

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

FRANKLIN HENSON,
Appellant,

DOCKET NUMBER
CH-4324-10-0705-X-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: December 28, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Andrew L. 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

The administrative judge issued a March 26, 2012 recommended decision, under the Board's regulations in effect at that time, that the Board grant the appellant's petition for enforcement of the settlement agreement that was the basis for dismissal of his appeal, and the matter was referred to the Board for

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

consideration. See [5 C.F.R. § 1201.183](#) (Jan. 1, 2012); Compliance Referral File (CRF), Tab 1. The administrative judge recommended enforcement because the agency failed to provide evidence that it had paid attorney's fees due pursuant to the parties' settlement agreement. CRF, Tab 1 at 2-3.

The parties executed a settlement agreement on June 24, 2010, resolving the appellant's claim in MSPB Docket No. CH-4324-10-0705-I-1. Initial Appeal File, Tab 6. 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.* at ¶ 2.

On November 18, 2011, the appellant filed a petition for enforcement² asserting that the agreed-upon attorney's fees had not been paid. MSPB Docket No. CH-4324-10-0705-C-1, Compliance File, Tab 1. The Board issued an Order directing the agency to demonstrate compliance on August 31, 2012. CRF, Tab 3. On November 6, 2012, the Board directed the agency to appear on November 27, 2012, to show cause as to why sanctions should not be imposed. CRF, Tab 4. On November 20, 2012, the agency produced evidence of compliance in the form of a statement from the appellant's attorney representing that the agency had paid attorney's fees pursuant to the terms of parties' settlement agreement. CRF, Tab 5.

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(c)(1) ([5 C.F.R. § 1201.183\(c\)\(1\)](#)).

² Except as otherwise noted in this decision, we have applied the Board's regulations that became effective November 13, 2012. We note, however, that the petition for enforcement in this case was filed before that date. The revisions to [5 C.F.R. § 1201.183](#) do not affect our consideration of the merits of this compliance proceeding.

**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 the date of this order. 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.