

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

ONME C. PERNELL,  
Appellant,

DOCKET NUMBER  
DA-0752-10-0174-X-1

v.

DEPARTMENT OF VETERANS  
AFFAIRS,  
Agency.

DATE: July 17, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL<sup>1</sup>**

Gregory A. Placzek, Esquire, San Antonio, Texas, for the appellant.

Erich W. Schwartze, III, Esquire, Houston, Texas, for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Anne M. Wagner, Vice Chairman  
Mark A. Robbins, Member

**FINAL ORDER**

This matter is before the Board based upon a finding of agency noncompliance with a Board final order. *Pernell v. Department of Veterans Affairs*, MSPB Docket No. DA-0752-10-0174-C-1, Compliance Petition for

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<sup>1</sup> A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See [5 C.F.R. § 1201.117\(c\)](#).

Review (CPFR) File, Tab 4. Based upon the parties' submissions, we DISMISS the petition as settled and enter the parties' settlement agreement into the record for purposes of Board enforcement.

An August 6, 2010 Initial Decision reversed the appellant's removal. Initial Appeal File (IAF), Tab 26. The initial decision became final on September 10, 2010, when neither party filed a petition for review. *Id.* at 5. The appellant petitioned for enforcement of that order, which was denied by the administrative judge in a May 11, 2011 compliance initial decision. CF, Tab 11. The Board reversed the compliance initial decision and found the agency in noncompliance in an April 6, 2012 Opinion and Order. CPFR File, Tab 4.

On June 12, 2012, the appellant submitted a "Withdrawal with Prejudice and Notice of Settlement" with a settlement agreement attached. Compliance Referral File (CRF), Tab 10. On June 26, 2012, the parties submitted a joint stipulation clarifying that "their intention and request is to enter the referenced executed settlement agreement into the record for purposes of future enforcement." CRF, Tab 11.

Before dismissing a matter as settled, the Board must decide whether the parties have entered into a settlement agreement, understand its terms, and intend to have the agreement entered into the record for enforcement by the Board. *See Mahoney v. U.S. Postal Service*, [37 M.S.P.R. 146](#), 149 (1988). We find here that the parties have, in fact, entered into a settlement agreement, that they understand the terms, and that they want the Board to enforce those terms. CRF, Tabs 10-11.

In addition, before accepting a settlement agreement into the record for enforcement purposes, the Board must determine whether the agreement is lawful on its face, whether the parties freely entered into it, and whether the subject matter of this appeal is within the Board's jurisdiction, that is, whether a law, rule, or regulation grants the Board the authority to decide such a matter. *See Stewart v. U.S. Postal Service*, [73 M.S.P.R. 104](#), 107 (1997). We find here that

the agreement is lawful on its face, that the parties freely entered into it, and that the subject matter of this appeal – a petition to enforce an administrative judge’s initial decision reversing the appellant’s chapter 75 removal – is within the Board’s jurisdiction under [5 U.S.C. § 1204](#)(a)(2). IAF, Tab 26.<sup>2</sup> Accordingly, we find that dismissal of the petition for enforcement with prejudice to refiling (i.e., the parties normally may not refile this petition) is appropriate under these circumstances, and we accept the settlement agreement into the record for enforcement purposes.

This is the final order of the Merit Systems Protection Board in this compliance proceeding. Title 5 of the Code of Federal Regulation, section 1201.113 ([5 C.F.R. § 1201.113](#)).

**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

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<sup>2</sup> The administrative judge’s finding that the appeal was within the Board’s jurisdiction did not specify the statutory basis for the Board’s jurisdiction. IAF, Tab 26 at 2-3.

comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 ([5 U.S.C. § 7703](#)). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov). Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's [Rules of Practice](#), and [Forms 5, 6, and 11](#).

FOR THE BOARD:

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William D. Spencer  
Clerk of the Board

Washington, D.C.