

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

GEORGE VANOVER,
Appellant,

DOCKET NUMBER
DE-0752-09-0052-X-1

v.

DEPARTMENT OF AGRICULTURE,
Agency.

DATE: February 4, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL¹

George Vanover, Willcox, Arizona, pro se.

Gary M. Gilbert, Esquire, and Nicholas H. Sikon, Esquire, Silver Spring,
Maryland, for the agency.

BEFORE

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

FINAL ORDER

The administrative judge issued a recommended decision that the Board find, under the Board's regulations in effect at that time, the agency noncompliant with the June 26, 2009 Initial Decision, which accepted the parties'

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

settlement agreement into the record for enforcement and became the Board's final decision on July 31, 2009. MSPB Docket No. DE-0752-09-0052-I-1, Initial Appeal File (IAF), Tab 43. The matter was referred to the Board for consideration.² See [5 C.F.R. § 1201.183](#) (Jan. 1, 2012). 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(c)(1) ([5 C.F.R. § 1201.183\(c\)\(1\)](#)).

DISCUSSION OF ARGUMENTS AND EVIDENCE OF COMPLIANCE

On June 26, 2009, the administrative judge issued an Initial Decision accepting the parties' settlement agreement into the record for enforcement. IAF, Tab 43. The settlement agreement required the agency, in pertinent part, to reinstate the appellant to his former position, retroactive to his termination date of September 27, 2008; permit the appellant to remain in leave without pay (LWOP) status from July 3, 2009, for a period not to exceed six months, at which time the appellant would resign; and expunge all removal-related documents from his Official Personnel Folder (OPF). IAF, Tab 42 at Section 1, ¶¶ 1-3; *see also* MSPB Docket No. DE-0752-09-0052-C-2, Compliance File (CF), Tab 13 at 4. On August 1, 2011, following the appellant's petition for enforcement, the administrative judge found that the agency had violated several of these provisions and recommended that the Board grant the petition for enforcement. CF, Tab 13 at 5-7 & n.4.

On July 2, 2012, the Board issued a Nonprecedential Order affirming only the administrative judge's finding that the agency breached the settlement

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.

agreement by failing to expunge all removal-related documents from the appellant's OPF. MSPB Docket No. DE-0752-09-0052-X-1, Compliance Referral File (CRF), Tab 19 at 5-10. *See also King v. Department of the Navy*, [130 F.3d 1031](#), 1033 (Fed. Cir. 1997). We found that, contrary to the appellant's claim, the failure to expunge did not harm his retirement application. *Id.* at 10-11. We also found, however, that the removal references that remained in the OPF deprived the appellant of the benefit of his bargain, and we ordered the agency to request that the Office of Personnel Management (OPM), which maintained the OPF, amend its records to show that the appellant's separation resulted from his resignation rather than a removal. *Id.* at 10.

On July 17, 2012, the agency submitted evidence that it had made this request. CRF, Tab 20 at 1, 4-5. On November 9, 2012, the agency submitted evidence that OPM had corrected the appellant's records to show that he resigned rather than was removed. CRF, Tab 26 at 4, 9-10. On December 26, 2012, the Clerk of the Board ordered the appellant to respond to the agency's submission by January 2, 2013. CRF, Tab 27 at 1-2. The order advised the appellant that if he failed to respond, the Board might assume he was satisfied and dismiss his petition for enforcement. *Id.*

On January 19, 2013, the appellant responded to the agency's submission. CRF, Tab 28. Although his response was untimely by more than two weeks, we have considered it. In his response, the appellant noted his displeasure with OPM's delay in correcting his records, but did not address whether he is satisfied with the actual corrections, as the Clerk's Office ordered him to do. *See* CRF, Tab 28 at 4. Therefore, we assume he is satisfied with the agency's evidence that OPM amended his records in accordance with the settlement agreement.

In his January 19, 2013 response, and prior to the agency's July 17, 2012 submission, the appellant raised several other issues. First, the appellant contended that the agency's delay in correcting his records contributed to OPM's denial of his disability retirement application. CRF, Tab 21 at 5-6; CRF, Tab 28

at 4. We have already determined that the agency's failure to timely expunge the OPF did not materially harm the appellant's disability retirement application because OPM did not consider the removal itself as a factor. CRF, Tab 19 at 11. We will not address this issue further.

Second, the appellant contended that the agency is "barring [him] from applying for a Disability Retirement by . . . not submitting their portions of the retirement application." CRF, Tab 21 at 5, 7; *see also* CRF, Tab 28 at 4. The settlement agreement does not require the agency to assist in the appellant's disability retirement application, and, as the agency pointed out, it previously informed him where to direct his inquiries related to the agency form. CRF, Tab 15 at 6; Tab 12 at 55. Accordingly, this issue is beyond the scope of this compliance matter. The appellant should contact the appropriate agency employee for assistance with his form.

Third, the appellant contended that the agency is required to "produce copies of [his] OPF from the Agency and OPM." CRF, Tab 21 at 7; *see also* CRF, Tab 28 at 4. Any entitlement the appellant may have to view his employment records does not arise from the settlement agreement, and therefore is beyond the scope of this compliance matter. The agency previously informed the appellant how to obtain a copy of his OPF. *See* CRF, Tab 12 at 55.

Finally, the appellant asserted that the agency "stole" money from his retirement account – possibly a reference to his claims regarding his TSP fund, his insurance, or the offset of the interest payment the agency erroneously paid him. CRF, Tab 21 at 7; Tab 23 at 4. Our July 2, 2012 Order and the administrative judge's Recommendation addressed these issues and found that the agency had demonstrated compliance. CRF, Tab 19 at 4; CF, Tab 13 at 6. Accordingly, we will not address these issues further.

In sum, as explained in our July 2, 2012 Order and as above, we now find the agency compliant with the settlement agreement and the Initial Decision, and DISMISS the petition for enforcement.

**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. 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.