

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

MICHAEL A. DANOWSKI
v.
UNITED STATES POSTAL SERVICE

Docket No.
PH075299085

OPINION AND ORDER

Appellant, a preference eligible, was removed from a position with the United States Postal Service during his 90-day probationary period. He appealed the removal to the Board's Philadelphia Field Office claiming that the removal was unfair and not warranted. The presiding official dismissed appellant's appeal on the ground that it was not within the appellate jurisdiction of the Board, citing 5 U.S.C. 7511.

The petition for review alleges the following:

- (1) that the initial decision by the presiding official was discriminatory and constituted a capricious and wanton disregard of the relevant facts in this matter, and
- (2) that the initial decision of the presiding official was based on an erroneous interpretation of the statute and regulations.

The petition for review contains no references to applicable laws or regulations as required by 5 C.F.R. 1201.115 (1979), and presents no other evidence in support of these allegations. In addition, the petition for review does not address the issue of the Board's appellate jurisdiction, the lack of which is the basis of the presiding official's decision.

The presiding official based his decision primarily on 5 U.S.C. 7511 which he stated set out the statutory rights of appeal for employees who have been removed from federal employment. He said that excluded from coverage of the statute by 5 U.S.C. 7511(a)(1)(B) were preference eligibles in the United States Postal Service who have not completed one year of current continuous service in the same or similar positions. The presiding official concluded that since the appellant had not completed one year of service at the time of his removal, that he did not have a statutory right of appeal to the Board.

The presiding official also considered whether appellant might have a right to appeal to the Board under Office of Personnel Management regulations. See 5 U.S.C. 1205(a)(1) and 5 C.F.R.

1201.3. (1979). The presiding official correctly concluded that appellant does not have a regulatory right of appeal to the Board.

Thus, the Board agrees with the conclusion of the presiding official that appellant has neither a regulatory or statutory right of appeal to the Board. In the absence of such a right, the Board is without appellate jurisdiction in this case.

Accordingly, the Board does not find that the initial decision was based on an erroneous interpretation of statute or regulation, and the petition for review is DENIED.

This is the final decision of the Merit Systems Protection Board in this case. The appellant is hereby notified of his right to appeal this decision to the United States Court of Claims, or the appropriate circuit of the United States Court of Appeals, provided such appeal is filed within thirty (30) days of receipt of this decision.

For the Board:

ROBERT E. TAYLOR,
Secretary.

Washington, D.C., *July 28, 1980*