



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for April 28, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Victoria Snyder

Respondent: Department of the Navy

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2016-1940](#)

MSPB Docket No. DC-0752-13-6201-I-1

Issuance Date: April 26, 2017

The appellant was one of many Department of Defense (DOD) employees furloughed in 2013 as a result of legislation that cut the DOD's 2013 budget by \$37 billion approximately halfway through Fiscal Year 2013 as a result of across-the-board budget cuts known as sequestration. The appellant was a civilian mechanical engineer at the Naval Surface Warfare Center, Dahlgren Division (Dahlgren), a Working Capital Fund (WCF) entity. Other than receiving initial working capital through appropriation, WCF entities are self-supporting and function from the fees charged for the services they provide to their customers. The primary customers of WCF entities are other DOD entities that transfer their own congressionally appropriated funds to make "purchases" from WCFs. At the time of the sequestration, the appellant was working

full-time on a project funded by Lockheed Martin.

The appellant appealed her 6-day furlough, and her case was consolidated with 39 other furloughed Dahlgren employees. The appellant argued that, because Lockheed Martin was solely responsible for funding her project, she should have been exempt from the furlough because her furlough could not have assisted in reducing DOD's budgetary shortfall. She also argued that the agency improperly provided some, but not all, furloughed employees on her project an opportunity to earn overtime pay to mitigate the economic impact of the furlough.

The administrative judge issued an initial decision finding that the appellant's furlough was a reasonable management solution to the shortage of funds caused by sequestration and therefore promoted the efficiency of the service. In so finding, the administrative judge explained that the appellant was paid directly from the WCF and thus was no different from other furloughed employees. The administrative judge also concluded that there was no evidence that the furlough was unfairly applied. Instead, a witness only "assumed" that the agency paid him and others the requested overtime to mitigate the effects of the furlough and the appellant did not request overtime pay.

The appellant filed a petition for review of the initial decision with the Board. On March 18, 2016, the Board issued a Split Vote Order indicating that the two members of the Board could not agree upon a disposition and, as a result, the initial decision became the final decision of the Board.

The appellant then appealed the Board's decision to the U.S. Court of Appeals for the Federal Circuit. The court affirmed the judgment of the Board upholding the appellant's furlough.

Holdings:

(1) The court agreed with the administrative judge's finding that the appellant was a WCF employee directly paid from the WCF, regardless of the ultimate funding source of her project.

(2) The court further agreed that, taking a holistic view of budget management, the decision to furlough employees paid by a WCF was a reasonable management solution to the budget shortfall because, among other reasons, preserving money in the WCFs generally provided DOD with the flexibility to meet higher priority needs during the critical time period.

(3) The court was not persuaded by the appellant's argument that the

Government would not realize any savings from her furlough because, although any unused monies from her project would be returned to Lockheed Martin at the completion of the project in 2015, it was reasonable for the agency to furlough all WCF employees in May 2013 to achieve a savings during that critical time period.

(4) The court further found unpersuasive the appellant's argument that she met an exception in the Secretary of Defense's furlough memorandum pertaining to employees who were "not paid directly by accounts included in the Department of Defense-Military [] budget" because she was paid directly from the WCF.

(5) The court agreed with the administrative judge's finding that the the agency applied the furlough in a fair and even manner. The court agreed that the agency's approval of other employees' requests for overtime did not establish that the overtime was offered to mitigate the impact of the furlough or establish that the appellant, who did not request overtime, was treated differently than similarly situated employees.