authority is limited to a determination as to whether OPM's determination of unsuitability is proven by preponderant evidence. Subsequently, the Board has no authority to review the determination as to what action is appropriate based on the unsuitability determination.

III.
ARGUMENT

WHEN OPM DIRECTS AN AGENCY TO REMOVE A TENURED EMPLOYEE FOR SUITABILITY REASONS, THE BOARD MUST CONSIDER THE APPEAL UNDER 5 U.S.C. CHAPTER 75 BECAUSE OPM IS WITHOUT AUTHORITY TO LIMIT STATUTORY RIGHTS. THE BOARD ALSO HAS JURISDICTION OVER APPELLANT'S DEBARRMENT FROM FEDERAL SERVICE

Basic principles of statutory construction dictate that Appellant Holley Barnes is entitled to appeal her removal under Chapter 75. It is a fundamental precept of statutory construction that, when a "statute's text is plain and unambiguous, the statute must be applied according to its terms." *United States v. Gonzales*, 520 U.S. 1, 4 (1997); *Dodd v. United States*, 545 U.S. 353, 359 (2005). As discussed below, 5 U.S.C. Chapter 75 plainly and unambiguously applies to Appellant's removal. OPM cannot short-circuit or circumvent the Appellant's Chapter 75 rights. OPM is also unable to deny Appellant's Chapter 75 rights due to the "general prohibition" against implying exceptions into the reading of a statute. *Andrus v. Glover Construction Company*, 466 U.S. 608, 616-17 (1980). As a plain reading of the statute reveals, there is no exception to the right of non-probationary employees to appeal their removals on unsuitability grounds to the Board under Chapter 75. Moreover, OPM's exceeded its rule-making authority in that 5 C.F.R. Subpart 731 outsteps the statutory grant of rule-making rights under 5 U.S.C. § 3301.

Lastly, Appellant's appeals of the debarment and cancellation of eligibilities would remain within the Board's jurisdiction under the "unified penalty" principle, but only under 5 U.S.C. Chapter 75 and not under 5 C.F.R. § 731.501. Thus, all three of the penalties in the instant case fall within the jurisdiction of the Board. Each of these arguments will be discussed in turn.

A.
The Text of 5 U.S.C. § Chapter 75, Granting Appellant Board Jurisdiction of Her Removal as an Adverse Action is Plain and Unambiguous on its Face. Therefore, Appellant is Entitled to Appeal her Removal for Suitability Reasons Under 5 U.S.C. §7513(d) as Any Other Adverse Action.

The plain language of Chapter 75 grants Appellant an unconditional right to appeal her removal under 5 U.S.C. §7513(d). It is a well-established principle of statutory construction that, "[t]he starting point for statutory interpretation is the language of the statute." *Bull v. United States*, 479 F.3d 1365, 1376 (Fed. Cir. 2007). Importantly, when the text of the statute provides a clear meaning or answer to the question at issue, the inquiry ends, and the interpretation does not pause to consider other tools of statutory construction, including the statute's structure, the canons of statutory construction, and legislative history. *Id.* In these cases, where the statute's text is plain and unambiguous, the statute must be applied according to its terms. *Carcieri v. Dep't. of the Interior*, 129 S.Ct. 1058 (2009). Applying these rules of statutory construction to the instant case, it is apparent that Chapter 75 grants Appellant the right to appeal her removal for suitability reasons under that statute.

1.
5 U.S.C Chapter 75 expressly establishes the right of Appellant to appeal her removal as adverse actions to the Board

In pertinent part, 5 U.S.C. § 7513 provides:

> (a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an ***employee*** only for such cause as will promote the efficiency of the service.
>
> (b) An employee against whom an ***action*** is proposed is entitled to--
> (1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;
> (2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

. . .

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(Emphasis added).

To determine if Appellant falls within this statutory right of appeal, she must be an "employee" within § 7513(a), and the personnel action on appeal must be an "action" as contemplated by § 7513(b). That Appellant Barnes is an employee with an appealable action is clear from the plain reading of the statute.

The definition of "employee" is contained in Section 7511 of Chapter 75. This definition provides for three classifications of employees: 1) employees in the competitive service; 2) employees who are preference eligible and in the excepted service; and 3) employees who are not preference eligible but are in the excepted service. *See* 5 U.S.C. §7511. Appellant was an employee in the competitive service, and a reading of the definition of this category of employee leaves no room for equivocation as it asserts that:

(1) "employee" means – (A) an individual in the competitive service – (i) who is not serving a probationary or trial period under an initial appointment; or (ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less. *See* 5 U.S.C. § 7511(a)(1)(A).

From a reading of the statutory provision, it is clear that an individual who is not serving a probationary or trial period under an initial appointment constitutes an "employee" for the purposes of the statute. Thus, Appellant would classify as an employee as she was in the competitive service, and it is uncontested that she had completed her probationary period. In

fact, the Board has made a specific finding that the Appellant satisfies the definition of employee. *See* Opinion and Order, dated September 3, 2009, at 3.

It is worth noting that the Federal Circuit previously adjudicated a similar matter, involving the definition of "employee" and, in so doing, reaffirmed the primacy of the "plain and unambiguous" doctrine in statutory construction. In *Van Wersch v. Dept. of Health and Human Services*, 197 F.3d 1144, 1148 (Fed. Cir. 1999), the Court found itself facing express statutory language concerning the definition of employee with possibly conflicting legislative history. The Board had held that Van Wersch did not meet the definition of employee because she did not meet the requirements of § 7511(a)(1)(C)(i) ***and*** (ii). Van Wersch argued that under the express terms of the statute, she satisfied the definition of employee if she satisfied the requirements of § 7511(a)(1)(C)(i) ***or*** (ii). The Court agreed with Van Wersch while noting the government's argument that the legislative history of Chapter 75 indicated that Congress did not want to extend appeal rights to nonpreference eligibles, such as Ms. Van Wersch. *Id.* at 1151. In ultimately deciding that Ms. Van Wersch was an employee entitled to appeal rights at the Board, the Court declared that "the language of § 7511(a)(1)(C) … is crystal clear." *Id.* at 1152. Noting that the plain meaning of the word "or" signifies alternatives, the Court stated that per the statute, Ms. Van Wersch needed only to qualify under (i) or (ii) to be considered an employee. *Id.* The Court added that had the statute been ambiguous, then and *only* then, the government's legislative intent argument would have come into play. *Id.* (Emphasis added). In the instant case, there is no ambiguity about the definition of employee, and Appellant Barnes meets that definition. The lesson of *Van Wersch* applies to the instant case.

The statute is also clear that the personnel action in this case -- a removal -- is appealable to the Board as an adverse action; a removal for "unsuitability" is not among the listed statutory exceptions. As 5 U.S.C. §7512(1) plainly states -- and could not state it any plainer -- subchapter II of 5 U.S.C. Chapter 75 applies to removals:

> Sec. 7512. Actions covered
>
> This subchapter applies to--
> (1) ***a removal;***
> (2) a suspension for more than 14 days;
> (3) a reduction in grade;
> (4) a reduction in pay; and
> (5) a furlough of 30 days or less;

(Emphasis added).

Moreover, 5 U.S.C. §7512 also specifically enumerates which actions are not covered under the statute, and they include:

> (A) a suspension or removal under section 7532 of this title, (B) a reduction-in-force action under section 3502 of this title, (C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager, (D) a reduction in grade or removal under section 4303 of this title, or (E) an action initiated under section 1215 or 7521 of this title. *See* 5 U.S.C. § 7512.

Appellant's removal does not fall within any of the explicit exemptions in §7512. Therefore Appellant's removal is within the Board's jurisdiction under § 7513(a) and can only be taken for such cause as "will promote the efficiency of the service," as that term has been interpreted and applied by the Board and its reviewing court.

Because Appellant meets the statutory definition of an "employee," and because her removal falls within the list of enumerated adverse actions, she is entitled to bring her appeal under Chapter 75. Section 7513(d) makes clear that "an employee against whom an action is taken

under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title." *See* 5 U.S.C. §7513(d). As with the earlier provisions, a plain reading of this provision is sufficient to ascertain its meaning.

2.

Congress has demonstrated its ability to explicitly exempt certain employees from appeal rights under Chapter 75 and did not exempt employees removed on nonsuitability grounds. Any attempt to imply such exemption into Chapter 75 is contrary to established case law.

OPM's attempt to deprive Appellant of her statutory rights by implication is a violation of statutory construction and rules of preemption, and therefore fails. As mentioned above, in drafting Chapter 75, Congress specifically enumerated exceptions to the general ability of employees to appeal their removals under the provisions of 5 U.S.C. § 7513(d). Section 7511(b) contains an extensive list of individuals exempted from the section. *See* 5 U.S.C. §7511(b). Moreover, § 7512 provides an explicit list of adverse actions to which the appeal rights of Chapter 75 do not apply. *See* 5 U.S.C. §7512. Nowhere does the statute provide an exemption from Chapter 75's adverse actions rights and procedures for non-probationary individuals who are removed for nonsuitability, such as Appellant.

It is an axiom of statutory construction that "the expression of ...exception[s] indicates that no other exceptions apply." *Horner v. Andrzjewski*, 811 F.2d 571, 575 (Fed. Cir. 1987). Put another way, "[w]here Congress explicitly enumerates certain exceptions...additional exceptions are not to be implied, in the absence of evidence or a contrary legislative intent." *Andrus v. Glover Construction Company,* 446 U.S. 608, 617 (1980). Because removal actions based on suitability are not included among the exemptions, Appellant is not divested from Chapter 75

appeal rights. By attempting to deny Appellant these rights, OPM is clearly trying to employ an implicit, unauthorized exception to Chapter 75.

For the reasons stated above, the plain and ambiguous language of 5 U.S.C. Chapter 75 provides that the Appellant's removal must be processed according to, and adjudicated in accordance with, the substantive and procedural safeguards of that Chapter, and with OPM's Regulations under 5 C.F.R. Part 752, to the extent those regulations are in accord with 5 U.S.C. Chapter 75. OPM's limited appeal rights, and limits on the Board's authority under 5 C.F.R. § 731, should be declared invalid or otherwise inoperative to the extent they apply to federal employees, such as the Appellant, who have passed their probationary periods.

B.
OPM's Regulations Are in Conflict With, and Exceed, its Statutory Authority With Respect to Making Suitability Determinations

OPM declares that the purpose of 5 C.F.R. Part 731 is "to establish criteria and procedures for making determinations of suitability and for taking suitability actions regarding employment in covered positions pursuant to ***5 U.S.C. §3301*** and E.O. 10577." *See* 5 C.F.R. § 731.101(a), (emphasis added). Yet, OPM's regulations, and its dictates to federal agencies that they remove non-probationary federal employees for nonsuitability, as in the instant case, exceed the scope of OPM's statutory authority under 5 U.S.C. § 3301. Consequently, the Board should hold OPM's regulations to be invalid.

The inquiry starts, as it must, with the express language of 5 U.S.C. § 3301 -- which statute OPM claims is the source of its authority to promulgate the regulations used in this case to remove Appellant Barnes. Specifically, 5 U.S.C. § 3301 provides:

The President may:

(1) prescribe such regulations for the ***admission*** of individuals into the civil service in the executive branch as will best promote the efficiency of that service;
(2) ascertain the fitness of ***applicants*** as to age, health, character, knowledge, and ability for the employment sought; and
(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

(Emphasis added).

Therefore, any statutory authority that OPM claims emanates from 5 U.S.C. § 3301 must be be limited to those individuals who are seeking ***admission*** into the civil service under § 3301(1) or for ascertaining the fitness of ***applicants*** to federal civil service. The Appellant fits under neither of these statutory grants to OPM.

Oxford dictionary on-line defines "admission" as follows: "the process or fact of entering or being allowed to enter a place, organization, or institution." *(http://oxforddictionaries.com/view/entry/m_en_us1220008#m_en_us1220008)*. Merriam-Webster on-line dictionary defines "admission" as follows: "the state or privilege of being admitted." (http://www.merriam-webster.com/dictionary/admission?show=0&t=1283287502).

Neither the Appellant, nor any non-probationary employee, is seeking ***admission*** into the civil service. To the contrary, non-probationary employees such as the Appellant are perforce the antithesis of individuals seeking "admission" into federal civil service because they have already been employed and have passed the probationary period, which period is considered to be a continuation of the examination process. *See Brandt v. Dept. of the Air Force*, 103 M.S.P.R. 671, 681 n. 7 (2006). Because OPM claims that its right to promulgate 5 C.F.R. Subpart 731

devolves from 5 U.S.C. § 3301, Subpart 731 must be limited in scope and application to individuals seeking to be admitted into the civil service, or else to "applicants" as discussed immediately below. Again, the Appellant and non-probationary civil servants are not seeking to be admitted to the federal civil service. Therefore, to the extent 5 C.F.R. Subpart 731 allows OPM to make suitability determinations of non-probationary employees, such regulations exceed OPM's claimed statutory authority.

Oxford dictionary on-line defines "applicant" as follows: "a person who makes a formal application for something, typically a job." *(http://oxforddictionaries.com/view/entry/m_en_us1222523#m_en_us1222523).* Merriam-Webster on-line dictionary defines "applicant" as follows: "one who applies <a job *applicant*>." (http://www.merriam-webster.com/dictionary/applicant).

Neither the Applicant nor other non-probationary employees were applying to become civil service employees; that status had already been attained by them when they were selected for employment and appointed to their positions. Because OPM claims that its right to promulgate 5 C.F.R. Subpart 731 devolves from 5 U.S.C. § 3301, Subpart 731 must be limited in scope and application to individuals who are "applying" to become federal civil service employees. The Appellant and non-probationary civil servants are not "applying" to become federal civil service employees; they had already attained that status. Therefore to the extent 5 C.F.R. Subpart 731 allows OPM to make suitability determinations of non-probationary employees, such regulations exceed OPM's claimed statutory authority.

Interestingly, in implementing its regulations at 5 C.F.R. Subpart 731 purportedly in fulfillment of this statutory right, OPM has listed the "definitions" it itself uses. OPM defines an "applicant" as "a person who is being considered or has been considered for employment." 5 C.F.R. § 731.101(b). Additionally, an "appointee" is defined as a person who has entered on duty and is in the first year of a subject-to-investigation appointment. *Id.* Moreover, Part 731 also clearly contrasts employees from applicants and appointees, stating that an employee is "a person who has completed the first year of a subject-to-investigation appointment." *Id.* Even using OPM's own definitions it is clear that Subpart 731 is inapplicable to a removal of a non-probationary employee at OPM's direction for unsuitability.

As the plain and unambiguous reading of 5 U.S.C. § 3301 indicates, OPM has the power to regulate ***admission*** to the civil service or to examine the suitability of ***applicants***, but no clear reading of the statute could be said to grant OPM the power to subject permanent federal employees—who are not applicants, and who certainly are not seeking admission to the civil service—to suitability actions. *Id.* (Emphasis added). Such an ability by OPM is self-granted, and contrary to its statutory grant of authority. The Appellant, neither seeking "admission" into the civil service, nor being an "applicant" for federal civil service, is beyond the reach of OPM's OPM's regulations at 5 C.F.R. Subpart 731, permitting it to dictate to federal agencies that they remove non-probationary employees for unsuitability exceed OPM's statutory rights and are invalid.

1.
OPM cannot rely on executive orders to circumvent clear statutory limits on its rule-making

In addition to citing to 5 U.S.C. § 3301 as its authority, also cites to E.O. 10577 as its authority for its suitability regulations at 5 C.F.R. Subpart 731. OPM's regulations are subservient to the statutory authority in Chapters 33 and 75 of Title 5 the U.S. Code, regardless of any executive order.

OPM, like all federal agencies, is a "'creature of statute,'" ... "'having no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.'" *See Atlantic City Electric Company*, 295 F.3d at 8. Moreover, an agency is not permitted to "rely on one of its own regulations to trump the plain meaning of a statute." *Id.* at 11. OPM's rule-making authority must defer to the explicit terms of a federal statute. Likewise, OPM's stated reliance on E.O. 10577, to support the validity of 5 C.F.R. Subpart 731, fails as the provisions of Chapter 75 supersede any grant of authority in an executive order. As federal case law has made manifestly clear, "an executive order cannot supersede a statute." *Marks v. CIA*, 590 F.2d 997, 1003 (D.C. Cir. 1978). Notable about E.O. 10577 is the fact that it predates Chapter 75 by over 20 years, having been signed into law by President Eisenhower in 1954. As the order states explicitly that it applies to all positions in the competitive service, the rules of statutory construction dictate that any provision contrary to a provision in Chapter 75—which controls on issues relating to the competitive service—or any other statute, is superseded by the statutory authority. *Id.*[3] Moreover, Chapter 75 post-dates the Executive Order and would supersede any conflicting provision in the Order.

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[3] In its Opinion and Order, the Board asked the parties to address how and whether OPM's June 16, 2008 revision of it suitability regulations affect the scope of the Board's review of those actions. Because OPM now specifically precludes agencies from taking an action against an "employee," *i.e.* a non-probationer, on suitability grounds, (*see* 5 C.F.R. § 105(e)), inasmuch as OPM is without statutory authority to remove a non-probationer for unsuitability as discussed at

B.
The Board Has Jurisdiction Over the Debarment and Cancelation Penalties

If the Board finds that the Appellant is entitled to appeal her removal under Chapter 75, the Board should also retain jurisdiction over her debarment and cancellation of eligibilities issues. The "unified penalty" principle dictates that when two penalties are part of a unified penalty, arising from the same set of factual circumstances, the Board's jurisdiction extends to both actions. *Campbell v. Dept. of Veterans Affairs*, 93 M.S.P.R. 70, 72 (2002). However, this jurisdiction would be pursuant to 5 U.S.C. Chapter 75, not 5 C.F.R. § 731.501. [4]

This jurisdictional principle regarding multiple components of a penalty has been firmly established by Federal Circuit. In *Brewer v. American Battle Monuments Commission*, 779 F.3d 663, 664 (Fed. Cir. 1985), the agency proposed to demote the employee a grade and reassign him based upon the same charged misconduct. The employee had been charged with the loss of government property and violation of two agency regulations. *Id.* The agency attempted to argue that the Board did not have jurisdiction to review the reassignment that accompanied the reduction in grade. *Id.* at 665. However, the Federal Circuit disagreed, asserting that:

> The board has jurisdiction to review what is ... a unitary penalty. To hold otherwise would insulate from review a penalty that may clearly be excessive or unreasonable in view of *Douglas*, by merely reversing the order of reduction in grade and reassignment.

Id.

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length above, and agencies are precluded by force of OPM's regulation from taking such action, Appellant must be reinstated as her removal was substantively and procedurally defective. If the CIS attempts to remove Appellant subsequently, if cannot rely on "unsuitability" but must give Appellant notice of reasons as to why her removal would promote the efficiency of the service.

[4] If 5 C.F.R. Subpart 731 is invalid as it applies to non-probationary employees, then so too are its debarment and other penalty provisions invalid with respect to those employees.

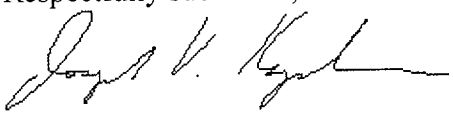
The unified penalty theory also applies when one of the proposed penalties, in-and-of-itself, would not invoke appeal rights under §7512. For example, a 14-day suspension is reviewable by the Board as part of a unified penalty. *Campbell v. Dept. of Veterans Affairs*, 93 M.S.P.R. 70, 73 (2002). It is evident that OPM's intended penalties of: 1.) removal; 2.) cancellation of reinstatement eligibility; and 3.) debarment from competition for any covered position for three years, stem from the same set of circumstances, namely, OPM's finding that Appellant was not suitable for her position. As such, the Board has jurisdiction over these penalties as part of Appellant's adverse action appeal.

IV.
CONCLUSION

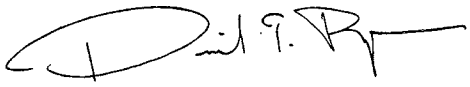
For all of the foregoing reasons, the Board should hold that OPM's regulations at 5 C.F.R. Subpart 731 are invalid to the extent that such regulations allow OPM to direct federal agencies to remove non-probationary in contravention of their full substantive and procedural rights under 5 U.S.C. Chapter 75. The removal of the Appellant should be reversed.

August 31, 2010

Respectfully submitted,



Joseph V. Kaplan



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Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

Name & Address	Documents	Method of Service
MSPB: Office of the Clerk of the Board	Appellant's Brief in Support of Petition for Review on Remand	e-Appeal / e-Mail
Holley C. Barnes Appellant	Appellant's Brief in Support of Petition for Review on Remand	e-Appeal / e-Mail

I agree to send a printed copy of the electronic pleading with attachments to non-efilers by the end of next business day, as follows:

Name & Address	Documents	Method of Service
Steven E. Abow, Esq. Agency Representative Office of Personnel Management Office Of General Counsel 1900 E St. N.W., Rm 7F10 Washington, DC 20415	Appellant's Brief in Support of Petition for Review on Remand	US Postal Mail
Robert J. Girouard, Esq. Agency Representative Office of Personnel Management Office of the General Counsel 1900 E Street, N.W. Room 7353 Washington, DC 20415-1300	Appellant's Brief in Support of Petition for Review on Remand	US Postal Mail
Darlene M. Carr, Esq. Agency Representative	Appellant's Brief in Support of Petition for	US Postal Mail

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