UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2012 MSPB 64

Docket No. SF-0752-09-0370-I-1

Joseph T. Gargiulo,
Appellant,
v.
Department of Homeland Security,
Agency.

April 27, 2012

Lawrence A. Berger, Esquire, Glen Cove, New York, for the appellant.

Eileen Dizon Calaguas, Esquire, San Francisco, California, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman

OPINION AND ORDER

¶1 The appellant petitions for review of the July 6, 2009 initial decision that sustained his indefinite suspension. For the reasons set forth below, the Board AFFIRMS the initial decision as MODIFIED by this Opinion and Order.

BACKGROUND

¶2 The appellant, a Federal Air Marshal (FAM) with the Transportation Security Administration (TSA), is required to hold a Top Secret security

clearance. Initial Appeal File (IAF), Tab 6, Subtabs 1 at 1, 4J, 4L.[1] In an August 1, 2008 letter, the Office of Security, Personnel Security Division Associate Director Norma Jo Greenlee informed the appellant that the Division had suspended his security clearance with the intent to revoke his access to classified information. *Id.*, Subtab 4E. The agency admittedly mailed the letter to an incorrect address, and the appellant first received it as an attachment to Deputy Special Agent in Charge (SAC) Frank Donzanti's August 28, 2008 notice proposing the appellant's indefinite suspension based on his security clearance suspension. *Id.*, Subtabs 1 at 3 n.1, 4B, 4C. After receiving an extension, the appellant filed an October 15, 2008 written response to the August 28, 2008 notice of proposed indefinite suspension. *Id.*, Subtabs 4A at 1, 4B.

¶3 On February 10, 2009, SAC James McMurray issued a decision sustaining the appellant's indefinite suspension. IAF, Tab 6, Subtab 4A. The decision noted that the suspension would begin when the appellant received the notice or no later than 5 days from mailing and would remain in effect pending resolution of the revocation of his clearance or until there was evidence sufficient to either return him to duty or take administrative action against him. *Id.* at 1. The record shows that the appellant received the decision on February 13, 2009. *Id.* at 5. The appellant filed an appeal with the Board. IAF, Tab 1.

¶4 After the appellant withdrew his request for a hearing, the administrative judge issued an initial decision affirming the agency's action. The administrative judge found that, although the appellant is a TSA employee not subject to

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[1] The agency initially suspended the appellant's security clearance in 2006 pending an internal review, IAF, Tab 6, Subtab 4H, and later indefinitely suspended him twice; however, the agency rescinded one suspension and the Board reversed the other suspension. *See Gargiulo v. Department of Homeland Security*, MSPB Docket No. SF-0752-07-0096-I-2, slip op. at 2 (Initial Decision, May 31, 2007); *Gargiulo v. Department of Homeland Security*, MSPB Docket No. SF-0752-07-0611-I-1, slip op. at 2, 8 (Initial Decision, Oct. 9, 2007). Both of those initial decisions became the Board's final decisions when neither party filed a petition for review.

5 U.S.C. § 7513, TSA's Management Directive (MD) No. 1100.75-3 imposes similar procedural requirements for adverse actions, and, therefore, that 5 U.S.C. chapter 75 precedent applied in adjudicating his appeal. The administrative judge found that the agency met those requirements in the notice of the security clearance suspension and the notice of proposed indefinite suspension. The administrative judge further found that there was an ascertainable end to the appellant's indefinite suspension, that there was a nexus between the charges and the efficiency of the service, and that the penalty was reasonable. IAF, Tab 12. The appellant filed a petition for review of the initial decision, Petition for Review File (PFR File), Tab 1, and the agency filed a response opposing the petition, *id.*, Tab 3.

¶5 The Board determined that this appeal presents similar legal issues to those presented in three other appeals.[2] The Board therefore issued a request for briefing to the parties, PFR File, Tab 7, and also issued a notice of opportunity to file amicus briefs, 76 Fed. Reg. 59171 (Sept. 23, 2011). The request and notice explained the background of the appeal and applicable law and set forth the following issues: (1) Should the Board apply the balancing test set forth in *Gilbert v. Homar*, 520 U.S. 924 (1997), in determining whether an agency violates an employee's constitutional right to due process in indefinitely suspending him or her pending a security clearance determination; (2) If so, does that right include the right to have a deciding official who has the authority to change the outcome of the proposed indefinite suspension; and (3) If the Board finds that an agency did not violate an employee's constitutional right to due process in this regard, how should the Board analyze whether the agency committed harmful procedural error in light of the restrictions set forth in

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[2] Those appeals are *McGriff v. Department of the Navy*, MSPB Docket No. DC-0752-09-0816-I-1; *Buelna v. Department of Homeland Security*, MSPB Docket No. DA-0752-09-0404-I-1; and *Gaitan v. Department of Homeland Security*, MSPB Docket No. DA-0752-10-0202-I-1.

Department of the Navy v. Egan, 484 U.S. 518 (1988), on the Board's authority to analyze the merits of an agency's security clearance determination. *Id.* The parties submitted additional argument and amici submitted briefs.[3] PFR File, Tabs 9, 12-13, 15-17, 20-22, 25. The record closed on November 21, 2011. *Id.*, Tabs 19, 24. The Board has considered the entire record in ruling on this appeal.

ANALYSIS

¶6 The appellant argues that he was not given the opportunity to challenge his security clearance suspension before the agency proposed to indefinitely suspend him based upon that security clearance suspension.[4] PFR at 1; *see also* IAF, Tab 9, Br. at 8-11. He asserts that the agency was required to give him enough information to enable him to make a meaningful response to the agency's suspension of his security clearance prior to him being placed in a leave without pay status. PFR at 10; *see also* IAF, Tab 9, Br. at 9. He further asserts that he was not able to argue the merits of the suspension of his security clearance in the indefinite suspension proceedings because the deciding official had no authority to entertain such arguments, yet his indefinite suspension was based solely on the suspension of his clearance. PFR at 6-7, 9-10, 13-14; *see also* IAF, Tab 9, Br. at 6.

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[3] The amici are Peter B. Broida, Esquire, the U.S. Office of Special Counsel, the American Federation of Government Employees, the National Federation of Federal Employees, the National Treasury Employees Union, the Government Accountability Project, and the Metropolitan Washington Employment Lawyers Association. PFR File, Tabs 9, 15-17, 20-22. We have also considered a late-filed brief from John Futuran, Esquire.

[4] Throughout his appeal, the appellant has attempted to distinguish between the 2006 and 2008 suspensions of his security clearance. He apparently argues that his indefinite suspension somehow relates back to the former and not to the latter. *See, e.g.*, IAF, Tab 11, Reply at 2-3; PFR at 3. As discussed above, the appellant filed two previous appeals concerning the agency's earlier actions that were subject to final Board decisions, and the agency based the indefinite suspension at issue here on its Personnel Security Division's August 1, 2008 decision. IAF, Tab 6, Subtabs 4A, 4C. Thus, we decline to consider the appellant's argument in this regard.

The general principles that apply in analyzing whether employees covered under 5 U.S.C. chapter 75 have been denied statutory, regulatory, or constitutional due process rights also apply in analyzing whether TSA employees have been denied those rights.

¶7 As the administrative judge indicated, because the appellant is an employee of the TSA, this appeal is governed by the provisions of the Aviation and Transportation Security Act (ATSA). *See Connolly v. Department of Homeland Security*, 99 M.S.P.R. 422, ¶ 9 (2005). Under the ATSA, TSA employees are covered by the personnel management system that is applicable to employees of the Federal Aviation Administration (FAA) under 49 U.S.C. § 40122, except to the extent the Administrator of the TSA modifies that system as it applies to TSA employees. 49 U.S.C. § 114(n); *Connolly*, 99 M.S.P.R. 422, ¶ 9; *Lara v. Department of Homeland Security*, 97 M.S.P.R. 423, ¶ 9 (2004). Under 49 U.S.C. § 40122(g)(2), many of the provisions of title 5 do not apply, including, notably, chapter 75. Thus, the Board has held that chapter 75 does not apply to the FAA and, instead, the FAA's internal procedures are applicable. *See Hart v. Department of Transportation*, 109 M.S.P.R. 280, ¶¶ 10-11 (2008).

¶8 Pursuant to the ATSA, the Administrator of the TSA modified the FAA's system by issuing MD No. 1100.75-3, "Addressing Performance and Conduct Problems." IAF, Tab 6, Subtabs 4F, 4I. MD No. 1100.75-3 does not purport to modify the list of title 5 provisions that are expressly applicable to the FAA and, thus, only the title 5 provisions that are set forth in 49 U.S.C. § 40122(g)(2) apply to the TSA. *See Winlock v. Department of Homeland Security*, 110 M.S.P.R. 521, ¶ 6 (2009) (interpreting a prior, but substantively similar version of MD No. 1100.75-3), *aff'd*, 370 F. App'x 119 (Fed. Cir. 2010). Those provisions do not include chapter 75, as we have indicated above. *See* 49 U.S.C. § 40122(g)(2); *Hart*, 109 M.S.P.R. 280, ¶ 10. Therefore, as the administrative judge correctly found, the provisions of MD No. 1100.75-3, rather than chapter 75, apply to this appeal. *Winlock*, 110 M.S.P.R. 521, ¶ 6; *see* IAF, Tab 12.

¶9 Nevertheless, as the administrative judge also found, the procedural requirements for effecting an adverse action set forth in MD No. 1100.75-3 are similar to those set forth in 5 U.S.C. § 7513(b). S*ee* IAF, Tab 6, Subtab 4I. Further, in its response to the appellant's petition for review, the agency acknowledges that it must afford the appellant minimum due process under its management directive. PFR File, Tab 3, Resp. at 5-7.

As explained in *McGriff v. Department of the Navy*, 2012 MSPB 62, the appellant was entitled to due process when the agency indefinitely suspended him based on a suspension of access to classified information.

¶10 In *McGriff*, 2012 MSPB 62, the Board recently addressed the question as to what process is due a tenured federal employee who is suspended based upon the suspension of access to classified information, or pending its investigation regarding that access, where the access is a condition of employment. The Board explained that, although it lacks the authority to review the merits of the agency's decision to suspend an employee's access to classified material, it may review whether the agency provided the employee with the procedural protections set forth in 5 U.S.C. § 7513 in taking an adverse action, whether the agency committed harmful error in failing to follow its applicable regulations, and whether the agency afforded him minimum due process with respect to his constitutionally-protected property interest in his employment. *Id.*, ¶¶ 24-25.

¶11 Specifically, the Board found that a tenured federal employee who is indefinitely suspended based on an agency's security clearance determination is constitutionally entitled to due process, i.e., notice of the reasons for the suspension and a meaningful opportunity to respond. *McGriff*, 2012 MSPB 62, ¶ 28. We also recognized that under *Homar*, due process in this context may not necessarily encompass a right to have such notice and opportunity to respond *prior* to the suspension as required in a removal action under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). *Id.*, ¶ 27. Rather, because due process relates to time, place and circumstances, its parameters in any given case

will be a function of the demands of the particular situation. *Id*. (citing *Homar*, 520 U.S. at 930). Consequently, in order to determine what process is due, the Court has instructed that we balance the following three factors: (1) The private interest affected by the official action; (2) The risk of erroneous deprivation of the interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) The government's interest. *Homar*, 520 U.S. at 931-32 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

¶12 Consistent with our holding in *McGriff*, we find that the appellant was entitled to constitutional due process, i.e., notice and a meaningful opportunity to respond, upon being indefinitely suspended based on the agency's security clearance decision. We therefore consider the *Homar* factors in order to determine whether the timing, place and circumstance of the procedures used in this case afforded the appellant his right to due process. Concerning the first factor, the record indicates that the appellant was suspended for approximately nine months prior to the final decision in November 2009 regarding his security clearance.[5] IAF, Tab 6, Subtab 4A. We assume, without finding, that such a length of time represents a significant deprivation of the appellant's property interest. However, the appellant was afforded notice and an opportunity to respond to the reasons for the revocation of his security clearance *prior* to the imposition of the suspension based on that revocation, and therefore, we cannot conclude that the "timing" of the notice and opportunity to respond rendered the process afforded him constitutionally defective.

¶13 Regarding the third factor, the agency undoubtedly has a compelling interest in withholding national security information from unauthorized persons. *See Egan*, 484 U.S. at 527. Thus, this factor arguably weighs in favor of the

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[5] The record does not reflect the appellant's status after the November 2009 security clearance determination.

government's authority to take immediate action without providing the appellant with notice and opportunity to respond prior to suspending him. However, again, given that the agency did, in fact, provide the appellant with prior notice and an opportunity to respond in this case, its interest as a factor relative to the timing of the process afforded the appellant is somewhat inconsequential to the ultimate issue as to whether the appellant received the process due him under the Constitution.

¶14 In discussing the second factor in *Homar*, i.e., the risk of erroneous deprivation of the property interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, the Court focused on the need to ensure that the procedures used provide adequate assurance that the agency had reasonable grounds to support the adverse action. *Id.* at 933-934. Here, based on the totality of the evidence, we find that the agency did have reasonable grounds to support the suspension. In the August 1, 2008 decision letter suspending the appellant's security clearance, Greenlee notified the appellant that the Personnel Security Division had suspended his security clearance with intent to revoke his access to classified information based on a July 7, 2008 TSA Office of Inspection Report of Investigation (ROI) and that it was in accordance with Exec. Order No. 12,968 and its Adjudicative Guidelines, specifically Guideline E, Personal Conduct, and Guideline D, Sexual Behavior. The letter detailed two allegations involving the appellant's personal conduct and sexual behavior during his prior employment as a police officer with the Hawaii County Police Department and as a deputy sheriff with the San Juan County, Washington, Sheriff's Department. IAF, Tab 6, Subtab 4E. Similarly, in the August 28, 2008 letter proposing the appellant's indefinite suspension, Donzanti referred to the ROI and the underlying conduct identified in the August 1, 2008 letter as supporting the decision to propose the appellant's indefinite suspension. *Id.*, Subtab 4C.

¶15 In addition, the November 25, 2009 decision to uphold the initial decision to revoke the appellant's security clearance supports a finding that the indefinite suspension was not baseless or unwarranted. *See Homar*, 570 U.S. at 934. The decision stated that the reason for upholding the initial decision was that the appellant had failed to meet the Personnel Security Standards for Access to Classified Information. PFR File, Tab 13, Ex. D. It further noted that the appellant had provided an oral response on June 24, 2009, to the November 13, 2008 letter[6] informing him of the initial determination to suspend with intent to revoke his security clearance. *Id*. It also discussed the personal conduct and sexual behavior charges underlying the action and found none of them mitigated. *Id*. Thus, we conclude that the agency did have reasonable grounds to support the appellant's suspension sufficient to avoid the risk that the appellant's property interest had been erroneously compromised as a result of the procedures used.

¶16 The appellant asserts that the agency should not have indefinitely suspended him until issuance of the November 25, 2009 decision upholding the initial determination to revoke the appellant's security clearance. However, as discussed in *McGriff*, 2012 MSPB 62, both the Board and our reviewing court have held that an agency may indefinitely suspend an employee pending a determination on the security clearance issue, and that such a suspension, in and of itself, does not violate an employee's right to minimum due process. *Id.*, ¶ 24; *see, e.g., Gonzalez v. Department of Homeland Security*, 114 M.S.P.R. 318, ¶ 13 (2010); *Jones v. Department of the Navy*, 48 M.S.P.R. 680, 682, 689, *aff'd as*

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[6] Despite the appellant's apparent assertion that he was not provided with an opportunity to respond to the security clearance determination until the agency reissued the letter on November 13, 2008, we note that the letter is identical to the August 1, 2008 letter except for the final sentence identifying who he should contact if he had questions. *Compare* IAF, Tab 6, Subtab 4E *with* PFR File, Tab 13, Ex. A.

modified on recons., 51 M.S.P.R. 607 (1991), *aff'd*, 978 F.2d 1223 (Fed. Cir. 1992).

¶17 Moreover, we find that the agency did not deny the appellant due process by failing to provide him with the August 1, 2008 decision to suspend his security clearance before issuing him the August 28, 2008 notice proposing his suspension. As discussed above, the August 1, 2008 decision was attached to the notice of proposed suspension and provided the appellant with the specific reasons for the security clearance suspension. We also note that the notice of proposed indefinite suspension, besides referring to the ROI, provided the appellant with an opportunity to review the material relied on to support the reason for the proposed action. IAF, Tab 6, Subtab 4C. The record does not show that the appellant asked to review the ROI and was denied that opportunity. Thus, we discern no error in the administrative judge's finding that the notice of proposed indefinite suspension, coupled with the notice of the suspension of his security clearance, gave the appellant enough information to enable him to respond meaningfully to the agency's proposed indefinite suspension. IAF, Tab 12.

¶18 Further, the August 1, 2008 decision afforded the appellant the right to respond in writing, orally, or both to Chief Security Officer Roderick Allison within 30 calendar days of receipt of the decision, and the right to request an extension of time to respond. IAF, Tab 6, Subtab 4E. Thus, when the appellant received the decision with the August 28, 2008 proposed indefinite suspension, he still had an opportunity to request an extension of time to respond to it. He has not explained why he did not respond or request an extension to respond. Indeed, after receiving a substantial extension to respond to the proposed indefinite suspension, the appellant's attorney responded in writing on October 15, 2008, waiving his right to reply orally. *Id.*, Subtabs 4A, 4B. Although the appellant's attorney continued to argue that he was effectively out of time to respond to the August 1, 2008 decision by the time he received it, he again did

not assert that he requested an extension of time to respond. *Id.*, Subtab 4B. Specifically, the appellant has not explained why he did not attempt to challenge the suspension of his security clearance between his receipt of the August 1, 2008 decision and his February 2009 indefinite suspension. Thus, we are not persuaded that the appellant was denied due process as a result of the delayed receipt of the notice of the decision to suspend his security clearance. *Cf. Henton v. U.S. Postal Service*, 102 M.S.P.R. 572, ¶ 13 (2006) (finding that the agency did not deny the appellant due process, even though it did not issue a notice proposing his removal before issuing its decision to remove him, noting that he was well aware of the basis for the removal, the agency afforded him an opportunity to file a grievance before the effective date of the removal, the notice informed him that he had a right to file a Board appeal of his removal, and that such pre- and post-removal procedures satisfied the requirements of due process under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985)).

¶19 The appellant asserts that he was denied due process because he was unable to argue the merits of the security clearance suspension in the indefinite suspension proceedings because Donzanti had no authority to entertain such arguments. To begin with, we note that Donzanti stated that the suspension would remain in effect pending resolution of the revocation of the appellant's clearance or until there was evidence sufficient to either return the appellant to duty or take administrative action against him. IAF, Tab 6, Subtab 4A (emphasis added). Further, the agency claimes that Donzanti had the authority to impose any other penalty deemed appropriate, citing MD No. 1100.75-3, which states that an indefinite suspension may be imposed when an employee's security clearance has been suspended, denied or revoked, and a security clearance is a condition of employment or is otherwise required for the position. PFR File, Tab 12, Resp. at 9; Tab 25, Rebuttal Br. at 7.

¶20 In any event, even if the record does not show that Donzanti had authority to change the outcome of the indefinite suspension, as explained above, the

appellant could have requested an opportunity to respond to the security clearance determination before his indefinite suspension was effected. The appellant has not asserted, and we find no indication, that Allison lacked authority to change the outcome of the security clearance determination. Due process requires only that the appellant receive a meaningful opportunity to respond to someone with authority to change the outcome of the security clearance determination in either the security clearance proceeding or in the adverse action proceeding. That is so because an employee lacks a property interest in access to classified information, and, therefore, the suspension or revocation of a security clearance, in and of itself, does not implicate constitutional procedural due process concerns. *See, e.g., Robinson v. Department of Homeland Security*, 498 F.3d 1361, 1364-65 (Fed. Cir. 2007); *Hesse v. Department of State*, 217 F.3d 1372, 1381 (Fed. Cir. 2000).

¶21 Thus, the appellant's opportunity to respond to the security clearance determination before he was indefinitely suspended weighs in favor of upholding the suspension. In that regard, this case is distinguishable from *McGriff* because the record there did not clearly indicate that the appellant was provided with an opportunity to contest the security clearance determination before the agency imposed his indefinite suspension and it was unclear whether the deciding official on the indefinite suspension had authority to change the outcome of that adverse action. *McGriff*, 2012 MSPB 62, ¶¶ 45-47; *see Satterfield v. Department of the Navy*, 58 M.S.P.R. 152, 157-58 (1993) (Parks, concurring) (finding that the agency afforded the appellant the requisite due process, even though it proposed his indefinite suspension based only on its Central Adjudication Facility's pending determination on his security clearance, where the Central Adjudication Facility notified the appellant of the specific reasons for suspending his security access and the agency did not indefinitely suspend him until nearly 3 months after the notification); *accord Alexander v. Department of the Navy*, 58 M.S.P.R. 147, 151-52 (1993) (Parks, concurring).

¶22 The Board also found in *McGriff* that, even if an agency did not violate an employee's right to minimum due process, the employee may still show that the agency committed harmful error in failing to follow statutory provisions or its own regulations. We noted that the employee bears the burden of proving harmful error. *McGriff*, 2012 MSPB 62, ¶¶ 37-39. *McGriff* addressed an employee's statutory rights under 5 U.S.C. chapter 75, *id.*, and, as discussed above, the statutory provision does not directly apply here. But as also discussed above, the same general principles apply in analyzing whether employees have been denied rights under 5 U.S.C. chapter 75 and in analyzing whether they have been denied rights under the agency's directives. Therefore, the Board will apply the same general principles in determining whether the appellant established that the agency committed harmful error by failing to follow its management directive.

The agency afforded the appellant minimum due process under the *Homar* balancing test, and the appellant failed to establish harmful error.

¶23 The appellant has not shown that the agency's action should be reversed because of harmful error. The appellant has not contested the administrative judge's finding that his harmful error allegation was essentially the same as his due process violation allegation discussed above. IAF, Tab 12. As a general matter, the Board has found that compliance with 5 U.S.C. chapter 75 procedural requirements satisfies minimum due process requirements. *See Markland v. Office of Personnel Management*, 73 M.S.P.R. 349, 357 (1997), *aff'd*, 140 F.3d 1031 (Fed. Cir. 1998); *Byerline v. Department of the Navy*, 62 M.S.P.R. 279, 284 (1994). As previously discussed, the directive at issue here requires similar procedures to chapter 75. Absent a specific allegation that the agency committed harmful error by violating one of its regulations, therefore, the appellant has shown no other basis for reversing his indefinite suspension.

¶24 Finally, the appellant has not challenged and we discern no reason to disturb the administrative judge's findings that the appellant's indefinite

suspension included an ascertainable end, the agency established a nexus, and an indefinite suspension was reasonable. Accordingly, we AFFIRM the initial decision as MODIFIED by this Opinion and Order.

ORDER

¶25 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request 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.