UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

THOMAS E. BURKWIST, appellant, v. DEPARTMENT OF TRANSPORTATION, agency.	DOCKET NUMBER SE07528410245 DATE: APR 30 1985

ORDER

Having considered the appellant's timely petition for review[1] of the initial decision issued on January 7, 1985, and finding that it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115, the Board hereby DENIES the petition.

Appellant's argument that his reassignment is within the Board's appellate jurisdiction because his take-home pay is now less[2] and that he, therefore, has suffered a

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1/ The Board considers the postmark date the date of filing. See Beer v. Department of the Army, 2 MSPB 226, 227 (1980). Here, the postmark date is February 11, 1985, the last date for timely filing in accordance with the initial decision.

2/ Specifically, he asserts that his take-home pay is less as a result of the fact that he now has to pay for health insurance not covered under the new position and does not have the seniority in the new position to bid for shifts which pay shift differentials.

loss of pay is without merit. It is a base-pay comparison which the Board uses to determine the issue of whether appellant has suffered a reduction in pay. See 5 U.S.C. § 7511(a)(4) and Fair v. Department of Transportation, 5 MSPB 28, 29-30 (1981). In this case, such a comparison shows that appellant's base-pay was increased as a result of the reassignment. This conclusion is not altered by the evidence showing that the agency originally paid appellant approximately 15 cents per hour less in the position to which he was reassigned. The agency corrected its error by raising appellant's pay in the new position retroactive to the effective date of the transfer. See Official File, Tabs 4c and 4d. This action was taken prior to appellant's timely appeal of the reassignment. Thus, the present situation is unlike the situations in Goettmann v. Department of the Air Force, 9 MSPB 363 (1982) and Himmel v. Department of Justice, 6 MSPB 408 (1981) wherein the agencys unilaterally modified the actions after the time the appeals were filed to avoid Board jurisdiction. Further, the reduction in pay in this case was cured by the retroactive step increase whereas the actions appealed in Himmel and Goettman were only partially cancelled (in Himmel a 30-day suspension was reduced to a 14-day suspension and in Goettman although the removal was cancelled derrogatory remarks about the employee's performance were left in his personnel records). Further, appellant's submission of statements by an agency official that the reassignment was a demotion because the latter position resulted in less take-home pay, fails to meet the Board's criteria for review as new evidence. See generally, Russo v. Veterans Administration, 3 MSPB 427, (1980) (to warrant granting a petition for review the asserted "new" evidence must be

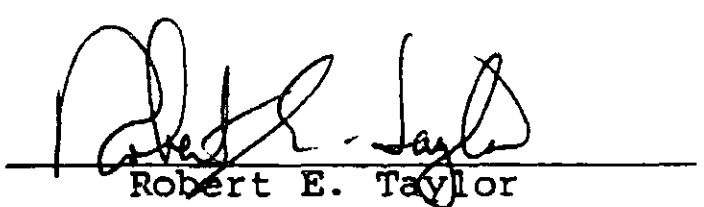
"material" meaning that it is of sufficient weight to warrant an outcome different from that reached on the initial decision).

Finally, the appellant's arguments that the reassignment constituted a prohibited personnel practice or that it was a reprisal for his filing an appeal of an earlier suspension, intended to coerce his resignation, constituted an illegal detail, and was disciplinary in nature, cannot be considered by the Board absent the presence of an otherwise appealable issue. See Brown v. Department of Justice, MSPB Docket No. CH07528210187 at 3-4 (May 8, 1984) and Wren v. Department of the Army, 2 MSPB 174 (1980).

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.