

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

**2013 MSPB 9**

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Docket Nos. CH-0752-11-0827-I-1  
CH-0752-10-0040-I-2

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**Regina Hairston,**

**Appellant,**

**v.**

**Department of Defense,**

**Agency.**

January 30, 2013

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Troy Marshall, Cleveland, Ohio, for the appellant.

Thomas S. Tyler, Esquire, Indianapolis, Indiana, for the agency.

**BEFORE**

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

**OPINION AND ORDER**

¶1 The agency has filed a petition for review of the initial decision that reversed the appellant's indefinite suspension in Merit Systems Protection Board ("MSPB" or "Board") Docket No. CH-0752-10-0040-I-2 and her removal in MSPB Docket No. CH-0752-11-0827-I-1.<sup>1</sup> For the reasons discussed below, we

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<sup>1</sup> 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 review in this case was filed before that date. Even if we considered the petition under the previous version of the Board's regulations, the outcome would be the same.

AFFIRM the initial decision as MODIFIED in MSPB Docket No. CH-0752-10-0040-I-2, STILL REVERSING the appellant's indefinite suspension. We REVERSE the administrative judge's finding in MSPB Docket No. CH-0752-11-0827-I-1 that the appellant established good cause for the untimely filing of her appeal, VACATE the initial decision in that appeal, and DISMISS that appeal as untimely filed without a showing of good cause.

### BACKGROUND

¶2 The appellant was a GS-5 Accounting Technician with the Defense Finance and Accounting Service (DFAS). MSPB Docket No. CH-0752-10-0040-I-1 Initial Appeal File (IAF 0040-I-1), Tab 4, Subtab 4a. Her position was designated "Non-Critical Sensitive (NCS) with No Access." *Id.*, Subtabs 4i-4j.

¶3 On January 31, 2008, the agency's Washington Headquarters Service (WHS)/Central Adjudication Facility (CAF) sent the Personnel Security Officer (PSO) a memorandum and Statement of Reasons (SOR) concerning the appellant. In the memorandum, the CAF Project Manager stated that the CAF had made a tentative determination to deny the appellant's eligibility for access to classified material and/or occupancy of a sensitive position. The CAF further directed the PSO to provide the appellant with the SOR, which it did on February 5, 2008. MSPB Docket No. CH-0752-10-0040-I-2 Initial Appeal File (IAF 0040-I-2), Tab 15 (Part 1) at 50-57. Citing the appellant's Standard Form (SF) 85P and a July 2007 Equifax Credit Bureau Report (CBR), the CAF found as follows: "1. Available information tends to show that you have a history of not meeting your financial obligations and are unable or unwilling to satisfy your debts," citing the CBR as disclosing four unpaid collections; and "2. Available information tends to show issues of personal conduct on your part," citing the appellant's apparent deliberate omission, concealment, or falsification on her SF-85P when she listed only one of the four accounts as delinquent. *Id.* at 55-56. After the appellant responded to the SOR, WHS/CAF Deputy Chief Susan

Edenfield issued an April 9, 2009 letter of denial (LOD) of the appellant's eligibility for access to classified information and/or occupancy of a sensitive position. *Id.* at 69-90, 92-98.

¶4 On June 24, 2009, DFAS Supervisory Accounting Technician Katherine Riley proposed the appellant's indefinite suspension based on Edenfield's LOD upholding the SOR. IAF 0040-I-1, Tab 4, Subtab 4d. Subsequently, Defense Office of Hearings and Appeals (DOHA) administrative judge Shari Dam, to whom the appellant had appealed the LOD, issued an August 31, 2009 decision recommending that the WHS Clearance Appeals Board (CAB) overturn the LOD. MSPB Docket No. CH-0752-11-0827-I-1 Initial Appeal File (IAF 0827-I-1), Tab 9 at 14-21.

¶5 Before the WHS/CAB acted on Dam's recommendation to overturn the LOD, DFAS Disbursing Operations Division Director Lou Ann Willard indefinitely suspended the appellant, effective September 14, 2009, based on the LOD. IAF 0040-I-1, Tab 4, Subtabs 4a, 4b. The appellant timely appealed her indefinite suspension to the Board. *Id.*, Tab 1. The WHS/CAB subsequently issued a November 4, 2009 memorandum stating that it did not accept Dam's recommendation and sustaining the LOD. IAF 0040-I-2, Tab 15, Part 2 at 77-78. The WHS/CAB stated that it found against the appellant based on financial considerations and personal conduct. *Id.* at 77. Concerning financial considerations, it concluded that she had not appropriately managed her finances while experiencing financial problems, had failed to show that she had the means to meet all of her monthly financial obligations, had not clearly demonstrated that her financial problems were being resolved or were under control, and, thus, had not mitigated this security concern. *Id.* at 77. Concerning personal conduct, it concluded that the appellant had failed to disclose any delinquent financial obligations on her security form as required, that her explanation was not credible, and, thus, that she had not mitigated this security concern. *Id.* at 78.

¶6 On November 27, 2009, DFAS Supervisory Financial Technician David Dubitsky proposed the appellant's removal based on the WHS/CAB's decision to sustain the LOD. IAF 0827-I-1, Tab 9 at 24-26. The Board's regional office thereafter dismissed the appellant's indefinite suspension appeal without prejudice pending the Board's adjudication of similar issues in another appeal. IAF 0040-I-1, Tab 5.

¶7 Effective February 13, 2010, Willard removed the appellant on the basis that WHS/CAF had denied her eligibility to hold a sensitive position. IAF 0827-I-1, Tab 9 at 27-30. The appellant's indefinite suspension appeal was automatically reinstated following the Board's December 22, 2010 decisions in *Conyers v. Department of Defense*, [115 M.S.P.R. 572](#) (2010), and *Northover v. Department of Defense*, [115 M.S.P.R. 451](#) (2010), *rev'd*, *Berry v. Conyers*, [692 F.3d 1223](#) (Fed. Cir. 2012), *vacated and petition for rehearing en banc granted*, No. 2011-3207 (Fed. Cir. Jan. 24, 2013). IAF 0040-I-2, Tab 1. The appellant, however, did not file an appeal of her removal until September 8, 2011. IAF 0827-I-1, Tab 1. The administrative judge joined the appellant's indefinite suspension and removal appeals for adjudication. *Id.*, Tab 4.

¶8 In his initial decision, the administrative judge first reiterated his prehearing finding that the appellant established a reasonable excuse for her delay in filing her removal appeal. IAF 0827-I-1, Tab 14, Initial Decision (ID) at 2-3; *see also id.*, Tab 13 at 2-3. Based on *Conyers*, [115 M.S.P.R. 572](#), and *Northover*, [115 M.S.P.R. 451](#), he then found that "the Board has jurisdiction to decide the merits of the agency's statement of reasons underlying its determination that the appellant is not eligible for an 'NCS with NO access' clearance, which resulted in her suspension and removal." ID at 3.

¶9 Although the administrative judge discussed the history of the appeals at length and made some, at least implicit, findings on the merits, nexus, and penalty, ID at 6-16, he ultimately reversed the actions on the basis that the agency violated the appellant's constitutional due process rights under *Stone v. Federal*

*Deposit Insurance Corporation*, [179 F.3d 1368](#), 1376 (Fed. Cir. 1999), ID at 4-5, 16-18. In that regard, he stated that “the foregoing agency witness testimony and documentary evidence establishes the appellant was afforded no opportunity to address evidence and issues raised by the CAB for the first time in its November 4, 2009 final decision regarding her management of financial accounts not specified in the WHS CAF’s January 2008 SOR and April 200[9] LOD.” ID at 17.

¶10 Specifically, the administrative judge found as follows concerning the information the CAB considered that was not specified in the SOR and LOD: The “evidence” from a 2009 Equifax CBR, which included references to alleged delinquent accounts other than those specified in the CAF’s 2008 SOR and 2009 LOD, was not merely “cumulative,” but material to the CAB’s final decision. That decision showed that the CAB considered the evidence as an additional basis on which to deny the appellant’s NCS position eligibility. Although the appellant clearly knew or should have known the additional information that was contained in the 2009 Equifax CBR – because she submitted it to Dam – she was not afforded notice or opportunity to respond to the CAB’s consideration of the information before or after the CAB rendered its final decision. The agency produced no evidence or testimony to show that the CAF or the CAB told the appellant that it would consider evidence of other delinquent accounts not specified in the SOR. ID at 17.

¶11 The administrative judge also found that, in view of Willard’s admitted lack of authority to effectively review the appellant’s response and alter the CAF’s LOD and the CAB’s final decision, the agency failed to afford the appellant a meaningful opportunity to respond to the merits of the agency’s actual reasons for proposing her suspension and removal. ID at 17-18. The administrative judge concluded that “the appellant’s suspension and removal must be REVERSED insofar as she was not afforded the opportunity to meaningfully address the

totality of material evidence utilized by the agency to effect her suspension and removal.” ID at 18.

¶12 The agency has filed a petition for review. Petition for Review (PFR) File, Tab 1. The appellant has not responded to the petition for review.

### ANALYSIS

The appellant failed to establish good cause for her untimely removal appeal.

¶13 The agency asserts that the appellant failed to establish good cause for the untimeliness of her removal appeal, and thus, the time limit for filing should not be waived. PFR File, Tab 1 at 4, 9-10, 17-20. We agree.

¶14 Generally, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. [5 C.F.R. § 1201.22](#)(b). The Board will dismiss an appeal not filed within the time limit unless the appellant establishes good cause for the filing delay. 5 C.F.R. § 1201.22(c). An appellant bears the burden of proof on the timeliness issue. 5 C.F.R. § 1201.56(a)(2)(ii).

¶15 The administrative judge issued an order in which he stated that the removal appeal appeared to be untimely and ordered the appellant to submit evidence and argument showing that it was timely or that good cause existed for the untimeliness. IAF 0827-I-1, Tab 3. In response, the appellant stated her belief that her removal appeal should be heard in the interest of justice because she exercised due diligence in the pursuit of her appeals, she and her representative believed that no other action was needed, and the agency’s ability to present its case was not harmed. She argued that the unusual circumstances of her case created a unique situation. *Id.*, Tab 7. The agency moved to dismiss the removal appeal as untimely filed with no showing of good cause for the untimeliness. *Id.*, Tab 6. At the outset of the hearing, the agency preserved its objection to the untimeliness of the removal appeal. Hearing Transcript (HT) at 4-5; *see also*, IAF 0827-I-1, Tab 9 at 1-2.

¶16 The administrative judge correctly found that the appellant's removal appeal was untimely. ID at 2; *see also* IAF 0827-I-1, Tabs 1, 6 at 8-14, Tab 13 at 2. The critical question is whether the appellant demonstrated good cause for the delay in filing this appeal. *See, e.g., Mauldin v. U.S. Postal Service*, [115 M.S.P.R. 513](#), ¶ 6 (2011).

¶17 To establish good cause for the untimely filing of an appeal, a party must show that she exercised due diligence or ordinary prudence under the particular circumstances of the case. *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980). To determine whether an appellant has shown good cause, the Board will consider the length of the delay, the reasonableness of her excuse and her showing of due diligence, whether she is proceeding pro se, and whether she has presented evidence of the existence of circumstances beyond her control that affected her ability to comply with the time limits or of unavoidable casualty or misfortune which similarly shows a causal relationship to her inability to timely file her petition. *Moorman v. Department of the Army*, [68 M.S.P.R. 60](#), 62-63 (1995), *aff'd*, 79 F.3d 1167 (Fed. Cir. 1996) (Table).

¶18 Here, the delay was lengthy – almost 18 months.<sup>2</sup> In addition, the decision letter clearly informed the appellant that she had 30 days from the effective date of the removal to file a Board appeal. IAF 0827-I-1, Tab 6 at 8-22. As the agency asserted, the appellant testified that she received the decision letter and the appeal rights in February 2010. HT at 108-10. Moreover, the appellant was not acting pro se, but was represented by her union. IAF 0827-I-1, Tab 1 at 5. The appellant is responsible for the errors of her chosen representative. *Sofio v. Internal Revenue Service*, [7 M.S.P.R. 667](#), 670 (1981). Her or her representative's mistaken belief that her appeal of her indefinite suspension

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<sup>2</sup> Even excusing ten months of this period due to the appellant's confusion over the effect of the January 14, 2010 dismissal without prejudice of the indefinite suspension matter, it still took eight months to file her removal appeal after the January 14, 2011 reinstatement of the indefinite suspension appeal.

encompassed an appeal of her removal provides no basis for waiving the filing deadline. *Depierro v. U.S. Postal Service*, [54 M.S.P.R. 251](#), 252-53 (1992) (declining to waive the filing deadline based on the appellant's counsel's mistaken belief that his filing of an appeal of an indefinite suspension somehow automatically covered the subsequent removal arising out of the same set of facts after finding that it was not a reasonable belief and did not establish good cause for the appellant's filing delay). Accordingly, we DISMISS the appellant's removal appeal as untimely filed without a showing of good cause for the delay.

The indefinite suspension must be reversed on the basis of due process.<sup>3</sup>

¶19 The agency argues that the administrative judge erred in finding that the agency violated the appellant's due process rights. It reiterates that the appellant was given several layers of due process through the WHS/CAF/DOHA/CAB procedures. It further contends that no mitigation was available because the appellant failed to maintain a requirement for her position and there were no available non-sensitive positions to which she could be assigned. PFR File, Tab 1 at 22-23.<sup>4</sup>

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<sup>3</sup> The agency continues to argue that the administrative judge erred in applying *Conyers*, [115 M.S.P.R. 572](#), and *Northover*, [115 M.S.P.R. 451](#). Moreover, it contends that the administrative judge erred in giving no deference to the agency's entire WHS/CAF process. PFR File, Tab 1 at 11-17, 23-25. The agency correctly concedes, however, that the administrative judge ultimately did not base his decision on the Board's decisions in *Conyers* and *Northover*, *see, e.g., id.* at 20, and, therefore, we need not further address the agency's arguments on these issues.

<sup>4</sup> The agency asserts that the administrative judge erred in finding that it violated the appellant's due process rights by considering ex parte evidence in the form of the 2009 Equifax CBR because the appellant herself submitted the CBR to Dam at the hearing on the tentative ineligibility determination. PFR File, Tab 1 at 21-22. We find it unnecessary to address this argument because we find, as discussed herein, that the administrative judge properly reversed the indefinite suspension based on the deciding official's lack of authority to change the outcome of the indefinite suspension.

¶20 We find the agency's argument unavailing. After the agency submitted its petition for review, the Board issued *McGriff v. Department of the Navy*, [118 M.S.P.R. 89](#), ¶¶ 24-33 (2012), and *Diehl v. Department of the Army*, [118 M.S.P.R. 344](#), ¶¶ 5-14 (2012), in which the Board addressed the procedures that are due when an agency indefinitely suspends an employee based upon the suspension of access to classified information, or pending its investigation regarding that access, where the access is a condition of employment. The Board in *McGriff* and *Diehl* relied on the holding in *Gilbert v. Homar*, [520 U.S. 924](#), 931-932 (1997), which set forth the balancing test for determining what process is constitutionally due a tenured government employee. *Diehl*, [118 M.S.P.R. 344](#), ¶ 6; *McGriff*, [118 M.S.P.R. 89](#), ¶ 27. The relevant factors adopted in *Homar* and applied in *McGriff* and *Diehl*, provide a framework for determining whether the timing, place, and circumstance of the procedures used in a case afforded the appellant her right to due process. *Homar*, 530 U.S. at 930; *Diehl*, [118 M.S.P.R. 344](#), ¶ 6; *McGriff*, [118 M.S.P.R. 89](#), ¶ 27. The factors are: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest. *Homar*, 530 U.S. at 931-32; *Diehl*, [118 M.S.P.R. 344](#), ¶ 6; *McGriff*, [118 M.S.P.R. 89](#), ¶ 27.

¶21 In *McGriff* and *Diehl*, the Board found that providing an appellant with a reasonable opportunity to reply that satisfies constitutional due process requires more than mere notice; the reply opportunity may not be an empty formality, and the deciding official on the indefinite suspension should have authority to take or recommend agency action based on the reply. *Diehl*, [118 M.S.P.R. 344](#), ¶ 12; *McGriff*, [118 M.S.P.R. 89](#), ¶ 33. In other words, the agency does not afford an individual with a meaningful opportunity to respond by merely providing an empty process for presenting his defense against the agency's adverse action. *Diehl*, [118 M.S.P.R. 344](#), ¶ 12; *McGriff*, [118 M.S.P.R. 89](#), ¶ 33. The deciding

official must have the authority to change the outcome of the action or the agency runs the risk of an erroneous deprivation of the employee's property interest in employment such that it will have violated her right to constitutional due process. *McGriff*, 118 M.S.P.R. 89, ¶ 36.

¶22 While this case is arguably distinguishable from security clearance cases such as *McGriff* and *Diehl*, we discern no basis for affording an employee whose position does not require access to classified information fewer due process protections than employees whose positions do require such access. Indeed, the Court in *Homar* applied the analytical framework set forth above in a case that did not involve access to classified information, or even a federal employee. *Homar* at 926-27, 931-32 (applying the framework to the suspension of a tenured state police officer). Thus, we find applicable the Board's analysis in *McGriff* and *Diehl*, which applied the test in *Homar*.

¶23 Although both the appellant and the government have a significant interest in the action at issue here, we find, as we did in *Diehl*, that the due process concerns ultimately weigh in the appellant's favor. As the administrative judge found, Willard both stated in her September 11, 2009 decision letter sustaining the appellant's indefinite suspension and testified that she had no authority to cancel or mitigate the appellant's indefinite suspension notwithstanding any response made by the appellant to the proposed indefinite suspension. IAF 0040-I-1, Tab 4, Subtab 4b; December 7, 2011 Hearing Compact Disc; ID at 16. Therefore, we find that the administrative judge properly reversed the appellant's indefinite suspension because the agency did not provide adequate due process. *See, e.g., Diehl*, [118 M.S.P.R. 344](#), ¶ 14.

### ORDER

¶24 We ORDER the agency to cancel the appellant's indefinite suspension and to restore the appellant effective September 14, 2009, until February 13, 2010, the effective date of her removal. *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.

¶25 We also ORDER the agency to pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Office of Personnel Management's regulations, no later than 60 calendar days after the date of this decision. 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.

¶26 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 to describe 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).

¶27 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 in 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).

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

¶29 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) ([5 C.F.R. § 1201.113](#)(c)).

**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. See [5 U.S.C. § 7703](#)(b)(1)(A) (as rev. eff. Dec. 27, 2012). 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](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the United States Code, at our website, <http://www.mspb.gov/appeals/uscode/htm>. 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.



## 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.