

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

OSCAR W. WOODARD,
Appellant,

DOCKET NUMBER
SF-0353-09-0509-X-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: September 7, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Minette D. Turner-Miles, Ontario, California, for the appellant.

Kris Ashman, Long Beach, California, for the agency.

BEFORE

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

FINAL ORDER

This case is before the Board on the recommendation of the administrative judge that the appellant's petition for enforcement be granted and the agency required to search for available work within the appellant's medical restrictions

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

and restore him to a limited duty job offer within his restrictions. Compliance Referral File (CRF), Tab 1. In response to the administrative judge's recommendation, the agency has filed a nonconcurrence with the recommendation contending that the only work in the local commuting area that can be made available to the appellant would require rescinding limited duty job offers to other employees with less severe restrictions and that doing so would violate the collective bargaining agreement. CRF, Tab 3. In his response, the appellant disputed the agency's description of his restrictions and contended that there was work he could do. CRF, Tab 4.

On March 15, 2012, the agency supplemented its response with a request for dismissal of the appellant's appeal as moot. CRF, Tab 5. The motion is based on the appellant's receipt of disability retirement payments from the Social Security Administration, which issued a notice of award on March 5, 2011, finding that the appellant was disabled from working effective April 6, 2009. *Id.* The motion also relies on the approval by the Office of Personnel Management of the appellant's application for disability retirement on August 3, 2011. *Id.*

On April 17, 2012, the Board issued an order providing the appellant an opportunity to respond to the agency's motion. The Board's order notified the appellant that, if he did not respond to the motion, the Board may assume that he is not opposed to the agency's motion and dismiss the petition for enforcement. The appellant has made no response to the motion.²

The agency's evidence shows that the appellant has applied for and accepted disability benefits under the Social Security Act. CRF, Tab 5, Exhibit 3. The Act defines "disability" in [42 U.S.C. § 423\(d\)\(1\)\(A\)](#) as inability to perform any substantial gainful activity. The appellant's ability to qualify for benefits

² The order was served on the appellant by electronic mail. The copy sent to his representative by certified mail was returned as undeliverable because her address of record had changed, and she had failed to comply with the Board's regulations requiring notification of a change of address.

under this standard is on its face inconsistent with his claimed right to restoration based on ability to perform limited duty. The appellant's failure to file any objection to the agency's motion is an implicit admission of this fact which the Board will treat as an abandonment of his claim. Accordingly, we dismiss the appellant's petition for enforcement as abandoned.

**NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS**

This is the Board's final decision in this matter. [5 C.F.R. § 1201.113](#). 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 your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. 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](#)). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, www.ca9c.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.