

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

CURTIS S. ANDERSON,
Appellant,

v.

DEPARTMENT OF THE AIR FORCE,
Agency.

DOCKET NUMBER
DA075286C0388

DATE: OCT 22 1987

Gary L. Benton, Harrah, Oklahoma, for the appellant.

Howard O. Bain, Tinker Air Force Base, Oklahoma, for
the agency.

ORDER

This case is before the Board on the issue of compliance. The agency was found in partial compliance with a decision of the Board which reversed the appellant's removal and restored him retroactively to his position as an aircraft engine repairer at Tinker Air Force Base, Oklahoma. Specifically, an administrative judge of the Board's Dallas Regional Office found that the agency failed to calculate correctly the amount of back pay due the appellant for overtime during the removal period.

In a decision issued May 29, 1987, the Board found that an award of overtime could not be based on the appellant's overtime work history for a period after he returned to work from his unlawful removal. In addition, the Board determined that, although an employee's pre-removal overtime

experience, where available, could be an accurate gauge for making the employee whole, such a formula would not be appropriate here where evidence of record indicated that the appellant suffered from an acute anxiety neurosis brought on by job-related stress. Under such circumstances, the Board reasoned, it would not be expected that the appellant would work the number of overtime hours he would normally have worked if the job site were not a source of serious stress to him.

Therefore, the Board held that the agency should determine the appellant's overtime back pay in this case by averaging the number of overtime hours worked by fellow employees occupying similar positions during the removal period. It ordered the agency to amend its back pay calculation and to submit proof of compliance with its order within thirty days.

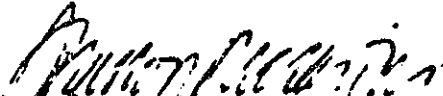
As proof of compliance with the Board's order, the agency submitted a payment voucher and distribution sheet indicating that it was taking the necessary action to pay the appellant for an additional 96 hours overtime. In light of this documentation, by Order dated July 14, 1987, the appellant was provided with an opportunity to show cause why this proceeding should not be dismissed as moot. No evidence or argument having been received, appellant's petition is hereby DISMISSED. This is the final decision of the Merit Systems Protection Board in this case.

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington, DC 20439. The court must receive the petition no later than thirty days after you or your representative receives this order.

FOR THE BOARD:

Washington, D.C.


Robert E. Taylor
Clerk of the Board