

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ELIJAH DRAYTON

v.

DEPARTMENT OF THE NAVY

Docket No.
AT075299049

OPINION AND ORDER

The appellant was removed from a position with the Naval Regional Medical Center, Charleston, South Carolina. He appealed to the Board's Atlanta Field Office. In the initial decision, the presiding official found the charges against the appellant to be supported by a preponderance of the evidence and sustained the removal action. In the petition for review, the appellant requested additional time in which to obtain new medical evidence relevant to his case.

The appellant was removed for excessive unauthorized absence. He had been off work over 90 days allegedly because of an on-the-job injury. Following the injury, however, the appellant was examined by two different physicians at the request of the agency. Neither found evidence of injury or abnormality and indicated that the appellant could return to work. He never submitted medical evidence to the agency or the presiding official which demonstrated incapacity for work during the period of unauthorized absence. In his petition for review, the appellant set forth the basis for "a 30 day continuance to seek to obtain further medical diagnosis, treatment and evidence relevant to his case." The Board considered this a request for additional time to perfect a petition for review based upon the availability of new and material evidence. 5 C.F.R. 1201.115(a). By letter dated October 22, 1979, the Board granted the appellant's request for an extension of 30 days. To date, however, nothing further has been submitted on this case. Therefore the Board finds that there has been no showing that new and material evidence is now available on this case. Further, there has been no argument that the initial decision was based upon erroneous interpretation of statute or regulation. 5 C.F.R. 1201.115(b).

Accordingly, neither of the criteria of 5 C.F.R. 1201.115 having been met, the petition for review is **DENIED**. This is a final decision of the Merit Systems Protection Board on this case. The appellant is hereby informed of the right to petition for judicial

review in the U.S. Court of Appeals for the appropriate circuit or in the U.S. Court of Claims within 30 days of receipt of this decision.

For the Board:

ERSA H. POSTON.

Washington, D.C., *August 12, 1980*