



U.S. MERIT SYSTEMS PROTECTION BOARD

Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review

The Board's Manual on Organization Functions & Delegations of Authority (Delegations Manual) states that the Merit Systems Protection Board (the Board) has delegated adjudicatory authority to the Clerk of the Board "to grant a withdrawal of a petition for review when requested by a petitioner." See Delegations Manual, § 2.3.5.1 (Delegations of Adjudicatory Authorities to the Clerk of the Board). In practice, the Clerk has traditionally exercised this delegated authority only when such a request is made early in the process, before the record on petition for review has closed. See 5 C.F.R. § 1201.114(k). All other requests to withdraw have been adjudicated by the full Board.

In light of the unprecedented, lengthy period of time that the Board has been without a quorum and therefore unable to rule on requests to withdraw petitions for review, the current practice has been carefully reviewed. Consistent with the ministerial role of the Clerk of the Board, the Clerk may now exercise the delegated authority to grant a withdrawal of a petition for review when requested by a petitioner if there is no apparent untimeliness of the petition, *see Walls v. Merit Systems Protection Board*, 29 F.3d 1578, 1582 (Fed. Cir. 1994) (setting forth the factors that the Board considers when deciding whether good cause exists to waive filing deadlines), and if no other party objects to the withdrawal, *see Kravitz v. Office of Personnel Management*, 75 M.S.P.R. 44, 47 (1997) (holding that "the Board may dismiss an appeal based solely on an appellant's request, provided that the opposing party would not be prejudiced"). If the petition for review appears to be untimely or if another party objects to the withdrawal request, the Clerk is unable to grant the request because the issues raised must be adjudicated by the full Board.

Additionally, if a request to withdraw is made as part of a settlement agreement that the parties wish to enter into the record for enforcement purposes, the Clerk cannot grant that request because it requires findings that must be made by the Board. Specifically, before accepting a settlement agreement into the record for enforcement purposes, the Board must determine whether the agreement is lawful on its face, whether the parties freely entered into the agreement, and whether the parties

understand the agreement's terms. *See, e.g., Stewart v. U.S. Postal Service*, 73 M.S.P.R. 104, 107 (1997); *Mahoney v. U.S. Postal Service*, 37 M.S.P.R. 146, 149 (1988). The Clerk, however, may exercise delegated authority to grant a withdrawal made in fulfillment of a settlement agreement that has not been entered into the record for enforcement by the Board and that the parties do not intend for the Board to enforce.

When the Clerk of the Board grants a request to withdraw a petition for review, the order granting the request will be the final order of the Board for purposes of exercising further review rights, including filing in court.

This policy is hereby adopted and effective immediately, May 11, 2018.



Mark A. Robbins, Acting Chairman*
Merit Systems Protection Board

* Because the office of Chairman currently is vacant, the functions of the chief executive and administrative officer of the Merit Systems Protection Board are vested in the Vice Chairman pursuant to 5 U.S.C. § 1203(b).