

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ROBERT F. FIELDS

v.

VETERANS ADMINISTRATION

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OPINION AND ORDER

Appellant was suspended for thirty days based upon multiple charges of intentional unauthorized use of a government vehicle for other than official purposes, willfully falsifying government records or documents, willfully wasting government time and materials (gasoline), and one charge of patient abuse, misuse of a government identification card, failure to report a motor vehicle violation, and drinking intoxicating beverages while on duty. Appellant appealed the agency's action to the Board's Philadelphia Regional Office.

Following a hearing, the presiding official found that the agency only proved by preponderant evidence two charges of intentional unauthorized use of a government vehicle for other than official purposes and willfully wasting government time and materials, and the charge that appellant failed to report a motor vehicle violation. The presiding official then considered the penalty imposed in light of the sustained charges, and mitigated the thirty-day suspension to fourteen days.

The agency has petitioned for review contending that the presiding official lacked jurisdiction to mitigate the penalty in light of 31 U.S.C. § 638(a)(c)(2).^{*/} The agency also argues that the presiding official failed to consider

^{*/} The relevant statutory provisions can now be found at 31 U.S.C. § 1349(b).

the relevant statutory provisions, the agency's table of penalties, and various factors established by the Board for determining the appropriateness of an agency-imposed penalty.

Under 31 U.S.C. § 1349(b), an employee who willfully uses an official passenger motor vehicle for unofficial purposes "shall be suspended without pay . . . for at least one month." Since this statute imposes a mandatory minimum penalty for appellant's offense, the Board lacks authority to reduce the penalty below a thirty-day suspension. Woody v. General Services Administration, 6 MSPB 410 (1981).

Accordingly, the agency's petition for review is hereby GRANTED, the initial decision is AFFIRMED in part and REVERSED in part and the agency's imposition of a thirty-day suspension is SUSTAINED.

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

The appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review 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:

JUN 7 1984

(Date)

Washington, D.C.

Paula A. Ratchew

for Robert E. Taylor
Secretary