

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

ROQUE C.J. TORRES,
Appellant,

DOCKET NUMBERS
SF-0353-10-0962-I-1
SF-0353-11-0858-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: September 20, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

J.R. Pritchett, McCammon, Idaho, for the appellant.

Sherilyn A. DeNinno, Esquire, San Diego, California, for the agency.

Rebecca R. Horan, Esquire, Long Beach, California, for the agency.

BEFORE

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

FINAL ORDER

The appellant has filed petitions for review in these joined cases² asking us to reconsider the initial decisions issued by the administrative judge. We grant

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

petitions such as these only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 ([5 C.F.R. § 1201.115](#)). For the reasons discussed below, we GRANT the appellant's petition for review and REVERSE IN PART and AFFIRM IN PART the initial decision in *Torres v. U.S. Postal Service*, MSPB Docket No. SF-0353-10-0962-I-1. For the reasons set forth below, we also DISMISS his appeal in *Torres v. U.S. Postal Service*, MSPB Docket No. SF-0353-11-0858-I-1.

Torres v. U.S. Postal Service, Docket No. SF-0353-10-0962-I-1

This case involves the agency's now discontinued National Reassessment Process (NRP), and it is subject to the subsequent guidance provided by the Board in *Latham v. U.S. Postal Service*, [117 M.S.P.R. 400](#) (2012).³ The preference-eligible appellant was a Rural Carrier at the agency's Suisun Rural Post Office of the Fairfield Main Post Office in Fairfield, California. Initial Appeal File (IAF-10-0962), Tab 23, Exhibit (Ex.) D-02; Hearing Compact Disc (HCD), Volume 5, testimonies of appellant and Fairfield Postmaster Johnny Aguilera. It is undisputed that the appellant sustained a compensable injury on May 1, 2005, and that the agency subsequently offered the appellant a modified duty assignment consisting of 8 hours per day and 6 days per week as a 204B

² As a preliminary matter, we note that the joinder of two or more appeals filed by the same appellant is appropriate where doing so would expedite processing of the cases and will not adversely affect the interests of the parties. *Tarr v. Department of Veterans Affairs*, [115 M.S.P.R. 216](#), ¶ 9 (2010); [5 C.F.R. § 1201.36](#)(a), (b). We find that these appeals met the regulatory criteria, and, therefore, we join them here.

³ The stated purpose of the NRP was to review current modified assignments within the agency in order to ensure that the assignments consist only of "operationally necessary tasks" within the employee's medical restrictions. See *Latham*, [117 M.S.P.R. 400](#), ¶ 2 n.4.

Acting Supervisor at the Suisun Rural Post Office effective November 4, 2008. *Id.*, Ex. A-01; HCD, testimonies of appellant and Postmaster Aguilera. The appellant testified that in January 2010 his tasks were changed to being the primary Express Mail deliverer, doing the mail collection box “collections” (collections), and also working as a 204B Acting Supervisor on Saturdays and Mondays. HCD, testimony of appellant. The appellant testified that he worked 8 hours per day from 10:00 a.m. to 6:30 p.m. *Id.* He also testified that he was initially told on May 4, 2010, that there were no “operationally necessary tasks” available within his medical restrictions and that he was to stay home until such work became available. *Id.* However, he was told on May 5, 2010, to report back to work on May 6, 2010, and he was reassigned as a 204B Acting Supervisor. *Id.*

The agency again notified the appellant on June 24, 2010, that there were no operationally necessary tasks within his medical restrictions, and he was once again sent home. IAF-10-0962, Tab 25 at 9; HCD, testimony of appellant. However, the agency notified the appellant during another NRP-related meeting on July 7, 2010, that he was being afforded 30 days of administrative leave due to his status as a veteran. HCD, testimony of appellant. On July 23, 2010, the appellant received an NRP job offer of 3 hours per day delivering Express Mail, which the appellant requested time to consider. *Id.* After receiving a September 2010 letter from the Office of Workers’ Compensation Programs, the appellant accepted the 3 hours per day Express Mail job offer on September 29, 2010, and he returned to work on October 8, 2010, at which time he signed a new 3 hours per day Express Mail delivery job offer. IAF-10-0962, Tab 25, Ex. A-21; HCD, testimonies of appellant and Postmaster Aguilera.

The appellant filed an August 26, 2010 appeal in which he requested a hearing on his assertions that the agency had violated his restoration rights as a partially recovered employee and that the agency had engaged in disability

discrimination. IAF-10-0962, Tab 2 at 3-4, 6-7.⁴ The administrative judge found that the appellant had raised nonfrivolous allegations of the Board's jurisdiction, and she fully informed the appellant of what he was required to prove for each of the possible methods of proving his respective restoration and discrimination claims. *Id.*, Tabs 3, 16, 19, 25. In the initial decision following the February 3, 2011 hearing and the parties' written closing arguments, the administrative judge found that the appellant failed to prove that the agency had committed an arbitrary and capricious denial of his restoration rights and that he failed to prove his claim of disability discrimination. *Id.*, Tabs 31, 32, 33. Accordingly, the administrative judge denied the appellant's request for restoration. *Id.*, Tab 33 at 2, 23. The appellant filed a timely petition for review, and the agency filed a timely response in opposition. Petition for Review File (PFR File-10-0962), Tabs 1, 3.

The appellant reasserts on review that the agency committed an arbitrary and capricious denial of his restoration rights under 5 C.F.R. part 353 and Section 546 of the agency's Employee and Labor Relations Manual (ELM) when the agency rescinded his modified duty assignment in which he performed 8 hours of work per day and at least 40 hours of work per week as a 204B Acting Supervisor, or delivered Express Mail and then made collections in the afternoon, and in subsequently giving him a modified duty assignment that reduced his working hours from 8 hours per day to 3 hours per day. PFR File-10-0962, Tab 1 at 1-12. The appellant asserts that the 204B Acting Supervisor, Express Mail delivery, and collections tasks he performed for 8 or more hours per day are still being performed and they are being performed by an employee who was brought in from another Post Office and by part-time Rural Carrier Associates (RCAs) who are less senior to him as a fulltime Rural Carrier. *Id.* Further, the appellant

⁴ Although the appellant also raised other claims, IAF-10-0962, Tab 1 at 5, 8-9, those claims were disposed of prior to the hearing, and, therefore, they were not addressed in the initial decision, IAF-10-0962, Tab 25 at 3-4.

asserts that he has the same medical restrictions he had when he worked 8 hours per day and 40 hours or more per week and that he remains able to continue working 8 hours per day in his previous modified duty assignment tasks. *Id.*

In our recent decision in *Latham*, the Board held that pursuant to ELM § 546 and EL-505, chapters 7 and 11, the agency has agreed to restore partially recovered individuals to duty in whatever tasks are available regardless of whether those tasks comprise the essential functions of an established position. An agency is required to follow its own rules regardless of whether those rules go beyond the requirements of government-wide statutes and regulations. *Latham*, [117 M.S.P.R. 400](#), ¶ 26. The agency may discontinue a modified assignment consisting of tasks within an employee's medical restrictions only where the duties of that assignment no longer need to be performed by anyone or those duties need to be transferred to other employees in order to provide them with sufficient work and the transfer of work does not violate any contractual provisions limiting the agency's authority to combine work in different crafts, occupational groups, or levels into one job. *Id.*, ¶¶ 31-33.

We find that the appellant presented preponderant evidence through his testimony and the testimonies of Postmaster Aguilera and Supervisor of Customer Services Eloina Henry that he had performed modified duty tasks for 8 hours per day and 40 or more hours per week as a 204B Acting Supervisor or performing Express Mail deliveries and making collections, prior to the agency's rescission and reduction of his previous modified duty assignment tasks in May and June of 2010. HCD, testimonies of Supervisor Henry, Postmaster Aguilera, and appellant. We also find it undisputed that the appellant's previous 204B Acting Supervisor, Express Mail delivery, and collections tasks are still being performed and that they are being performed by a Rural Carrier who was brought in from the Richmond, California Post Office as a temporary 204B Acting Supervisor, and by part-time RCAs who perform Express Mail deliveries and collections. IAF-10-0962, Tab 17, Ex. 2 at 15 ("The Postal Service stipulates that Rural Route

Associates ('RCAs') are scheduled for express mail and collections Saturday, 0700 – 1700; Monday through Friday, 0800-1800.”); HCD, testimonies of Supervisor Henry, Postmaster Aguilera, and appellant. We therefore find that the appellant established by preponderant evidence that the discontinuation and reduction of his previous 8 hours per day and 40 hours per week modified duty assignment tasks violated the agency’s rules regarding its modified duty obligations. *See Penna v. U.S. Postal Service*, [118 M.S.P.R. 355](#), ¶ 11 (2012); *Latham*, [117 M.S.P.R. 400](#), ¶ 31; *Kinglee v. U.S. Postal Service*, [114 M.S.P.R. 473](#), ¶ 14 (2010). Because an agency’s failure to adhere to the restoration obligations it has voluntarily adopted is per se arbitrary and capricious, we find that the agency’s discontinuation and reduction of the appellant’s modified assignment under the circumstances of this case constitutes an arbitrary and capricious denial of restoration. *See Latham*, [117 M.S.P.R. 400](#), ¶¶ 16, 42. We therefore REVERSE the initial decision in regard to the appellant’s restoration claim.

The appellant also asserts that the administrative judge’s finding that he failed to prove his reasonable accommodation disability discrimination claim is legally erroneous. PFR File-10-0962, Tab 1 at 12-15. We have considered the appellant’s assertions of error and find that they fail to show error in the administrative judge’s well-reasoned analysis of and ruling on his disability discrimination claim. IAF-10-0962, Tab 33 at 17-23. The appellant failed to present any evidence of a reasonable accommodation that would allow him to perform the duties of his Rural Carrier position or other vacant position for which he was qualified, and, thus, he failed to prove that he is a qualified individual with a disability. *See 42 U.S.C. §§ 12111(8), 12112(a), (b)(5)(A)*; *White v. U.S. Postal Service*, [117 M.S.P.R. 244](#), ¶ 21 (2012). We therefore AFFIRM the initial decision in regard to the appellant’s disability discrimination claim.

Torres v. U.S. Postal Service, Docket No. SF-0353-11-0858-I-1

The appellant filed a second restoration appeal on September 10, 2011, in which he asserted that the agency had engaged in an arbitrary and capricious denial of restoration and disability discrimination. IAF-11-0858, Tab 1 at 1-4, 26. The appellant requested that the Board order the agency to restore him to duty with a permanent fulltime modified job offer. *Id.* at 3. The appellant attached to his appeal a copy of an August 9, 2011 final agency decision (FAD) on his July 27, 2010 formal Equal Employment Opportunity (EEO) complaint in which he had alleged that the agency's May 4, 2010, June 24, 2010, July 7, 2010, and July 23, 2010 NRP meetings with him and the agency's reduction in the number of his modified duty assignment hours constituted retaliation for his prior EEO activity. *Id.* at 5-25. The agency's FAD treated his complaint as a "mixed case" complaint because the appellant's complaint involved a claim regarding his restoration rights. *Id.* at 5.

The administrative judge informed the appellant of what he needed to allege to establish the Board's jurisdiction over a restoration appeal and ordered him to file evidence and argument that would prove that the Board has jurisdiction over his appeal. IAF-11-0858, Tab 2 at 2. The appellant's first jurisdictional response acknowledged that he had filed the August 2010 restoration appeal addressed above and that his request for restoration in that appeal had been denied by the administrative judge. *Id.*, Tab 4 at 2. However, the appellant noted that the August 9, 2011 FAD had informed him that he could appeal the FAD to the Board. *Id.* The appellant went on to address his burdens in proving a claim of retaliatory discrimination, and he then discussed the Board's restoration jurisdiction. *Id.* at 3-7.

The administrative judge, who had presided over the appellant's first restoration appeal addressed above, then issued an order to show cause why this second restoration appeal should not be dismissed as barred by the doctrine of res judicata or otherwise decided on the basis of the doctrine of collateral estoppel,

and she fully explained the circumstance under which the respective doctrines are applicable. IAF-11-0858, Tab 5. In the appellant's second jurisdictional response, he noted that the Board had not yet issued a final decision on his petition for review of the initial decision in his first restoration appeal, and, further, he again noted that the FAD had informed him of the right to file a Board appeal, not an appeal with the Equal Employment Opportunity Commission (EEOC). IAF-11-0858, Tab 7 at 1-2. The appellant asserted that his retaliation claim was a separate issue that the agency was still investigating at the time of his first restoration appeal, it had not been addressed on the merits in his first appeal, and, thus, it allegedly was not barred by either *res judicata* or collateral estoppel. *Id.* at 3. The appellant asserted in the alternative that "the Board should find that it does not have jurisdiction so that [he] can adjudicate his claim with the EEOC." *Id.*

The agency moved to dismiss the appeal on the grounds of collateral estoppel because the appellant's claim of a denial of restoration based on the agency's July 23, 2010 modified job offer had already been litigated on the merits in the appellant's first restoration appeal and because the appellant had waived his retaliatory discrimination claim by failing to raise it in his first appeal given that he was aware of facts supporting the retaliation claim when he filed his first appeal. IAF-11-0858, Tab 8 at 4-6. The agency also asserted that the appeal should be dismissed in the interests of judicial efficiency. *Id.* at 6. The administrative judge held a status conference on October 18, 2011, during which the appellant acknowledged that the restoration issue was the same issue raised in his first restoration appeal, but he asserted that he had preserved a retaliation claim that had not yet been considered in his prior appeal. IAF-11-0858, Tab 9.

In the appellant's response to the agency's motion to dismiss, he noted that he had appealed the agency's original August 13, 2010 FAD to the EEOC's Office of Federal Operations (OFO), that OFO had remanded his retaliation claim to the agency for further investigative processing in accordance with [29 C.F.R.](#)

[§ 1614.108](#), and that OFO had not directed the agency to process his retaliation claim as a mixed-case complaint in accordance with [29 C.F.R. § 1614.302](#). IAF-11-0858, Tab 10 at 1. The appellant asserted that he “selected the EEO process to adjudicate his claim that he was selected for the NRP as a result of retaliation for his prior EEO activity. Clearly it is supposed to be the Complainant who exercises this option, not the agency.” *Id.* at 2. The appellant asserted that the agency’s processing of his retaliation claim as a mixed-case complaint was procedurally defective “because retaliation for prior EEO activity is not a factor under Board jurisdiction. His claim should have been filed exclusively with the EEOC.” *Id.* at 3.

The administrative judge issued an initial decision finding that the Board has jurisdiction over this second restoration appeal, that it is undisputed that the appellant did not raise a claim of retaliation in his first restoration appeal, and that the issues in the first and second restoration appeals are identical, with the exception of the retaliation claim. IAF-11-0858, Tab 12 at 2. The administrative judge found that, in evaluating whether the appellant’s retaliation claim is barred by the doctrines of collateral estoppel or res judicata, it is appropriate to await the Board’s final decision in the appellant’s first appeal. *Id.* Accordingly, without objection from the appellant, the administrative judge dismissed this second restoration appeal without prejudice to the refile of the appeal within 30 days of the Board’s final decision in the first appeal. *Id.* at 2-3.

The appellant filed a petition for review in which he asserts that the administrative judge erred in finding that the Board has jurisdiction over this second restoration appeal. PFR File-11-0858, Tab 1 at 2-3. The appellant asserts that his claim that the agency engaged in retaliation as a result of his prior EEO activity is not within the Board’s jurisdiction and “should have been filed exclusively with the EEOC.” *Id.* at 3.

Because the agency’s alleged retaliatory actions involve the appellant’s restoration rights, a matter over which the Board has jurisdiction, *Latham*, [117](#)

[M.S.P.R. 400](#), ¶¶ 9-10, we find that the Board does have jurisdiction over this appeal. *See Spears v. Merit Systems Protection Board*, [766 F.2d 520](#), 523 (Fed. Cir. 1985). Further, because our decision on the appellant's first restoration appeal addressed above constitutes the Board's final decision in that appeal, we find it in the interests of judicial economy to now address whether this second restoration appeal is barred by the doctrine of res judicata.

As the administrative judge correctly informed the appellant in the September 30, 2011 order to show cause, res judicata precludes parties from relitigating issues that were, or could have been, raised in the prior action, and is applicable if: (1) the prior judgment was rendered by a forum with competent jurisdiction; (2) the prior judgment was a final judgment on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases. *Hicks v. U.S. Postal Service*, [114 M.S.P.R. 232](#), ¶ 11 (2010); IAF-11-0858, Tab 5 at 1. We find that, as a result of our now final decision on the merits of the appellant's restoration claim in his first appeal, all of these criteria are satisfied. The appellant's instant claim of retaliation for prior protected activity simply constitutes a new legal theory regarding the agency's asserted denial of his restoration rights that he could have raised in his first appeal. *See Spears*, 766 F.2d at 523; *Sabersky v. Department of Justice*, [91 M.S.P.R. 210](#), ¶ 8 (2002), *aff'd*, 61 F. App'x 676 (Fed. Cir. 2003) (Table). We therefore DISMISS this second restoration appeal as barred by the doctrine of res judicata.

ORDER

We ORDER the agency to restore the appellant to his former modified assignment effective May 4, 2010. *See Kerr v. National Endowment for the Arts*, [726 F.2d 730](#) (Fed. Cir. 1984). The agency must complete this action no later than 20 days after the date of this decision.

We also ORDER the agency to pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Back Pay Act⁵ no later than 60 calendar days after the date of this decision.⁶ We ORDER the appellant to cooperate in good faith in the agency's efforts to calculate the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it carry out the Board's Order. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to pay the appellant the undisputed amount no later than 60 calendar days after the date of this decision.

We further ORDER the agency to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and of the actions it took to carry out the Board's Order. The appellant, if not notified, should ask the agency about its progress. See [5 C.F.R. § 1201.181\(b\)](#).

No later than 30 days after the agency tells the appellant that it has fully carried out the Board's Order, the appellant may file a petition for enforcement with the office that issued the initial decision on this appeal if the appellant believes that the agency did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes that the agency has not fully carried out the Board's Order, and should include the dates and results of any communications with the agency. [5 C.F.R. § 1201.182\(a\)](#).

For agencies whose payroll is administered by either the National Finance Center of the Department of Agriculture (NFC) or the Defense Finance and

⁵ Because the appellant is a preference eligible, his entitlement to back pay is governed by the Back Pay Act and [5 C.F.R. § 550.805](#), rather than the Employee and Labor Relations Manual § 436. See *Andress v. U.S. Postal Service*, [56 M.S.P.R. 501](#), 507-08 (1993).

⁶ *Special Counsel ex rel. Steen v. Department of Veterans Affairs*, [81 M.S.P.R. 601](#), ¶ 9 (1999) (although an appellant's receipt of OWCP payments does not preclude an award of back pay for the same period of time, the agency may reduce the back pay award by the amount of the OWCP payments received for that period).

Accounting Service (DFAS), two lists of the information and documentation necessary to process payments and adjustments resulting from a Board decision are attached. The agency is ORDERED to timely provide DFAS or NFC with all documentation necessary to process payments and adjustments resulting from the Board's decision in accordance with the attached lists so that payment can be made within the 60-day period set forth above.

**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**

This is the Board's final decision in this matter. [5 C.F.R. § 1201.113](#). You have the right to request further review of this final decision.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review this final decision on your discrimination claims. See Title 5 of the United States Code, section 7702(b)(1) ([5 U.S.C. § 7702\(b\)\(1\)](#)). If you submit your request by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, DC 20013

If you submit your request via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, NE
Suite 5SW12G
Washington, DC 20507

You should send your request to EEOC no later than 30 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 EEOC no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time.

Discrimination and Other Claims: Judicial Action

If you do not request EEOC to review this final decision on your discrimination claims, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States district court. *See* [5 U.S.C. § 7703\(b\)\(2\)](#). You must file your civil action with the district court no later than 30 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 district court no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* [42 U.S.C. § 2000e-5\(f\)](#) and [29 U.S.C. § 794a](#).

Other Claims: Judicial Review

If you do not want to request review of this final decision concerning your discrimination claims, but you do want to request review of the Board's decision

without regard to your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review this final decision on the other issues in your appeal. 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.



DFAS CHECKLIST

INFORMATION REQUIRED BY DFAS IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES OR AS ORDERED BY THE MERIT SYSTEMS PROTECTION BOARD

AS CHECKLIST: INFORMATION REQUIRED BY IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT
CASES

CIVILIAN PERSONNEL OFFICE MUST NOTIFY CIVILIAN PAYROLL OFFICE VIA COMMAND LETTER WITH THE FOLLOWING:

1. Statement if Unemployment Benefits are to be deducted, with dollar amount, address and POC to send.
2. Statement that employee was counseled concerning Health Benefits and TSP and the election forms if necessary.
3. Statement concerning entitlement to overtime, night differential, shift premium, Sunday Premium, etc, with number of hours and dates for each entitlement.
4. If Back Pay Settlement was prior to conversion to DCPS (Defense Civilian Pay System), a statement certifying any lump sum payment with number of hours and amount paid and/or any severance pay that was paid with dollar amount.
5. Statement if interest is payable with beginning date of accrual.
6. Corrected Time and Attendance if applicable.

ATTACHMENTS TO THE LETTER SHOULD BE AS FOLLOWS:

1. Copy of Settlement Agreement and/or the MSPB Order.
2. Corrected or cancelled SF 50's.
3. Election forms for Health Benefits and/or TSP if applicable.
4. Statement certified to be accurate by the employee which includes:
 - a. Outside earnings with copies of W2's or statement from employer.
 - b. Statement that employee was ready, willing and able to work during the period.
 - c. Statement of erroneous payments employee received such as; lump sum leave, severance pay, VERA/VSIP, retirement annuity payments (if applicable) and if employee withdrew Retirement Funds.
5. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.



NATIONAL FINANCE CENTER CHECKLIST FOR BACK PAY CASES

Below is the information/documentation required by National Finance Center to process payments/adjustments agreed on in Back Pay Cases (settlements, restorations) or as ordered by the Merit Systems Protection Board, EEOC, and courts.

1. Initiate and submit AD-343 (Payroll/Action Request) with clear and concise information describing what to do in accordance with decision.
2. The following information must be included on AD-343 for Restoration:
 - a. Employee name and social security number.
 - b. Detailed explanation of request.
 - c. Valid agency accounting.
 - d. Authorized signature (Table 63)
 - e. If interest is to be included.
 - f. Check mailing address.
 - g. Indicate if case is prior to conversion. Computations must be attached.
 - h. Indicate the amount of Severance and Lump Sum Annual Leave Payment to be collected. (if applicable)

Attachments to AD-343

1. Provide pay entitlement to include Overtime, Night Differential, Shift Premium, Sunday Premium, etc. with number of hours and dates for each entitlement. (if applicable)
2. Copies of SF-50's (Personnel Actions) or list of salary adjustments/changes and amounts.
3. Outside earnings documentation statement from agency.
4. If employee received retirement annuity or unemployment, provide amount and address to return monies.
5. Provide forms for FEGLI, FEHBA, or TSP deductions. (if applicable)
6. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.
7. If employee retires at end of Restoration Period, provide hours of Lump Sum Annual Leave to be paid.

NOTE: If prior to conversion, agency must attach Computation Worksheet by Pay Period and required data in 1-7 above.

The following information must be included on AD-343 for Settlement Cases: (Lump Sum Payment, Correction to Promotion, Wage Grade Increase, FLSA, etc.)

- a. Must provide same data as in 2, a-g above.
- b. Prior to conversion computation must be provided.
- c. Lump Sum amount of Settlement, and if taxable or non-taxable.

If you have any questions or require clarification on the above, please contact NFC's Payroll/Personnel Operations at 504-255-4630.