

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

ROBERT M. FORMELLA,  
Appellant,

DOCKET NUMBER  
CH-0752-09-0414-X-1

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DATE: November 21, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

James Bjork, Chicago, Illinois, for the appellant.

Isabelle Ferrera, Esquire, Chicago, Illinois, 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 his appeal regarding his removal from his position as a Postal Police Supervisor, EAS-17. Compliance

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

Referral File (CRF), Tab 1. The administrative judge recommended enforcement when the agency failed to provide evidence that it had paid interest due on back pay paid pursuant to the parties' settlement agreement. CRF, Tab 1 at 5-6.

The parties executed a settlement agreement on July 27, 2009, resolving the appellant's claim in MSPB Docket No. CH-0752-09-0414-I-1. Initial Appeal File, Tab 10. The settlement agreement provided, among other things, that the agency would pay back pay for the period February 28 through July 3, 2009, and that it would "place Appellant as nearly as possible in the situation he would have been had his retirement not been effectuated on February 28, 2009." *Id.*, ¶ 2(d) and (f). On February 9, 2012, the appellant filed a petition for enforcement asserting, among other things, that no interest had been paid on the back pay he collected. Compliance File, Tab 1.

The administrative judge recommended that the agency be ordered to pay interest on back pay to the appellant, a nonpreference-eligible employee, using the federal judgment rate ([28 U.S.C. § 1961](#)) in order to place the appellant "as nearly as possible in the situation he would have been" had he not retired, pursuant to the parties' settlement agreement. CRF, Tab 1, at 5-6. On July 9 and 20, 2012, the agency submitted evidence of compliance with the administrative judge's recommendation in the form of a copy of a check issued to appellant in the amount of \$192.31 and a summary of the agency's calculation of that interest. CRF, Tabs 2 and 3.

On July 20, 2012, the Board issued the acknowledgement order in this compliance referral matter, acknowledging that it had received the agency's compliance evidence and noting that the certificates of service accompanying the agency's evidence reflected that the appellant was served. CRF, Tab 4. The Board's order provided the appellant notice that, if he did not respond on or before August 9, 2012, the Board may assume that he was satisfied and dismiss his petition for enforcement. *Id.* The appellant did not file a response.

Accordingly, 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\(b\)](#)).

**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.