

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

KIM HAMNER-POWELL,
Appellant,

DOCKET NUMBER
DC-0752-12-0195-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: September 10, 2012

THIS ORDER IS NONPRECEDENTIAL¹

Kim Hamner-Powell, Hyattsville, Maryland, pro se.

Norma B. Hutcheson, Esquire, Landover, Maryland, for the agency.

BEFORE

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

REMAND ORDER

The appellant has filed a petition for review of the initial decision that dismissed her removal appeal for lack of jurisdiction. For the reasons discussed below, we GRANT the appellant's petition for review, VACATE the initial

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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\(c\)](#).

decision, FIND that the Board has jurisdiction over the removal appeal, and REMAND the case to the regional office for adjudication on the merits.

The appellant filed a Board appeal of the agency's decision to remove her from her Letter Carrier position. Initial Appeal File (IAF), Tab 1. The agency moved to dismiss the appeal for lack of jurisdiction, alleging that the appellant is not a preference eligible under [5 U.S.C. § 2108\(3\)](#). IAF, Tab 4. The administrative judge issued a jurisdictional show cause order, which informed the appellant that she must prove that she is a Postal Service employee with Board appeal rights under [39 U.S.C. § 1005\(a\)\(4\)\(A\)](#), and ordered her to show why her appeal should not be dismissed for the reasons stated in the agency's motion. IAF, Tab 5. The appellant subsequently filed two submissions, which were rejected and returned to her for failure to serve the submissions upon the agency. IAF, Tabs 6, 7. The appellant did not re-file either of these submissions or file a response to the jurisdictional show cause order.

On March 2, 2012, the administrative judge dismissed the removal appeal for lack of jurisdiction. IAF, Tab 8, Initial Decision (ID) at 1, 3. She determined that, although the record reflects that the appellant had prior military service, none of her service qualifies her for preference eligible status and that the appellant failed to submit any evidence or argument showing that she is a preference eligible under [5 U.S.C. § 2108\(3\)](#). ID at 2-3.

The appellant filed a petition for review, asking the Board to reverse the initial decision and remand the appeal for adjudication on the merits. Petition for Review (PFR) File, Tab 1. With her petition, she submits a copy of her PS-50 and a February 23, 2012 letter from a veterans service center manager, certifying that the appellant is receiving disability compensation for a service-connected disability. *Id.* at 13-14. The agency has responded in opposition. PFR File, Tab

3. The appellant has filed an untimely reply to the agency's response.² PFR File, Tab 4.

The Board's jurisdiction is not plenary; it is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. *Maddox v. Merit Systems Protection Board*, [759 F.2d 9](#), 10 (Fed. Cir. 1985). The Board's jurisdiction over adverse action appeals filed by Postal Service employees is limited to preference eligible employees (as defined in [5 U.S.C. § 2108\(3\)](#)) and certain supervisors and management employees. [5 U.S.C. § 7511\(a\)\(1\)\(B\)\(ii\)](#); [39 U.S.C. § 1005\(a\)\(4\)](#); *Jackson v. U.S. Postal Service*, [91 M.S.P.R. 506](#), ¶ 6 (2002). Here, whether the appellant may appeal her removal hinges on whether she is a preference eligible.

Based on the record before her below, the administrative judge correctly found that the appellant failed to show that she is a preference eligible under [5 U.S.C. § 2108\(3\)](#) with Board appeal rights. ID at 2. However, because the appellant submitted evidence with her petition for review that implicates the Board's jurisdiction and warrants an outcome different from the initial decision, we GRANT the appellant's petition for review. *See Trabue v. U.S. Postal Service*, [102 M.S.P.R. 14](#), ¶ 6 (2006) (reopening the appeal because the appellant submitted evidence for the first time on review that implicates the Board's jurisdiction and warrants an outcome different from the initial decision); *Collins v. U.S. Postal Service*, [88 M.S.P.R. 551](#), ¶ 7 (2001) (same).

Under [5 U.S.C. § 2108\(3\)\(C\)](#), a disabled veteran is a "preference eligible." Section 2108(2) defines "disabled veteran" as:

an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has

² The appellant filed a reply to the agency's response on April 18, 2012, 9 days after the April 9, 2012 close of the record on review. PFR File, Tabs 2, 4. However, she has not shown that her reply is based on evidence that was unavailable prior to the close of the record on review, and, thus, the Board need not consider the appellant's reply. *See* [5 C.F.R. § 1201.114\(i\)](#).

established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department.

Here, the appellant's PS-50 and the February 23, 2012 letter certifying that the appellant is receiving disability compensation for a service-connected disability rated at 30% or more show that the appellant is a disabled veteran. PFR File, Tab 1 at 7-8. Further, the appellant's DD-214, which the agency submitted on appeal below, shows that the appellant was honorably discharged from active duty services. IAF, Tab 4 at 18. Thus, the record establishes by preponderant evidence that the appellant is a preference eligible under [5 U.S.C. § 2108\(3\)\(C\)](#) and has Board appeal rights under [39 U.S.C. § 1005\(a\)\(4\)\(A\)\(i\)](#). Based on the foregoing, we VACATE the initial decision and FIND that the Board has jurisdiction over the appellant's removal appeal.

ORDER

For the reasons discussed above, we REMAND this case to the regional office for adjudication of the merits.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.