

military personnel and the Army. Also, OPM considered two previous disciplinary actions against appellant, a reprimand and a suspension, taken against appellant in 1979 and 1980 for failure to follow instructions upon which the Army relied in taking the removal action. Additionally, the agency considered criminal charges brought against appellant in 1974 for filing fraudulent unemployment compensation claims even though they had been dismissed with prejudice.

The record shows that OPM afforded appellant an opportunity to respond to its investigatory findings and that appellant submitted a written response stating that, with respect to the removal action, he became disagreeable only after the clients he was assisting became quarrelsome and that the disparaging statements with which he was charged were made in private conversations. He stated that the reprimand and suspension actions were outdated and should not have been considered and that, moreover, the suspension was ultimately reversed by the agency. Also, appellant denied the criminal charges and alleged, without supporting evidence, that the criminal charges were dismissed because they lacked merit. However, OPM noted that, as a Tax Examiner Assistant, appellant "would constantly be under intense public scrutiny" and, thus, it would be crucial that his "conduct reflect the highest levels of honesty, ethics and moral standards." It therefore determined that appellant was unsuitable for federal government service.

Appellant appealed to the Dallas Regional Office of the Board. The presiding official found that OPM had erroneously relied on the reversed suspension. She further found that OPM's evidence of appellant's criminal involvement, consisting solely of the allegations in a Federal Bureau of Investigation report and in the information filed in appellant's case, was insufficient to establish appellant's criminal involvement. However, she found that the misconduct charged in the removal action and the reprimand were properly considered and were sufficient to show appellant's

unsuitability for federal government service. She therefore sustained OPM's action.

Appellant has petitioned for review, alleging that the presiding official erred in the initial decision. First, he contends that more than five years have elapsed (presumably from the time the disciplinary actions were taken against him, since the presiding official found there was no evidence to support the criminal charges) and that information relating to his misconduct is not required to be on his Personal Qualifications Statement (Form 171). Second, he alleges that the initial decision failed to consider the fact that he held two jobs since his removal. Additionally, appellant requests a copy of the transcript of the Regional Office hearing in his appeal proceeding at no cost and also requests an opportunity to supplement the record upon receipt of the transcript.

Analysis

With respect to his first contention, appellant is apparently relying on question number 28 on his Form 171. That question asks whether the applicant has been fired from any job within the last five years. Appellant, however, cites to no law or regulation which precludes OPM from considering information relating to a removal occurring more than five years previously. In any event, such a law or regulation would be inapplicable in the instant case since appellant's application for the Tax Examiner Assistant position was filed less than five years after his removal.

As to appellant's second contention, the presiding official noted that he failed to submit evidence establishing that he had worked since his removal and had successfully rehabilitated himself. Appellant has neither pointed to supporting evidence in the record nor explained why he failed to submit such evidence. Thus, he has also not shown error by the presiding official in this finding.

Regarding appellant's request for a copy of the transcript, that request is denied. Appellant has failed to


comply with 5 C.F.R. § 1201.53(a), which provides that motions for a transcript copy at no charge must set forth the reasons showing good cause for an exception to the payment requirement and must be accompanied by a supporting affidavit. Appellant has neither presented any reasons for the request nor submitted an affidavit. Therefore there is no basis for granting his request.*/

Notice

This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five (5) days from the date of this order. 5 C.F.R. § 1201.113(b).

The appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review, if the court has jurisdiction, of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.

*/ Additionally, appellant has requested a hearing on review. While the Board has the authority to grant such a request, see 5 C.F.R. § 1201.116(a)(1) and (4), the Board finds that there is also no basis for granting that request.