

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

COLIN R. FORD,  
Appellant,

DOCKET NUMBER  
AT-0752-11-0902-X-1

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DATE: November 21, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL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

John R. Macon, Memphis, Tennessee, for the appellant.

Dana E. Morris, Esquire, Memphis, Tennessee, for the agency.

**BEFORE**

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

**FINAL ORDER**

On April 17, 2012, the administrative judge issued a recommendation that the Board find the agency noncompliant with the December 20, 2011 initial decision, which became final on January 24, 2012, when neither party petitioned

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

for review. MSPB Docket Nos. AT-0752-11-0902-C-1, Compliance File (CF), Tab 7; AT-0752-11-0902-I-1, Initial Appeal File (IAF), Tab 16. The initial decision canceled the appellant's constructive suspension, retroactively restored him to the light duty he had been performing effective August 2, 2011, and ordered the agency to pay him appropriate back pay, interest, and benefits. IAF, Tab 16 at 10. The appellant petitioned for enforcement, contending that the agency failed to restore him or pay him back pay, interest, or benefits. CF, Tab 1 at 2-5. On August 7, 2012, the Board issued an order finding the agency noncompliant and instructing both parties to submit additional evidence. MSPB Docket No. AT-0752-11-0902-X-1, Compliance Referral File (CRF), Tab 7 at 5-7.

For the reasons discussed below, we find the agency in compliance 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\(b\)](#)).

### **BACKGROUND**

Following a nonjob-related injury, the appellant performed light duty within his medical restrictions from July 7 through August 2, 2011, when the agency denied him light duty work and escorted him off the premises. IAF, Tab 16 at 1-3. The initial decision found that the agency suspended the appellant and committed harmful procedural error because it did not give him notice or an opportunity to respond to its intention to place him "off the clock." *Id.* at 3, 5-6, 10. The initial decision ordered the agency to cancel the suspension, restore the appellant effective August 2, 2011, and pay him appropriate back pay, interest, and benefits. *Id.* at 10-11.

On March 5, 2012, the appellant petitioned for enforcement, contending that the agency had neither restored him nor paid him back pay, interest, and benefits. CF, Tab 1 at 2-5. The administrative judge recommended that the

Board grant the petition for enforcement and again ordered the agency to cancel the constructive suspension, restore the appellant to the light duties he performed immediately prior to August 2, 2011, (or to other light duties within his medical restrictions), and pay him appropriate back pay, interest, and benefits. CF, Tab 7 at 4.

Both the agency and the appellant responded to the recommendation. *See* CRF, Tabs 3, 5, 6. After reviewing these responses, the Board issued an order on August 7, 2012, finding the agency noncompliant with the initial decision. CRF, Tab 7 at 5. The Board ordered the agency to submit an explanation of its back pay calculations; evidence that it had paid the back pay; evidence of its back pay interest calculations; and evidence that it had paid this interest. *Id.* at 5-7. The Board ordered the appellant to respond to the agency's contention and evidence that he was not entitled to a step increase as part of his back pay award. *Id.* at 6. The Board also ordered the appellant to provide evidence supporting his claim that the agency had not restored him to light duty within his medical restrictions. *Id.* at 7. Finally, the Board found the agency in compliance with respect to restoring the appellant's annual and sick leave. *Id.* at 6. Both parties have now responded to this order. *See* CRF, Tabs 8-10.

### ANALYSIS

When the Board finds a personnel action unwarranted or not sustainable, it orders that the appellant be placed, as nearly as possible, in the situation he would have been in had the wrongful personnel action not occurred. *House v. Department of the Army*, [98 M.S.P.R. 530](#), ¶ 9 (2005). The agency bears the burden to prove its compliance with a Board order. An agency's assertions of compliance must include a clear explanation of its compliance actions supported by documentary evidence. *Vaughan v. Department of Agriculture*, [116 M.S.P.R. 319](#), ¶ 5 (2011).

On August 14, 2012, and August 29, 2012, the agency submitted explanations of its back pay and interest calculations and evidence that it had paid the appellant \$16,271.34 in back pay and \$335.88 in interest. CRF, Tab 8 at 4-7, 18-19, 37; CRF, Tab 10 at 12. The appellant confirmed that he had “received all back pay with interest,” except that he contended that the agency had not restored the step increase to which he was entitled during the back pay period. CRF, Tab 9 at 2. The agency, however, submitted evidence that the appellant’s step increase was deferred from July 2, 2011, to December 1, 2012, due to the appellant’s excessive use of leave without pay. CRF, Tab 10 at 2-3, 14; *see* CRF, Tab 9 at 8 (showing step increase deferment, effective July 2, 2011). July 2, 2011, preceded the back pay period at issue, which did not begin until August 2, 2011. *See* CRF, Tab 7 at 2; IAF, Tab 16 at 10. This step deferment therefore was outside and unrelated to the back pay period and is not covered by the back pay award. The appellant has submitted no evidence showing otherwise. Accordingly, we find that the agency properly did not include a step increase in the back pay award. The appellant concedes that the agency otherwise has paid him the correct amount of back pay and interest.<sup>2</sup> Accordingly, we find the agency in compliance with the initial decision, and DISMISS the petition for enforcement.

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<sup>2</sup> Although the Board advised the appellant that failure “to submit the required information may cause the Board to dismiss the petition for enforcement,” the appellant did not respond to the Board’s order to provide evidence supporting his claim that the agency had not restored him to light duty within his medical restrictions. CRF, Tab 7 at 7. Accordingly, we find that the appellant no longer wishes to pursue this claim, and we take no further action on it.

**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](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.