UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2012 MSPB 26

Docket No. SF-0752-11-0122-I-1

Mia S. Rhee,
Appellant,
v.
Department of the Treasury,
Agency.

March 5, 2012

Mia S. Rhee, Irvine, California, pro se.

Brady J. Kiehm, Esquire, 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 agency has filed a petition for review of the initial decision that reversed its 30-day suspension of the appellant for lack of candor. For the reasons set forth below, we DENY the agency's petition.

BACKGROUND

¶2 The appellant, a Special Agent in the San Francisco Field Division (SFFD) of the agency's Treasury Inspector General for Tax Administration's (TIGTA's) Office of Investigations, filed a Board appeal challenging her 30-day suspension. Initial Appeal File (IAF), Tab 1. The agency suspended the appellant based on a

charge of lack of candor. IAF, Tab 5, Subtabs 4b, 4d. The sole specification underlying the agency's charge concerned the appellant's reply to an email from her immediate supervisor, Assistant Special Agent in Charge (ASAC) Rod Ammari. *Id.*, Tab 5, Subtab 4d at 2. The email concerned when the appellant created a Memorandum of Contact [MOC][1] and when she placed it into the agency's electronic repository for tracking and sharing work product, SharePoint.[2] IAF, Tab 5, Subtab 4d at 2; Hearing Compact Disc (HCD) (Gray). Specifically, the agency charged that:

> On October 15, 2009, ASAC Ammari questioned you regarding a MOC of your interview with Los Angeles Police Department Detective Liz Mesa. Specifically, ASAC Ammari asked, via email,
>
> > "I see this MOC was placed on sharepoint [sic] on October 9, 2009, however, this interview was conducted on September 29, 2009. Was this memorandum prepared within 5 work days? If so, why wasn't it on sharepoint [sic]? Please let me know."
>
> You answered this question by stating, via email,
>
> > "Yes, it was on SharePoiint [sic] on 10/2/09 after personal interview with Detective Mesa on 10/1/09."
>
> You knew, however, that the MOC in question was not, in fact, on Sharepoint [sic] on October 2, 2009.

IAF, Tab 5, Subtab 4d at 2.

¶3 On October 16, 2009, Ammari referred this statement, which he believed to be inaccurate, to TIGTA's Internal Affairs Division (IAD) for investigation into what he believed was misconduct. IAF, Tab 5, Subtab Tab 4d at 14; HCD

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[1] Although, as discussed below, Ammari referred to the document in question as an MOC and the agency refers to it as such in its petition for review, it was actually captioned as a "Memorandum of Interview or Activity" (MOI). Petition for Review File, Tab 1 at 6; IAF, Tab 5, Subtab 4d at 21.

[2] The SFFD uses SharePoint, a Microsoft software program that enables users to post, edit and save documents on a shared SharePoint site. The SFFD uses SharePoint as a tool to monitor and track employee workload and investigative case progress. Hearing Compact Disc (testimony of Lois Gray, Assistant Director, TIGTA).

(Ammari). IAD initially decided not to investigate. HCD (Ammari, proposing official Julie Parodi).

¶4 Thereafter, on October 29, 2009, the agency proposed to remove the appellant on a charge of conversion of government property in violation of 18 U.S.C. § 641. IAF, Tab 5, Subtab 4e at 17-23.[3] In a decision letter dated January 22, 2010, the deciding official sustained that charge, but mitigated the proposed removal to a 14-day suspension. *Id.* at 11-15. The same day, Ammari contacted IAD to inquire about the status of his prior complaint regarding the appellant's October 15 email response to him, and was advised that IAD would not be providing a complaint number related to the false statement allegations made against the appellant. IAF, Tab 5, Subtab 4d at 14. Subsequently, on February 4, 2010, Ammari contacted the TIGTA Office of Chief Counsel, "requesting guidance related to this matter and the false statement issue that has not been addressed to date." *Id.* at 13-15.

¶5 IAD thereafter commenced an investigation, and on June 21, 2010, forwarded to Parodi a Report of Investigation (ROI) regarding the appellant's statement. IAD, Tab 5, Subtab 4d at 8. The ROI indicated that the TIGTA Computer Investigative Support Division had reviewed the SharePoint alert message and imbedded SharePoint properties related to "1-Detective MESA.doc," which indicated that the document in question was placed on SharePoint on October 9, 2009. *Id.* at 10. Parodi then proposed the appellant's removal for lack of candor. *Id.* at 1-2.

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[3] The charge was supported by 13 specifications, each alleging that the appellant submitted in her prior Board appeal a copy of printouts from the agency's Performance and Results Information System, the database that maintains information on TIGTA investigations. IAF, Tab 5, Subtab 4e at 18-21. The appellant had previously provided these printouts with her written reply to Special Agent in Charge William Marandola, the deciding official in the performance-based removal that was subject of the appellant's prior Board appeal. *Id.* at 62.

¶6 On October 19, 2010, the deciding official, Terry Peacock, sustained the charge but mitigated the proposed removal to a 30-day suspension. IAF, Tab 5, Subtab 4b. In his analysis of the *Douglas* factors, Peacock found as a significant mitigating factor the circumstances surrounding the appellant's reassignment to the agency's Oakland office, specifically her apparent inability to work effectively with Ammari and the agency's desire to give her a "fresh start" with another ASAC, which he concluded may provide her with an opportunity for rehabilitation. *Id.* at 3; HCD (Peacock).

¶7 After a hearing, the administrative judge determined that the agency failed to prove its charge. IAF, Tab 19, Initial Decision (ID) at 1-9. He also determined that the appellant failed to establish her affirmative defense of reprisal for whistleblowing.[4] However, based on a thorough analysis of the evidence, the administrative judge further determined that the appellant established her claim that the agency's suspension action was taken in reprisal for her prior Board appeal, her protected equal employment opportunity (EEO) activity and her several grievances. ID at 11-19.

¶8 The agency has filed a petition for review challenging the administrative judge's determination that it failed to prove its lack of candor charge. The agency also contends that the administrative judge erred in adjudicating the appellant's affirmative defenses. Petition for Review (PFR) File, Tab 1.

ANALYSIS

The administrative judge applied the correct legal standard in adjudicating the lack of candor charge.

¶9 On review, the agency contends that, in determining that "the agency has not presented preponderant evidence that the appellant in any way intended to

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[4] The administrative judge noted that the appellant also had alleged discrimination based on her race and nationality, but that she had "presented no evidence of that claim." ID at 9 n.5.

provide Mr. Ammari with false or misleading information, or that she in any way attempted to deceive the agency," the administrative judge applied an incorrect legal standard. PFR File, Tab 1 at 11-16; ID at 9. Specifically, the agency contends that a lack of candor charge does not require proof of intent to deceive, but only proof that the appellant did not respond "fully and truthfully" to Ammari's email. PFR File, Tab 1 at 12. We find that the administrative judge applied the correct legal standard.

¶10 As the administrative judge recognized, the Federal Circuit has stated that "[l]ack of candor and falsification are different, although related, forms of misconduct, and the latter is not a necessary element of the former." *Ludlum v. Department of Justice*, 278 F.3d 1280, 1283-84 (Fed. Cir. 2002); *see* ID at 5. To establish falsification, an agency needs to show that the employee made an affirmative misrepresentation and prove intent to deceive. Conversely, lack of candor "is a broader and more flexible concept." *Ludlum*, 278 F.3d at 1284. "Although lack of candor necessarily involves an element of deception, 'intent to deceive' is not a separate element of that offense-as it is for 'falsification.'" *Id.* at 1284-85.

¶11 The administrative judge correctly interpreted *Ludlum*, which expressly employs a flexible lack of candor standard that requires the agency to produce some evidence that the appellant's actions, under the circumstances, involved an "element of deception." ID at 5; *Ludlum*, 278 F.3d at 1284. Here, the relevant circumstances are those set forth in the agency's specification underlying its charge, i.e., that the appellant responded to Ammari's question by answering that the MOC was on SharePoint on October 2, 2009, when she "knew . . . that the MOC in question was not, in fact, on SharePoint on October 2, 2009." IAF, Tab 5, Subtab 4d at 2.[5] Thus, in order to prove its charge, the administrative judge

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[5] In this regard, we note that the deciding official, Peacock, stated in the decision letter that "I found it significant that you made your incorrect statement with the intent to mislead the agency for personal gain." IAF, Tab 5, Subtab 4b at 2.

properly required the agency to establish that the appellant's response to Ammari was not merely incorrect, but that it also involved an element of deception in that, when she responded, she knew that the document in question was not, in fact, on SharePoint on October 2, 2009. *See generally Otero v. U.S. Postal Service*, 73 M.S.P.R. 198, 202-03 (1997) (an agency need not label its charge narrowly with "magic words" for the Board to sustain it, but instead the charge must be viewed in light of the accompanying specification and circumstances, and should not be technically construed). Accordingly, the agency's contention that the administrative judge applied an incorrect legal standard lacks merit.

The administrative judge correctly determined that the agency failed to prove its lack of candor charge.

¶12 The agency next contends that, even assuming that the administrative judge applied the correct legal standard, he erred in concluding that it failed to prove its lack of candor charge. PFR File, Tab 1 at 16-21. The agency's contentions again lack merit.

¶13 The agency states on review that the "Appellant was charged with providing untrue information regarding when Appellant posted '1-Detective MESA.doc' on SharePoint, not when Appellant completed 1-Detective MESA.doc." PFR File, Tab 1 at 17. Indeed, the appellant testified, without contradiction, that the first word in her email reply, "yes," was in response to Ammari's first question in his October 15 email, i.e., "Was this memorandum prepared within 5 work days?" HCD (appellant); IAF, Tab 5, Subtab 4d at 19. She also testified that she answered "yes" because she prepared the MOC the day after her interview with the subject, i.e., within 5 days. HCD (appellant).[6]

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[6] The appellant testified without contradiction that she also saved a copy of the MOC in another agency computer directory in addition to uploading it to SharePoint. HCD (appellant). Neither party offered any evidence concerning the date that this copy was saved. Moreover, the appellant's responding email also explains that she revised the document both on October 1 and October 9, thus potentially explaining why Ammari believed that it was placed in SharePoint on October 9. IAF, Tab 5, Subtab 4d at 19.

¶14 The agency argues, however, that if the appellant's first answer was in the affirmative, then her answer to Ammari's second question, i.e., "it was on SharePoint on 10/2/09 after personal interview with Detective Mesa on 10/1/09," was not candid because she "should have been expected to disclose why '1-Detective MESA.doc' was not on SharePoint within five workdays" to make that statement accurate and complete. PFR File, Tab 1 at 14; *see* IAF, Tab 5, Subtab 4d at 19. The agency's contention fails because such an expectation would arise only if the appellant knew at the time of her response to Ammari that the MOC was not saved in SharePoint within 5 workdays, as is alleged in the charge. As discussed below, the administrative judge correctly determined that the agency failed to establish by preponderant evidence that the appellant knew that this was the case. ID at 8.

¶15 The appellant testified at the hearing that when she received Ammari's email on October 15, 2009, she believed that the document was saved in SharePoint on October 2, the day that she created it. HCD (appellant). She stated that, when she received Ammari's email, she considered it to be a "passing email" from her supervisor to which she tried to respond quickly. *Id.* She further testified that she could not recall precisely the actions she took in responding to the email because she was not asked about it again until over 7 months after she sent it, during the course of the IAD investigation. *Id.*[7] She explained that because she believed that the "gist" of Ammari's email was to inquire whether she prepared the MOC within 5 days, to the best of her recollection, she checked her timesheet entries, which contained a notation on October 2, 2009, for the

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[7] In her response to the agency's proposal notice, the appellant stated that by the time she was questioned by IAD on May 27, 2010, she had difficulty recalling the details of the email and that all her work and notes on the case had been deleted. IAF, Tab 5, Subtab 4c at 2. In this regard we note that, by email dated June 29, 2009, Ammari advised the appellant that once a complaint or case is "processed out" of her office, old complaint files must be deleted from her SharePoint folder. IAF, Tab 5, Subtab 4d at 42.

"Brajevich" investigation of which "1-Detective MESA.doc" was a part, which stated "review docs, MOI, SharePoint, IDRS." *Id.; see* IAF, Tab 5, Subtab 4d at 84. The appellant also testified that she believed that she also checked SharePoint, which indicated that she had created an electronic file for the Brajevich investigation on October 2, and that she believed that she had saved the MOC in that electronic file on the same date. HCD (appellant); *see* IAF, Tab 5, Subtab 4d at 17. She also testified that, prior to responding to Ammari on October 15, she verified that "1-Detective MESA.doc" was accessible in SharePoint on that date, but that she did not attempt to determine on October 15 whether the document could have been accessed on October 2, and that she would not have known how to do so. HCD (appellant).

¶16 Based on the foregoing, the administrative judge found that although the appellant's response to Ammari's second question was inaccurate, ID at 3, the agency nonetheless offered insufficient evidence to rebut her "entirely plausible" assertion that when she wrote it, she believed that she entered the document in question onto SharePoint on October 2, 2009; she wanted to reply to Ammari quickly; and she therefore felt that she "had no reason to believe that there was a problem" with her response. ID at 8 (quoting the appellant's written response, IAF, Tab 5, Subtab 4c at 2). The agency argues that the administrative judge should have found the appellant's testimony implausible because she "was unable to explain how, on October 15, 2009, she continued to believe she successfully uploaded '1-Detective MESA.doc' on SharePoint on October 2, 2009, after uploading, for the first time, the document on October 9, 2009." PFR File, Tab 1 at 15. The appellant did not testify that she uploaded the MOC to SharePoint for the first time on October 9; rather, she consistently testified and stated in the initial email response that she uploaded it for the first time on October 2 and edited it on October 9. HCD (appellant); IAF, Tab 5. Subtab 4d at 19. Although Ammari's report indicates that "1-Detective MESA.doc" appears in SharePoint for the first time on October 9, *see* IAF, Tab 5, Subtab 4d at 18, we agree with the

administrative judge that this is not preponderant evidence that the appellant knew, in fact, that the MOC was not in SharePoint on October 2 when she replied to Ammari's email on October 15. ID at 8-9.

¶17 The agency also contends that the appellant demonstrated her lack of candor in responding to Ammari by failing to ascertain the truthfulness of the statement and by failing to concede prior to her hearing testimony that her email response may have been inaccurate. PFR File, Tab 1 at 17-18. It cites *Bradley v. Veterans Administration*, 39 M.S.P.R. 598, 604 (1989), *rev'd on other grounds*, 900 F.2d 233 (Fed. Cir. 1990), for the proposition that "the fact that employee later states the truth, and only while being investigated, does not warrant an inference that he did not intend to deceive." PFR File, Tab 1 at 18. *Bradley* is inapposite. In that case, the Board disagreed with the administrative judge's ultimate finding that an appellant's false statement to his supervisors was immaterial because he later gave correct information in his statement to an investigator. 39 M.S.P.R. at 604. The Board stated that "[a]n employee who knowingly gives false or inaccurate information to his supervisors strikes at the very heart of the employee-employer relationship." *Id.* Here, by contrast, the administrative judge determined that the agency failed to establish that the appellant knew that the information that she provided to Ammari was inaccurate. ID at 8-9. Although the appellant testified that it was possible that her attempt to post the document in question on SharePoint on October 2 was unsuccessful for a variety of technical reasons, she emphasized that she received no error messages and believed that she had successfully saved the MOC in SharePoint on that date. HCD (appellant). Similarly, the appellant speculated that it was possible that she changed the document name when she edited it on October 9, and that this could possibly explain why Ammari's report indicated that it was created on that date. *Id.* As the administrative judge stated in the initial decision, however, the agency argued that these were merely "speculative arguments" by the appellant as to what "could have" happened, and not her specific explanation of what she

believed did occur. ID at 8 n.4; *see* IAF, Tab 15 at 7 n.1. Thus, unlike *Bradley*, the appellant, in so testifying, was not "later stat[ing] the truth," but was merely offering possible explanations for the entry in Ammari's report indicating that "1-Detective MESA.doc" was uploaded to SharePoint for the first time on October 9.[8]

¶18 Finally, the agency contends that because the appellant knew that Ammari expected her to complete all documents within 5 days and to post them on SharePoint within 5 days, she had a reason to lie to him when responding to him. PFR File, Tab 1 at 17; *see* IAF, Tab 5, Subtab 4d at 70. Even assuming that the appellant had a motive to deceive Ammari, this does not establish by preponderant evidence that she attempted to do so. In sum, the administrative judge was in the best position to consider the credibility of all the witnesses' hearing testimony, including the appellant's, in light of other evidence in the record, and he concluded that the agency failed to prove its charge by a preponderance of the evidence. We have thoroughly reviewed the hearing testimony and documentary evidence from below, and find no basis for disturbing the administrative judge's determination that the agency failed to establish its charge. *See Yang v. U.S. Postal Service*, 115 M.S.P.R. 112, ¶ 12 (2010) (mere disagreement with the administrative judge's findings is insufficient to disturb the initial decision); *see also Broughton v. Department of Health & Human*

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[8] Although not discussed in the initial decision, we note that the agency's ROI contains a memorandum of interview with Anthony Kordich, Special Agent, Computer Investigative Support Group, which appears to offer an additional technical explanation of why a document might show a creation date that postdates the date upon which it was actually created. IAF, Tab 5, Subtab 4d at 95-97. The ROI states that Kordich "reported that if [the appellant] opened a document already in SharePoint, made a change, and then saved it, it would cause the document creation date to be changed, reflecting the date it was last edited." *Id.* at 10. Although the memorandum and attached email from Kordich refers to "a test [he] just did that may offer one explanation," *id.*, at 95, neither party called Kordich as a witness, and the agency offered no other explanation why this also could not have caused a document created on October 2, 2009, to later show as having been created on October 9.

Services, 33 M.S.P.R. 357, 359 (1987) (there is no reason to disturb the conclusions of the administrative judge when the initial decision reflects that the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions).

The agency has failed to identify a basis for disturbing the administrative judge's determinations that the appellant proved retaliation for her prior Board appeal, her prior EEO activity and her several grievances.[9]

¶19 As stated above, the administrative judge determined that the appellant established that the agency's adverse action was taken in retaliation for her prior Board appeal, her protected EEO activity, and her grievances. ID at 18. The Board is authorized to adjudicate a claim of retaliation for activities protected under 5 U.S.C. § 2302(b)(9) when, as here, such a claim is raised as an affirmative defense to an otherwise appealable action. *See Moss v. Department of the Air Force*, 82 M.S.P.R. 309, ¶ 10, *aff'd*, 230 F.3d 1372 (Fed. Cir. 1999) (Table). In his detailed, persuasive analysis of the relevant evidence, the administrative judge below found a "convincing mosaic" of retaliation against the appellant. ID at 11-19. He specifically found "clear evidence of retaliatory motive on the part of Ammari, who was without question the engine driving the agency's efforts to terminate the appellant by other means in the wake of its

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[9] The agency contends on review that the administrative judge erred in finding that the appellant had engaged in protected whistleblowing under 5 U.S.C. § 2302(b)(8). PFR File, Tab 1 at 21-22. Although the administrative judge did find that the appellant made protected whistleblowing disclosures, he ultimately determined that the appellant failed to establish her whistleblowing defense because she produced no evidence that the agency's officials responsible for her 30-day suspension had knowledge of her alleged whistleblowing disclosures. ID at 11. Under these circumstances, any alleged error by the administrative judge in this regard is of no legal consequence. *See Karapinka v. Department of Energy*, 6 M.S.P.R. 124, 127 (1981) (an administrative judge's procedural error is of no legal consequence unless it is shown to have adversely affected a party's substantive rights).

unsuccessful removal for performance based reasons."[10] ID at 17. We believe there is ample evidence supporting the administrative judge's findings of retaliation for filing a Board appeal and grievances, and find no basis to disturb them.[11] In addition, because the appellant may be entitled to compensatory damages based on her related claim of retaliation for protected EEO activity, the administrative judge properly considered this claim, and we discuss it in more detail below. *See* 5 U.S.C. § 2302(b)(9); *Harris v. Department of the Air Force*, 96 M.S.P.R. 193, ¶ 11 (2004).[12]

¶20 A claim of retaliation for EEO activity is cognizable not only under section 2302(b)(9), which prohibits retaliation for "the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation," but also under § 2302(b)(1)(A), i.e., as a violation of 42 U.S.C. § 2000e-16. *See Mahaffey v. Department of Agriculture*, 105 M.S.P.R. 347, ¶ 20 n.8 (2007); *Parnell v. Department of the Army*, 58 M.S.P.R. 128, 131 (1993). Additionally, under 5 U.S.C. § 7702(a)(1), where an appellant has been affected by an appealable action, the Board is obliged, notwithstanding any other provision of law, to adjudicate claims of discrimination prohibited under 42 U.S.C. § 2000e-16. Therefore, we consider the appellant's retaliation claim under Title VII and 5 U.S.C. § 2302(b)(1) and (9). Because the standards of proof require

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[10] The record also reflects that the appellant grieved each of two reprimands issued by Ammari after her reinstatement, and Ms. Parodi eventually denied each grievance at the second step.

[11] In her opposition to the agency's petition for review, the appellant requests that the Board refer its findings to the Office of Special Counsel (OSC). Because of our findings that the agency engaged in significant prohibited personnel practices in violation of 5 U.S.C. §2302(b)(1) and (b)(9), we will refer our findings to OSC for its consideration.

[12] The appellant, proceeding pro se, has not sought compensatory damages. But there is no indication in the record that she received appropriate notice on this issue. *See Harris*, 96 M.S.P.R. 193, ¶ 11; 5 C.F.R. § 1201.204(b). We therefore provide such notice below.

the same analysis, however, separate consideration of these "claims" is unnecessary. *See, e.g.*, *Mahaffey*, 105 M.S.P.R. 347, ¶¶ 20-22.

¶21 To prevail on a contention of illegal retaliation for EEO activity in violation of § 2302(b)(9), an appellant must show that: (1) she engaged in activity protected under the section; (2) the accused official had knew of the protected activity; (3) the adverse action could have been retaliation under the circumstances; and (4) there was a genuine nexus between the alleged retaliation and the adverse action. *Kohler v. Department of the Navy*, 108 M.S.P.R. 510, ¶ 11 (2008). Because the evidentiary record here is complete, the Board need not consider whether the appellant established a prima facie case; rather, it proceeds to the ultimate question of whether the appellant met her overall burden of proving retaliation. *Simien v. U.S. Postal Service*, 99 M.S.P.R. 237, ¶ 28 (2005).

¶22 The Board may consider circumstantial evidence in determining whether the appellant has met her burden of showing retaliation. *Wildeman v. Department of the Air Force*, 23 M.S.P.R. 313, 320 (1984). The Board has stated that, to establish retaliation using circumstantial evidence, an appellant must provide evidence showing a "convincing mosaic" of retaliation against her. *See Kohler*, 108 M.S.P.R. 510, ¶ 13; *FitzGerald v. Department of Homeland Security*, 107 M.S.P.R. 666, ¶ 20 (2008). In *Kohler*, the Board further explained:

> As a general rule, this mosaic has been defined to include three general types of evidence: (1) evidence of suspicious timing, ambiguous oral or written statements, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of retaliatory intent might be drawn; (2) evidence that employees similarly situated to the appellant have been better treated; and (3) evidence that the employer's stated reason for its actions is pretextual. Where an employer's motives or state of mind are relevant, the record must be carefully scrutinized for circumstantial evidence that would support an inference of retaliatory animus.

Kohler, 108 M.S.P.R. 510, ¶ 13 (citations omitted). Here, the administrative judge found that the preponderant evidence of record establishes that: (1) the

appellant engaged in protected activity; (2) the accused officials knew of such activity; (3) the adverse action under review could, under the circumstances, have been retaliation; and (4) a nexus existed between the motive and the subsequent action. ID at 18-19. As discussed below, the administrative judge's findings of fact and conclusions of law are supported by the record, and we find no basis to disturb them on review.

¶23 There is no dispute that the appellant engaged in protected EEO activity. Specifically, the administrative judge noted that on November 5, 2007, Ammari issued a proposal to remove the appellant for performance-based reasons, and the agency effected her removal on January 25, 2008. ID at 12. In her Board appeal of that action, the appellant raised an affirmative defense of discrimination, which consisted primarily of allegations that Ammari mimicked an Asian man who had made an anonymous telephone complaint to the TIGTA office, and that he had made comments about another Asian employee that evinced his dislike of Asians. *Rhee v. Department of Treasury*, MSPB Docket No. SF-0432-08-0301-I-1, Initial Decision at 17-18 (Oct. 17, 2008). The administrative judge reversed the removal on the grounds that the agency's performance standards were invalid, but found that the appellant did not establish her discrimination claim. *Id.* at 13, 19-20. As a result of that initial decision, which later became a final Board order, the appellant was reinstated to her position in May 2009. HCD (appellant). The appellant petitioned the Equal Employment Opportunity Commission (EEOC) for review of the Board's final order, and the Commission concurred in the Board's finding of no discrimination. IAF, Tab 5, Subtab 4g. Furthermore, both Ammari and the deciding official, Peacock, testified that they were aware of the foregoing activity.[13] HCD.

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[13] Although the appellant referred in her testimony to filing EEO "complaints," she is likely referring to the discrimination issues raised in her prior Board appeal and before the EEOC regarding her performance–based removal. HCD (appellant). In any event, Peacock testified that he was only aware of the allegations of discrimination that were

¶24 It is also evident that the appellant was treated in an adverse fashion by the agency after she engaged in protected activity, including protected EEO activity. In the initial decision, the administrative judge set forth a detailed narrative concerning Ammari's involvement in taking, or otherwise effecting, disciplinary action against the appellant following her reinstatement in May 2009 by order of the Board, and culminating in the suspension before the Board in this appeal. ID at 12-15. This included, inter alia: (1) issuing the appellant a reprimand in August 2009 for failure to follow instructions due to her failures to maintain all case-related files on SharePoint as directed by her supervisors, *see* IAF, Tab 5, Subtab 4d at 107-08; and (2) issuing the appellant another reprimand in September 2009 for unauthorized use of her Privately Owned Vehicle (POV) to conduct official business, *see* IAF, Tab 5, Subtab 4f at 29-31.[14] Further, as discussed above, in October 2009, the agency also proposed to remove the appellant on a charge of conversion of government property in violation of 18 U.S.C. § 641. IAF, Tab 5, Subtab 4e at 17-23.

¶25 On review, the agency contends that the administrative judge erred by readjudicating the merits of the appellant's prior discipline. PFR File, Tab 1 at 23-26. It contends that, in doing so, the administrative judge ran afoul of the Board's holding in *Bolling v. Department of the Air Force*, 9 M.S.P.R. 335, 339-40 (1981). *Id.* at 24. The agency's reliance on *Bolling* is misplaced. In

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first raised in her prior Board appeal, which was subsequently appealed to the EEOC. HCD (Peacock).

[14] As the administrative judge recognized, in her grievance of that reprimand, the appellant recounted that the Government Owned Vehicle (GOV) she had been assigned to use on business on June 4, 2009, had broken down and was therefore unavailable to her. ID at 13; *see* IAF, Tab 5, Subtab 4f at 29. Ammari testified that although he had approved her use of her POV for official duty on June 8 as a result, and that the appellant subsequently advised him that she was going out to do field work on two other days when her assigned GOV was still unavailable, he reprimanded her because she had not explicitly requested authorization to use her POV on those dates. HCD (Ammari); *see* IAF, Tab 5, Subtab 4f at 31.

Bolling, the Board held that its review of a prior disciplinary action in the context of a penalty determination is limited to determining whether that action is clearly erroneous, if the employee was informed of the action in writing, the action is a matter of record, and the employee was permitted to dispute the charges before a higher level of authority than the one that imposed the discipline. 9 M.S.P.R. at 339-40. Because *Bolling* does not concern the scope of the Board's review of prior discipline in the context of an affirmative defense of reprisal, it is of little or no relevance here.

¶26 Moreover, the administrative judge did not readjudicate the agency's prior discipline of the appellant. Rather, in accordance with the legal framework set forth above, he properly considered the agency's treatment of the appellant after she engaged in protected activity. In order to meet her ultimate burden of proof on retaliation for EEO activity, the appellant must establish not only that she engaged in protected activity and that the accused official was aware of that activity, but also that there is a "genuine nexus" between the alleged retaliatory motive and the adverse action. *Pyun v. Social Security Administration*, 111 M.S.P.R. 249, ¶ 11 (2009); *cf. Warren v. Department of the Army*, 804 F.2d 654, 658 (Fed. Cir. 1986). To establish a genuine nexus, the appellant must show that the action was taken because of the protected activity. *Pyun*, 111 M.S.P.R. 249, ¶ 12; *Murry v. General Services Administration*, 93 M.S.P.R. 560, ¶ 6 (2003). This requires the Board to weigh the severity of the appellant's alleged misconduct against the intensity of the agency's motive to retaliate. *See Warren*, 804 F.2d at 658; *Pyun*, 111 M.S.P.R. 249, ¶ 12.

¶27 Further, the administrative judge appropriately considered the suspicious timing of this treatment -- immediately following her reinstatement to duty following her prior Board appeal -- in determining whether the appellant had established a "convincing mosaic" of retaliatory intent. ID at 12-15; *see Kohler*, 108 M.S.P.R. 510, ¶ 13. In finding such a mosaic in this case, the administrative judge determined that Ammari's efforts to effect disciplinary action against the

appellant following her reinstatement were "relentless and their timing – in immediate response to either the appellant's grievances or to the agency's mitigation of more serious proposed actions – suspicious at best." ID at 16. The administrative judge credited the appellant's contention that, but for her prior Board appeal, EEO activity and grievances, Ammari would not have referred her email response at issue to IAD, or aggressively pursued that referral in the face of IAD's initial decision not to do so itself. ID at 18. Furthermore, as we already stated, the administrative judge found clear evidence of retaliatory motive on the part of Ammari, who he determined was "the engine driving the agency's efforts to terminate the appellant by other means in the wake of its unsuccessful removal for performance-based reasons," noting that Ammari was the proposing official in the earlier action and, upon her reinstatement, was also instrumental in lesser disciplinary actions and two more proposed removals against her. ID at 17.

¶28 The agency responds that Ammari had non-retaliatory reasons for his prior discipline of the appellant and that he acted appropriately regarding this discipline. PFR File, Tab 1 at 26. Again, this does not establish that the administrative judge erred in his analysis of the agency's treatment of the appellant upon her reinstatement. As the court recognized in *Warren*, "the mere fact the agency has a good case against the employee does not win the case for the agency if the evidence shows that the motive for invoking the misconduct or inadequate performance as a reason for discharge is predominantly retaliation, making the asserted reasons pretextual and establishing the 'nexus.'" 804 F.2d at 658. Here, the administrative judge determined, as the finder of fact, that the preponderance of the evidence established that Ammari's motive for imposing discipline for the appellant's alleged misconduct and performance issues was reprisal for her protected activity. ID at 16-18. In doing so, the administrative judge did not credit Ammari's testimony that he was not bothered by the appellant's reinstatement by the Board, finding that his testimony was inconsistent with that of agency witness and proposing official Parodi, as well as

the appellant's written statement to her fourth-level supervisor that Ammari loudly referred to the TIGTA counsel who represented the agency in her earlier Board appeal as "idiots." ID at 16-17; HCD (Parodi, Ammari); IAF, Tab 5, Subtab 4e at 61. The agency's petition for review provides no basis for disturbing his resulting findings.

¶29 Moreover, in considering motive, the administrative judge appropriately considered the gravity of the misconduct alleged by the agency to justify its treatment of the appellant. Specifically, the administrative judge noted that "one [disciplinary action] directly related to her participation in the Board appeal process, and the other [was] a clearly overreaching reaction to an ultimately unproven offense." ID at 17; *see Yunus v. Department of Veterans Affairs*, 242 F.3d 1367, 1372 (Fed. Cir. 2001) (when examining the strength of the agency's evidence, the Board will look at the evidence the agency had before it when it took the alleged retaliatory action); *Chambers v. Department of the Interior*, 116 M.S.P.R. 17, ¶ 30 (2011); *Russell v. Department of Justice*, 76 M.S.P.R. 317, 326 (1997). In this regard, we also note that the deciding official, Peacock, testified that, in selecting the penalty at issue in this appeal, he considered the appellant's allegedly substandard performance, even though the Board had determined in the appellant's prior appeal that the agency did not apply a valid performance standard to the appellant's performance of her duties. HCD (Peacock); *see Rhee v. Department of the Treasury*, MSPB Docket No. SF-0432-08-0301-I-1, ID at 13. In sum, we find no error in administrative judge's conclusion that in light of the fact that the one charge against the appellant was not sustained, and in light of the strong evidence of retaliatory motivation, the agency would not have taken the same action against her in the absence of that motivation. ID at 18.

¶30 The agency also contends that, even assuming that Ammari had a motive to retaliate against the appellant, he could not have violated section 2302(b), which, by its terms, applies to employees who have "authority to take, direct others to

take, recommend, or approve any personnel action." PFR File, Tab 1 at 32. It further asserts that because "Ammari simply provided some of the information that was the basis of the underlying charge," but did not recommend a personnel action to either the proposing official, Parodi, or the deciding official, Peacock, Ammari's motive to retaliate could not have tainted the agency's decision. *Id.* In examining retaliatory motive for an agency action, however, the officials "involved" in the action may encompass more than just the proposing or deciding officials, and may include other officials upon whom the proposing or deciding official relied for information. *See Mangano v. Department of Veterans Affairs*, 109 M.S.P.R. 658, ¶ 30 (2008); *Redschlag v. Department of the Army*, 89 M.S.P.R. 589, ¶¶ 65-66 (2001), *dismissed*, 32 F. App'x 543 (Fed. Cir. 2002).

¶31 Here, the appellant, in effect, claims that Ammari retaliated against her by immediately referring her response to his email to IAD for investigation, rather than simply raising any concerns that he may have had about it with her. HCD (appellant). Moreover, Ammari did not merely refer his allegations to IAD once - he did so twice and subsequently solicited assistance from the TIGTA Chief Counsel's office for action. IAF, Tab 5, Subtab Tab 4d at 14-15. An investigation is not a personnel action per se, but the Board will consider evidence of the conduct of an agency investigation when it is so closely related to a personnel action that it could have been pretext for gathering evidence to use to retaliate against an employee. *Cf. Johnson v. Department of Justice*, 104 M.S.P.R. 624, ¶ 7 (2007) (involving alleged reprisal for whistleblowing by investigation). To hold otherwise would sanction the use of a purely retaliatory tool, selective investigations. *Russell*, 76 M.S.P.R. at 325. A retaliatory investigation claim should be considered in determining the strength of the agency's evidence supporting the agency's action. *See Mangano*, 109 M.S.P.R. 658, ¶ 44; *Russell*, 76 M.S.P.R. at 323-28. In making this determination, the Board looks at the investigation's origins and the reason the matter was referred

for investigation. *Mangano*, 109 M.S.P.R. 658, ¶ 38; *Russell*, 76 M.S.P.R. at 323-25.

¶32 Because Ammari referred the appellant's response to his October 15, 2009 email to IAD for investigation and that email ultimately formed the basis of the charge in the instant suspension action, we conclude that the investigation is so closely related to the suspension that it could have been pretext for gathering evidence to use to retaliate against the appellant. *See Mangano*, 109 M.S.P.R. 658, ¶ 44; *Johnson*, 104 M.S.P.R. 624, ¶ 7. Thus, the administrative judge properly considered Ammari's referral for investigation in determining whether the appellant had provided evidence showing a "convincing mosaic" of retaliation against her. ID at 18; *see Kohler*, 108 M.S.P.R. 510, ¶ 13.

¶33 We also note that the appellant claimed in her response to the agency's proposal notice that, upon her reinstatement in May 2009, Ammari "began creating a 'disciplinary record' against" her, and that she transferred out of his work group "after years of his harassment and retaliation." IAF, Tab 5, Subtab 4c at 1. The agency's decision letter, however, makes no mention of the appellant's claims. *See id.*, Subtab 4b at 1-4. The agency's failure to investigate the appellant's allegations concerning Ammari would also tend to indicate that the stated reason for its actions were a pretext for reprisal. *Cf. Fulton v. Department of the Army*, 95 M.S.P.R. 79, ¶ 14 (2003) (to have proceeded with personnel actions without investigating whether the appellant's allegations of disparate treatment were true would tend to indicate that the stated reasons for these personnel actions were a pretext for retaliation for whistleblowing).

¶34 The agency, citing the Supreme Court's recent holding in *Staub v. Proctor Hospital*, 131 S. Ct. 1186 (2011), argues that, even assuming Ammari's referral to IAD could have tainted the deciding official's determination, the appellant nonetheless failed to demonstrate a nexus between Ammari's retaliatory motive and the adverse action. PFR File, Tab 1 at 35 & n.15. In *Staub*, the Court ruled that "if a supervisor performs an act motivated by antimilitary animus that is

intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under [the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)]." *Staub*, 131 S. Ct. at 1194. It also stated, however, that "[i]f the employer's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action . . . then the employer will not be liable." *Id.* at 1193. The agency argues that Ammari's input to IAD could not have been the proximate cause of the deciding official's decision because "the purpose of IAD's and [the proposing official's] inquiries was to determine whether . . . Ammari's allegations had a factual basis [, and t]heir inquiries substantiated the allegations independent of ASAC Ammari's input." PFR File, Tab 1 at 35 n.15.

¶35 The Board has not determined whether the holding in *Staub* applies to reprisal cases under section 2302(b)(9). Unlike USERRA, an appellant may not establish EEO reprisal by merely showing that her protected activity was a motivating factor. Rather, as stated above, an appellant alleging EEO reprisal must instead prove that the action was taken because of the protected activity. *Pyun*, 111 M.S.P.R. 249, ¶ 12. If the Board were to apply *Staub* directly to an EEO reprisal case, the appellant would then only need to prove her supervisor's animus was directly related to the adverse action and not that the animus was necessary to bring about the action. *See Staub*, 131 S. Ct. at 1192 ("Proximate cause requires only some direct relation between the injury asserted and the injurious conduct alleged, and excludes only those links that are too remote, purely contingent, or indirect.") (internal quotation marks and brackets omitted).

¶36 It is unnecessary for the Board to determine, in the context of this appeal, whether the Court's holding in *Staub* applies to EEO reprisal cases. As discussed above, Ammari was clearly the source of the information that ultimately formed the basis of the charge against the appellant. Moreover, as the decision letter

makes clear, in determining to suspend the appellant, Peacock relied heavily on the appellant's past disciplinary record in which Ammari played an ongoing role. IAF, Tab 5, Subtab 4b at 2-3. Further, even assuming, arguendo, that IAD's and the proposing official's inquiries determined that Ammari's allegations had a factual basis, this does not establish that the agency's "investigation result[ed] in an adverse action for reasons unrelated to the supervisor's original biased action." *Staub*, 131 S. Ct. at 1193. Here, the matter was investigated only because of Ammari's referral and repeated inquiries. Absent these actions and Ammari's prior discipline of the appellant, we find that the agency would not have taken action here.

¶37 When all of the foregoing circumstantial evidence is taken together, a pattern of retaliation emerges. Accordingly, we find sufficient evidence in the record to establish a causal link between the appellant's protected activities and the action to suspend her. In light of the foregoing, we agree with the administrative judge and find that the appellant established her claim of retaliation under 5 U.S.C. § 2302(b)(1) and (9), and Title VII.

ORDER

¶38 We ORDER the agency to cancel the appellant's suspension. *See Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 1984). The agency must complete this action no later than 20 days after the date of this decision.

¶39 We also ORDER the agency to pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Office of Personnel Management's regulations, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to calculate the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it carry out the Board's Order. If there is a dispute about the amount of back pay, interest due,

and/or other benefits, we ORDER the agency to pay the appellant the undisputed amount no later than 60 calendar days after the date of this decision.

¶40 We further ORDER the agency to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and to describe the actions it took to carry out the Board's Order. The appellant, if not notified, should ask the agency about its progress. *See* 5 C.F.R. § 1201.181(b).

¶41 No later than 30 days after the agency tells the appellant that it has fully carried out the Board's Order, the appellant may file a petition for enforcement with the office that issued the initial decision in this appeal if the appellant believes that the agency did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes that the agency has not fully carried out the Board's Order, and should include the dates and results of any communications with the agency. 5 C.F.R. § 1201.182(a).

¶42 For agencies whose payroll is administered by either the National Finance Center of the Department of Agriculture (NFC) or the Defense Finance and Accounting Service (DFAS), two lists of the information and documentation necessary to process payments and adjustments resulting from a Board decision are attached. The agency is ORDERED to timely provide DFAS or NFC with all documentation necessary to process payments and adjustments resulting from the Board's decision in accordance with the attached lists so that payment can be made within the 60-day period set forth above.

¶43 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 RIGHT TO REQUEST ATTORNEY FEES AND COSTS

You may be entitled to be paid by the agency for your reasonable attorney fees and costs. To be paid, you must meet the requirements set out at Title 5 of

the United States Code (5 U.S.C.), sections 7701(g), 1221(g), or 1214(g). The regulations may be found at 5 C.F.R. §§ 1201.201, 1201.202 and 1201.203. If you believe you meet these requirements, you must file a motion for attorney fees WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION. You must file your attorney fees motion with the office that issued the initial decision on your appeal.

NOTICE TO THE APPELLANT REGARDING YOUR RIGHT TO REQUEST COMPENSATORY DAMAGES

You may be entitled to be paid by the agency for your compensatory damages, including pecuniary losses, future pecuniary losses, and nonpecuniary losses, such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. To be paid, you must meet the requirements set out at 42 U.S.C. § 1981a. The regulations may be found at 5 C.F.R. §§ 1201.201, 1201.202, and 1201.204. If you believe you meet these requirements, you must file a motion for compensatory damages WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION. You must file your motion with the office that issued the initial decision on your appeal.

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 77960
Washington, DC 20013

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. § 2000e-5(f); 29 U.S.C. § 794(a).

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. 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.

	DFAS CHECKLIST **INFORMATION REQUIRED BY DFAS IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES OR AS ORDERED BY THE MERIT SYSTEMS PROTECTION BOARD**

AS CHECKLIST: INFORMATION REQUIRED BY IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES

CIVILIAN PERSONNEL OFFICE MUST NOTIFY CIVILIAN PAYROLL OFFICE VIA COMMAND LETTER WITH THE FOLLOWING:

1. Statement if Unemployment Benefits are to be deducted, with dollar amount, address and POC to send.
2. Statement that employee was counseled concerning Health Benefits and TSP and the election forms if necessary.
3. Statement concerning entitlement to overtime, night differential, shift premium, Sunday Premium, etc, with number of hours and dates for each entitlement.
4. If Back Pay Settlement was prior to conversion to DCPS (Defense Civilian Pay System), a statement certifying any lump sum payment with number of hours and amount paid and/or any severance pay that was paid with dollar amount.
5. Statement if interest is payable with beginning date of accrual.
6. Corrected Time and Attendance if applicable.

ATTACHMENTS TO THE LETTER SHOULD BE AS FOLLOWS:

1. Copy of Settlement Agreement and/or the MSPB Order.
2. Corrected or cancelled SF 50's.
3. Election forms for Health Benefits and/or TSP if applicable.
4. Statement certified to be accurate by the employee which includes:
   a. Outside earnings with copies of W2's or statement from employer.
   b. Statement that employee was ready, willing and able to work during the period.
   c. Statement of erroneous payments employee received such as; lump sum leave, severance pay, VERA/VSIP, retirement annuity payments (if applicable) and if employee withdrew Retirement Funds.
5. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.

NATIONAL FINANCE CENTER CHECKLIST FOR BACK PAY CASES

Below is the information/documentation required by National Finance Center to process payments/adjustments agreed on in Back Pay Cases (settlements, restorations) or as ordered by the Merit Systems Protection Board, EEOC, and courts**.**

1. Initiate and submit AD-343 (Payroll/Action Request) with clear and concise information describing what to do in accordance with decision.

2. The following information must be included on AD-343 for Restoration:

a. Employee name and social security number.
b. Detailed explanation of request.
c. Valid agency accounting.
d. Authorized signature (Table 63)
e. If interest is to be included.
f. Check mailing address.
g. Indicate if case is prior to conversion. Computations must be attached.
h. Indicate the amount of Severance and Lump Sum Annual Leave Payment to be collected. (if applicable)

Attachments to AD-343

1. Provide pay entitlement to include Overtime, Night Differential, Shift Premium, Sunday Premium, etc. with number of hours and dates for each entitlement. (if applicable)

2. Copies of SF-50's (Personnel Actions) or list of salary adjustments/changes and amounts.

3. Outside earnings documentation statement from agency.

4. If employee received retirement annuity or unemployment, provide amount and address to return monies.

5. Provide forms for FEGLI, FEHBA, or TSP deductions. (if applicable)

6. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.

7. If employee retires at end of Restoration Period, provide hours of Lump Sum Annual Leave to be paid.

NOTE: If prior to conversion, agency must attach Computation Worksheet by Pay Period and required data in 1-7 above.

The following information must be included on AD-343 for Settlement Cases: (Lump Sum Payment, Correction to Promotion, Wage Grade Increase, FLSA, etc.)

a. Must provide same data as in 2, a-g above.
b. Prior to conversion computation must be provided.
c. Lump Sum amount of Settlement, and if taxable or non-taxable.

If you have any questions or require clarification on the above, please contact NFC's Payroll/Personnel Operations at 504-255-4630.