

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

BRENDA L. JENKINS,
Appellant,

DOCKET NUMBER
CH-4324-10-0521-X-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: September 7, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Andrew McNamara, Esquire, Albany, New York, for the appellant.

Eric J. Teegarden, Esquire, Fort McCoy, Wisconsin, for the agency.

BEFORE

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

FINAL ORDER

This case is before the Board on the Recommendation of the administrative judge that the Board grant the appellant's petition for enforcement of the settlement agreement that was the basis for dismissal of her appeal. Compliance Referral File (CRF), Tab 1. The administrative judge recommended enforcement

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

when, after an extension of time, the agency failed to provide evidence that it had paid the entire amount of attorney's fees due to the appellant pursuant to the parties' settlement agreement. CRF, Tab 1 at 2.

The parties executed a settlement agreement on April 2, 2010, resolving the appellant's claim in MSPB Docket No. CH-4324-10-0521-I-1. Initial Appeal File, Tab 4. The settlement agreement provided, among other things, that the agency would pay attorney's fees to the appellant's counsel in the amount of \$600. *Id.*, ¶ 2. On November 18, 2011, the appellant filed a petition for enforcement asserting that the agreed-upon attorney's fees had not been paid. Compliance File (CF), Tab 1. On January 19, 2012, the agency provided evidence that it had paid \$500 of the \$600 due. CF, Tab 5. On May 1, 2012, the agency provided evidence that the agency erroneously paid attorney's fees to appellant's counsel in another case, in an amount exceeding what was agreed-upon by \$100. CRF, Tab 5 at Exhibits B and C. The agency represented that the parties agreed to apply the \$100 excess attorney's fees in the other case to resolve the \$100 shortage in this matter. CRF, Tab 5 at 1. The appellant has not objected to the agency's evidence as insufficient to establish compliance with the settlement agreement, despite being given an opportunity to respond to the agency's evidence and being informed that the Board may assume that he is satisfied and dismiss his petition for enforcement if he failed to respond. CRF, Tab 3 at 2.

Accordingly, we find the agency in compliance with the settlement agreement and DISMISS the petition for enforcement. This is the final decision of the Merit Systems Protection Board in this compliance proceeding. Title 5 of the Code of Federal Regulations, section 1201.183(b) ([5 C.F.R. § 1201.183\(b\)](#)).

**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 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:

William D. Spencer
Clerk of the Board

Washington, D.C.