

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

DARNEA WILLIAMS-TATIS,  
Appellant,

DOCKET NUMBER  
AT-0752-10-0096-X-1

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DATE: August 3, 2012

**THIS ORDER IS NONPRECEDENTIAL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

Nicholas E. Karatinos, Esquire, Lutz, Florida, for the appellant.

Barry D. Thorpe, Esquire, Pembroke Pines, Florida, for the agency.

**BEFORE**

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

**ORDER**

On March 19, 2012, the administrative judge issued a recommendation that the Board should find the agency in noncompliance with the March 22, 2011 Final Order, which sustained a charge of improper conduct but canceled the removal action against the appellant and mitigated the penalty to a 30-day

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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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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\(c\)](#).

suspension. MSPB Docket No. AT-0752-10-0096-I-1, Petition for Review (PFR) File, Tab 9 at 2, 6-7; MSPB Docket No. AT-0752-10-0096-X-1, Compliance Referral File (CRF), Tab 1 at 2, 6-7. The Board ordered the agency to pay the appellant back pay, interest, and other benefits. PFR File, Tab 9 at 7. The appellant contended that the agency failed to pay the correct amounts for her 2009 and 2010 performance awards. CRF, Tab 1 at 2. On April 30, 2012, we found the agency noncompliant and ordered it to take various actions to comply with the Final Order. CRF, Tab 8. The parties subsequently submitted multiple briefs.<sup>2</sup> *See* CRF, Tabs 11-18.

For the reasons discussed below, we again find the agency not in compliance with the Final Order and order appropriate relief.

#### **DISCUSSION OF ARGUMENTS AND EVIDENCE OF COMPLIANCE**

The Final Order canceled the appellant's removal, mitigated the penalty for her improper conduct to a 30-day suspension, and ordered the agency to "pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Back Pay Act and/or Postal Service Regulations, as appropriate, no later than 60 calendar days after the date of this decision." PFR File, Tab 9 at 6-7. As explained in our April 30, 2012 decision, the parties dispute whether the agency paid the correct amount for the appellant's fiscal year (FY) 2009 and FY 2010 performance awards—in particular, the proper method of calculating the appellant's overall rating and thus her bonus amounts. CRF, Tab 8 at 2.

The agency calculates performance awards for postmasters (such as the appellant) by combining two factors: (1) the employee's individual performance in her core requirements, weighted at 20%; and (2) the overall performance of the agency and the employee's work unit, weighted at 80%. CRF, Tab 1 at 3; MSPB

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<sup>2</sup> The appellant's motion to strike the agency's surreply dated March 29, 2012, is denied. *See* CRF, Tab 16. The Board ordered additional briefing from each side, but did not limit the number of briefs.

Docket No. AT-0752-10-0096-C-2, Compliance File (CF), Tab 14, Exhibit 1. For each category, employees receive a rating between 1 and 15. The two ratings are added, and the resulting overall rating is placed in a matrix to determine the bonus amount (a percentage of the employee's salary). *Id.*

#### Fiscal Year 2009 Bonus

The agency contended before the administrative judge that it correctly set the appellant's overall rating at 4 because seven other postmasters serving under the Manager of Postal Operations (MPOO) who supervised the appellant had received that rating. CF, Tab 14, Exhibit 1. Under the matrix, this entitled the appellant to a 2.5% bonus. *Id.* The appellant disputed this method of setting her overall rating, asserting that the agency improperly compared her to only the seven poorest performing postmasters, rather than to all 36 postmasters serving under the same MPOO. CF, Tab 16 at 5-6. She contended that the agency instead should have set her rating as the average of all 36 postmasters under her MPOO. Under her calculations, this would give her a constructive overall rating of 6.7. CF, Tab 16 at 5-6.

We found that the agency should have calculated the appellant's performance bonus by evaluating her actual performance from October 1, 2008, through March 27, 2009 (approximately the first six months of the fiscal year). CRF, Tab 8 at 6. This is the method specified by the agency's policy for Office of Workers' Compensation or Family and Medical Leave Act Leave Without Pay, which requires that an employee on leave "for any part of the fiscal year, must be evaluated based upon his/her performance while at work." CRF, Tab 5 at 49. We believed this was fair because it based the appellant's bonus on her actual performance during the time she worked, rather than speculation as to what her performance would have been had she worked the entire fiscal year. We ordered the agency to recompute the appellant's 2009 performance bonus entitlement

using her actual performance from October 1, 2008, through March 27, 2009. CRF, Tab 8 at 6-7.

The agency, however, asserts that it is unable to perform this computation accurately because it cannot measure work unit performance—which is 80% of the performance award calculation—for less than the entire fiscal year. CRF, Tab 11 at 5 (“Unfortunately, mid-years [sic] results [for the Bowling Green unit] are not available as they are subsumed into the Fiscal Year (‘FY’) report. Therefore, it is necessary to use the final NPA FY 2009 for Bowling Green Post Office.”). The agency therefore evaluated the appellant for the approximately six months she worked, but evaluated work unit performance for the entire fiscal year. CRF, Tab 11 at 5-6. This yielded an overall rating of 4—the same rating the agency originally proposed. *Id.*

The appellant also challenges the Board’s order, renewing her contention that rating her individual performance for only the approximately six months worked does not accurately reflect what her full year performance would have been. According to the appellant, post offices typically perform poorly during the “busy season”—which coincided with the approximately six months the appellant worked—and improve their performance during the slow half of the year. CRF, Tab 13 at 6-7. Thus, the appellant contends, the Board’s direction to evaluate only her actual performance for the first six months of the fiscal year exactly reproduces the agency’s original rating method (unfairly extrapolating her six-month performance over the full fiscal year), which the Board’s decision had rejected. *Id.* The appellant notes that the methods were so alike that the agency merely resubmitted the individual performance assessment provided before the Board’s April 30, 2012 order. *Id.* at 5-6. She seeks reconsideration of the Board’s decision. *Id.*

The agency does not dispute this characterization of its rating method.<sup>3</sup> Nor does it dispute the appellant's assertion that post offices perform differently during the busy and slow seasons, and thus only the full year evaluation accurately captures performance. Indeed, the agency's practice of maintaining work unit performance data only for the full fiscal year appears to support this claim.<sup>4</sup>

We find the appellant's contention persuasive in view of the fact that the agency cannot perform the calculation we originally ordered, and we grant her request for reconsideration. If the agency can measure work unit performance only for the full fiscal year, the remaining 20% of the formula—individual performance—must be calculated using the same time period. The agency acknowledges this. *See* CRF, Tab 11 at 5 (agency noting that it is appropriate to use the same time period for individual and work unit performance). The difficulty, of course, is that because the appellant did not perform work during the latter six months of the fiscal year, we must speculate as to what her performance would have been. The agency speculates that her performance would have been poor. *See* CRF, Tab 8 at 3. The appellant speculates that her performance would have been very good, as in previous and subsequent fiscal years. CRF, Tab 10 at 8; Tab 13 at 11.

The appellant proposes that she be given an individual performance rating equal to the average performance of postmasters serving under the same MPOO

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<sup>3</sup> The agency challenges the appellant's proffered expert, asserting that he is not competent to opine on performance award issues. CRF, Tab 17 at 5-6. As we have not relied on his purported expertise, we need not address his credentials at this time.

<sup>4</sup> The appellant also contends that the agency "does not maintain data of postmaster performance for less than an entire fiscal year." CRF, Tab 13 at 5. The appellant is mistaken. As the agency notes, its submissions clearly state that it does not maintain work unit performance data for less than the entire fiscal year, but does maintain or can provide individual performance data for lesser time periods. *See* CRF, Tab 11 at 5; CRF, Tab 14 at 5.

who supervised her (yielding an overall rating of 6). CRF, Tab 13 at 6. The agency contends this is inaccurate because the MPOO supervises 41 post offices of varying sizes, posing different challenges to postmasters. CRF, Tab 5 at 4-5. Rather, the agency proposes to use either the average rating of postmasters supervising offices the same size as the appellant's, or the average rating of postmasters detailed to the appellant's post office after her removal (for the remainder of fiscal year 2009). Either method yields an individual rating of 10 and an overall rating (using the Bowling Green work unit performance) of 5 (yielding a bonus of 3%). CRF, Tab 5 at 6-9.

We believe that both alternate methods proposed by the agency are acceptable. The appellant does not dispute that different sized post offices face different challenges. It therefore is appropriate to use the average of postmasters supervising offices similar to hers, rather than comparing her with postmasters supervising larger offices. Alternatively, using the average performance of postmasters detailed to replace her is appropriate because these postmasters worked under the same conditions she would have faced had she not been removed. As both methods yield the same result—an individual performance rating of 10 and an overall rating of 5—we need not choose between them. We therefore ORDER the agency to recompute the appellant's performance award using an individual rating of 10 and an overall rating of 5. This entitles the appellant to a 3% increase over her 2008 salary, or \$2,205.81 (3% of \$73,527). CRF, Tab 5 at 8, 32. The maximum salary the appellant could have received in FY 2009 was \$75,181. *Id.* Accordingly, the appellant is entitled to \$1,654 as a salary increase (\$75,181 minus \$73,527) and \$551.81 (\$2,205.81 minus \$1,654) as a merit lump sum. *See id.* As set forth below, however, the agency SHALL NOT PAY these amounts to the appellant until the performance award—including any interest—has been finally agreed upon by the parties or decided by the Board.

We previously ordered the agency to submit to the Board, before paying the appellant, “a written narrative and detailed documentation of its calculations,

in the manner specified by the administrative judge's Recommendation at pages 6-7." CRF, Tab 8 at 7. The agency did not comply with this order. Instead, the agency stated that it would pay the appellant "remaining amounts owed" on or before May 25, 2012. CRF, Tab 11 at 6-7. The agency's attempt to pay the appellant quickly is commendable, but does not excuse noncompliance with the Board's order. We ordered the agency to submit a narrative and documentation before making payment in order to avoid further complication of the amounts at issue. The agency did not do so. We now renew this order.

Within **15 days** of the date of this order, the agency shall submit the following, in written narrative form and with detailed documentary support:

1. The amount and reason for all deductions, reductions, and offsets from the gross amount of \$2,205.81 due the appellant for the 2009 fiscal year bonus; and
2. The source and amount of all checks or electronic payments already made to and received by the appellant, and how they impact the gross amount currently owed by the agency for the 2009 fiscal year.

Failure to do so may cause the Board to adopt the appellant's calculations. The appellant shall file any response within **7 days** of the agency's submission. Failure to do so may cause the Board to assume the appellant is satisfied and dismiss the petition for enforcement.

#### Fiscal Year 2010 Bonus

The parties agreed that the agency owed the appellant \$2,048.77 as a 2010 fiscal year bonus, and we ordered the agency to provide evidence that it paid this amount, along with a narrative explanation of deductions, reductions, and offset, and a calculation of interest. CRF, Tab 8 at 7-8. The agency submitted evidence that it paid the appellant a gross amount of \$2,049. CRF, Tab 12 at 4-5. The agency did not, however, provide an accounting of its deductions, reductions, or

offsets, as ordered, and the appellant appears to dispute the accuracy of the net amount. *See* CFR, Tab 13 at 7 n.1.

Within **15 days** of the date of this order, the agency shall submit the following, in written narrative form and with detailed documentary support:

1. The amount and reason for all deductions, reductions, and offsets from the \$2,049 paid the appellant for the fiscal year 2010 merit lump sum.

Failure to do so may cause the Board to adopt the appellant's calculations. The appellant shall file any response within **7 days** of the agency's submission. Failure to do so may cause the Board to assume the appellant is satisfied and dismiss the petition for enforcement.

The agency also submitted evidence that it calculated the interest on the appellant's back pay award as \$483.91 (of which the agency claims to have paid \$457.63). CRF, Tab 17 at 8, 22. Again, the agency did not explain how this amount was calculated. Moreover, to the extent the interest was calculated based on the entire back pay amount due the appellant (thus incorporating both the fiscal year 2009 and 2010 bonus payments), it must be recalculated to reflect the 2009 bonus payment set forth above.

Within **15 days** of the date of this order, the agency shall submit the following, in written narrative form and with detailed documentary support:

1. The amount of interest due the appellant;
2. How this amount was calculated, including:
  - a. the rate of interest;
  - b. how that rate was selected;
  - c. how that rate was applied;
  - d. whether the interest represents the entire back pay amount, and if so, how the entire back pay amount was calculated; and
3. The source and amount of all interest payments already made to and received by the appellant, and how they impact the interest amount currently owed by the agency.

Failure to do so may cause the Board to adopt the appellant's calculations. The appellant shall file any response within **7 days** of the agency's submission. Failure to do so may cause the Board to assume the appellant is satisfied and dismiss the petition for enforcement.

Attorney Fees

The appellant requests that we remand her request for attorney fees to the administrative judge. CRF, Tab 13 at 8. Her request is premature. The appellant should file her attorney fee request with the appropriate Board regional office at the conclusion of this compliance referral case. *See, e.g., Davis v. Office of Personnel Management*, [111 M.S.P.R. 544](#), ¶ 19 (2009).

FOR THE BOARD:

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William D. Spencer  
Clerk of the Board

Washington, D.C.