



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for October 31, 2014

BOARD DECISIONS

Appellant: Corinne S. Yee

Agency: Department of the Navy

Consolidation: NAVFAC Employees-Hawaii v. Department of the Navy

Decision Number: [2014 MSPB 81](#)

MSPB Docket Number: SF-0752-13-3562-I-1 and Consolidation Docket Number SF-0752-14-0265-I-1

Issuance Date: October 30, 2014

Appeal Type: Adverse Action

Action Type: Furlough

Definition of “Service” in 5 U.S.C. § 7513(a)

The appellant appealed her furlough for no more than 11 days from the position of General Attorney. She asserted that the furlough was illegal because the Department of Defense (DOD) was not authorized to order the Department of the Navy (Navy) to furlough its employees as the Navy, not DOD, was her employing agency. The appellant also alleged that the Navy had sufficient funding to avoid a furlough and did not prove that the furlough promoted the efficiency of the service. She also claimed that the majority of her work was not funded by appropriated funds, and the Navy should not have furloughed her to the extent of her position’s non-appropriated funding. Finally, she asserted that the agency did not implement the furlough in a fair and even manner because other civilians working at her shipyard, including other attorneys, were not furloughed. The administrative judge affirmed the furlough, holding that: (1) it was reasonable for DOD to consider its budget situation holistically, instead of isolating each military department; (2) the agency did not need to prove an actual deficit in funding to justify the

furlough, it only needed to show that the furloughs were a reasonable response to the financial situation; (3) the appellant's working capital funds status did not exempt her from a furlough; (4) the agency's decision to risk forgoing reimbursement for the work she would have done was a resource-allocation issue beyond the scope of the Board's review; (5) the agency decided which employees to furlough in a fair and even manner, and had legitimate management reasons for declining to furlough other employees; and (6) the appellant did not prove any harmful error, discrimination, or violation of due process.

Holding: The Board affirmed the initial decision as modified by the Opinion and Order.

1. The Board held that the "agency" taking the action against the appellant was the Navy, but that the Navy was not required to prove that the furlough promoted the efficiency of the service solely as it related to the Navy. With respect to the "efficiency of the service" standard, the term "service" should be interpreted as the civil, or federal, service, including both the competitive and excepted services, and not be limited to the service of a particular agency.

2. The Board declined to decide whether this definition of "service" applied outside the context of the special relationship that exists between a military department and DOD.

- The U.S. Court of Appeals for the Federal Circuit did not issue any decisions this week**