UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

96 M.S.P.R. 239

GREGORY LAVETTE,
Appellant,

DOCKET NUMBER
DA-0752-02-0708-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: May 28, 2004

Gail M. Dickenson, Esquire, Dallas, Texas, for the appellant.

Steve E. Coney, Esquire, Dallas, Texas, for the agency.

BEFORE

Neil A. G. McPhie, Acting Chairman
Susanne T. Marshall, Member

OPINION AND ORDER

¶1 Before the Board is the appellant's petition for review (PFR) and the agency's cross PFR of an April 30, 2003 initial decision (ID) that mitigated the appellant's demotion to a 90-day suspension. The appellant has filed a motion to dismiss the agency's cross PFR for failure to comply, or provide certification of compliance, with the interim relief ordered in the ID. For the reasons set forth below, we DENY the appellant's PFR under 5 C.F.R. § 1201.115, as well as his motion to dismiss the agency's cross PFR, GRANT the agency's cross PFR under 5 C.F.R. § 1201.115, and AFFIRM the ID as modified by this Opinion and Order. We REVERSE the ID with respect to the penalty and SUSTAIN the appellant's demotion.

BACKGROUND

¶2 The appellant was employed in the position of EAS-20 Customer Service Manager at the agency's Highlander Station in Waco, Texas. Initial Appeal File (IAF), Tab 1 at 2. By notice dated June 28, 2002, Allen Brock, Manager of Post Office Operations and Officer in Charge of the Waco, Texas Post Office, proposed the appellant's demotion to the position of Part-Time Flexible City Letter Carrier based on two charges: (1) Misconduct – Engaging in Conduct Characterized as Sexual Harassment by a Subordinate Employee and in Violation of the Postal Service Policy on Sexual Harassment; and (2) Unsatisfactory Performance – Failure to Comply with Postal Regulations and Rules Regarding the Count, Inspection and Adjustments to the City Routes at Highlander Station. IAF, Tab 7, Subtab 4E.

¶3 The three narrative specifications underlying Charge 1 all involve allegations made by a former subordinate employee of the appellant's at the Highlander Station, Ramonita Latchison. *Id.* In the first specification, Latchison claimed that, in March or April 2001, as she walked by the supervisor's desk at approximately 6:00 p.m., the appellant made the following statement to her: "You must have told your husband to shave his head so that he would look like me. That way you can dream about me at night." *Id.* at 1-2. In the second specification, Latchison, who was undergoing physical therapy for her back three times a week, claimed that, on April 4, 2002, the appellant came to her at a "carrier case at around 10:00 o'clock [a.m.] and asked [her]":

> What kind of physical therapy are they giving you? Do they do exercises or put you in the hot tub? I could put you in a hot tub and give you massages. I could take you to the gym and give you exercises, but it would have to be after 7:00 o'clock [p.m.].

Id. at 2. Latchison told the agency that the appellant's remarks made her "feel really bad" and that "she just started shaking." *Id.* The proposal notice indicated that three other employees mentioned that they heard the appellant make a statement "along those general lines." *Id.* The third specification claimed that

Latchison alleged that the appellant came to her carrier case "at about 10:00 o'clock [a.m.] on April 5, [2002], and made the comment 'Anything I can do for you, I'm here for you if you need me.'" *Id.* Latchison complained that she "got butterflies" in her stomach and did not know what the appellant meant by the statement. *Id.* The agency argued that the appellant's alleged misconduct violated the agency's Joint Statement on Violence and Behavior in the Workplace, the Postal Service Policy on Sexual Harassment, and the Employee and Labor Relations Manual (ELM), Sections 666.2 and 673.32. *Id.* at 2-3.

¶4 Charge 2 notified the appellant that:

> [O]n or about May 30, 2002, management became aware you were not in compliance with the rules, regulations, and instructions [with] reference [to] the Adjustments conducted by you and your staff following the Route Count and Inspection. You failed to provide the carriers at your station with a copy of the 1840 at least 1 day prior to the consultation, you failed [to] hold any consultation prior to the implementation of the adjustment. In addition, you received from the Manager, Delivery & Customer Service Programs, Rio Grande District, a Route Inspection Time Line Calendar. This Time Line was to [be] follow[ed] to allow for the implementation of any required adjustments within the 52-day time frame. You were to begin consultations with the carriers on or about April 4, 2002. Your failure to comply with the regulations has created a possible monetary liability in excess of $10,000.

Id. at 3. The proposal notice stated that the appellant's actions violated various Postal regulations, rules, and policy, including, but not limited to sections 923.1 and 923.2 of Handbook M-41, City Delivery Carriers' Duties and Responsibilities, and sections 242.345, 242.346, and 242.347 of Handbook M-39, Management of Delivery Services. *Id.* at 3-4.

¶5 The appellant and his representative responded, both orally and in writing, to the proposal notice. IAF, Tab 7, Subtabs 4B, 4C. Thereafter, the agency's deciding official, Manager of Post Office Operations Hector Rodriguez, sustained both charges and demoted the appellant, effective August 24, 2002. *Id.*, Subtab 4B; IAF, Tab 8, Subtab 13. The appellant filed an appeal with the Board

in which he challenged the demotion action, claimed that the action constituted discrimination on the basis of race (African-American), and requested a hearing. IAF, Tab 1, Tab 9 at 5-6.

¶6 Following a hearing, the administrative judge (AJ) sustained both charges, but found that the agency had established by preponderant evidence only the second specification under Charge 1. IAF, Tab 30, ID at 2-43. With regard to the race discrimination claim, the AJ found that the appellant failed to identify a similarly situated employee who engaged in conduct that was similar in both nature and seriousness to the appellant's charged misconduct. ID at 43-46. Even assuming that the appellant had identified a similarly situated comparative employee, the AJ found that the agency articulated a legitimate, nondiscriminatory reason for the appellant's demotion based on the sustained charges. ID at 46-47. The AJ found further that the agency demonstrated the requisite nexus between the appellant's misconduct and the efficiency of the service. ID at 47. However, the AJ mitigated the demotion to a 90-day suspension. ID at 48-51.

¶7 The AJ ordered the agency to provide interim relief in accordance with 5 U.S.C. § 7701(b)(2)(A), effective as of the date of the ID, in the event that either party filed a PFR. ID at 52. The AJ noted that any PFR filed by the agency must be accompanied by a certification that the agency has complied with the interim relief order. *Id.*

¶8 The appellant has filed a PFR, arguing that the AJ erred in sustaining the charges and by mitigating, rather than reversing entirely, the agency's demotion action. Petition for Review File (PFRF), Tab 5. The agency responded in opposition to the appellant's petition and filed a cross PFR, contending, among other things, that the AJ erred in mitigating the penalty. *Id.*, Tab 11. The appellant moved to dismiss the agency's cross PFR for failure to comply, or to provide certification of compliance, with the interim relief ordered in the ID. *Id.*, Tab 13. Thereafter, the agency submitted evidence purporting to prove

compliance with the interim relief order. *Id.*, Tab 17. The appellant then filed a response to the agency's cross PFR. *Id.*, Tab 18.

ANALYSIS

The Appellant's PFR is Denied.

¶9 The agency alleged in Charge 2[1] that the appellant's failure to timely consult with the carriers at the Highlander Station prior to the route adjustment procedures violated agency policy.[2] IAF, Tab 7, Subtabs 4B, 4E. The record evidence, as summarized by the AJ, indicates that the procedures for the route inspections and adjustments are as follows: The entire route inspection process is to be completed by a Station Manager within 52-days; at the beginning of the route inspection, all mail is counted on the various routes to be adjusted; thereafter, managers are to conduct consultations with the carriers to talk about their respective routes; the agency then adjusts the routes to either take away or add territory to a carrier's new route so that a carrier will be able to complete his or her route within an eight-hour period. ID at 28-29; Hearing Transcript (HT) at 44-48. The AJ found that: (1) the agency established that the appellant was fully informed of the deadlines for the completion of the route inspections at the Highlander Station and that he was to conduct the consultations with the carriers

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[1] As set forth below, we find that the AJ properly sustained Charge 2 and that charge alone is sufficient to sustain the appellant's demotion. Accordingly, we do not reach the merits of Charge 1. *See Luciano v. Department of the Treasury*, 88 M.S.P.R. 335, ¶ 10 (2001) (the Board found it unnecessary to address the agency's assertions that the AJ erred in not sustaining certain specifications of a charge because the charges and specifications that the AJ sustained warranted the appellant's removal), *aff'd*, 30 Fed. Appx. 973 (Fed. Cir. 2002); *New v. Veterans Administration*, 40 M.S.P.R. 212, 215-16 (1989) (any error by the AJ in failing to adjudicate a charge did not prejudice the appellant's substantive rights where the charge sustained by the AJ was sufficient to justify the penalty of removal).

[2] Both the ID and the proposal notice fully set forth the provisions that the appellant allegedly violated. ID at 27-28 nn.10-14; IAF, Tab 7, Subtab 4E at 4-5.

beginning on April 4, 2002, prior to the route adjustments, ID at 29, 33, 41; HT at 46-47, 146; IAF, Tab 7, Subtabs 4H, 4J; (2) the appellant did not conduct the requisite consultations before the deadline or ask for assistance in meeting the deadline for conducting the consultations, ID at 30, 34, 37; HT at 53, 168, 288; IAF, Tab 7, Subtab 4C; and (3) the appellant's failure in this respect resulted in a monetary loss to the agency in the amount of approximately $3,900.00, ID at 27 n.9; IAF, Tab 7, Subtabs 4D, 4K; HT at 186.[3]

¶10 In sustaining Charge 2, the AJ found credible the testimonies of numerous witnesses indicating that the appellant had received notice of the timeline for conducting the consultations prior to the completion of the route adjustments. ID at 41. Specifically, the AJ credited the testimonies of Sheila Jennings, Manager of Post Office Operations, HT at 33, 37; Peter Casias, Manager of the Delivery & Customer Services Programs, Rio Grande District Office (which includes the Highlander Station), HT at 44-46; Robert Vanderwaall, Delivery Retail Analyst with Delivery Programs, HT at 73-75; deciding official Rodriguez, HT at 184; proposing official Brock, HT at 146; and Dena Fox, Acting Supervisor of the Computer Forwarding Section, HT at 62-64. On the other hand, the AJ discredited the appellant's testimony that he never received such notice. ID at 41; HT at 357 The AJ also discredited the appellant's testimony that Brock told him that he did not have to do the consultations. ID at 41-42; HT at 370.

¶11 The appellant challenges virtually all of the AJ's credibility findings with respect to the merits of the agency's charge. PFRF, Tab 5 at 11-17. Our review of the record shows that the AJ fully considered the testimonies of the appellant and other witnesses and made his credibility determinations consistent with *Hillen v. Department of the Army*, 35 M.S.P.R. 453, 458 (1987); ID at 26-43.

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[3] As noted by the AJ, the agency furnished a copy of a July 22, 2002 Step B grievance decision, which determined that Highlander Station management violated Postal policies by not timely consulting with the carriers and awarded monetary damages to the affected employees. ID at 27 n.9; IAF, Tab 7, Subtab 4D.

Because the appellant has not shown error in the AJ's fully explained credibility and fact findings, we find that they are entitled to due deference. *See Haebe v. Department of Justice*, 288 F.3d 1288, 1299-1300 (Fed. Cir. 2002); *Weaver v. Department of the Navy*, 2 M.S.P.R. 129, 133-34 (1980), *review denied*, 669 F.2d 613 (9th Cir. 1982) (per curiam).

The Appellant's Motion to Dismiss the Agency's Cross PFR is Denied.

¶12 Where the ID granted interim relief, any PFR or cross PFR by the agency must be accompanied by a certification that the agency has complied with the interim relief order. *See* 5 C.F.R. § 1201.115(b)(1). Failure to provide such certification *may* result in dismissal of the agency's PFR. 5 C.F.R. § 1201.115(b)(4); *Merino v. Department of Justice*, 94 M.S.P.R. 632, ¶ 6 (2003).

¶13 Here, the agency failed to submit with its cross PFR a certification of compliance with the interim relief order. PFRF, Tab 11. Only after the appellant moved to dismiss its cross PFR did the agency submit prima facie evidence demonstrating that the demotion action was cancelled. *Id.*, Tabs 13, 17. In support of its assertion that it has complied with the interim relief order, the agency submitted an October 31, 2003 declaration and certification of compliance by Jeffrey Claye, Labor Relations Manager at the agency's Rio Grande District, indicating, inter alia, that the agency has complied with the interim relief order and cancelled the appellant's demotion. PFRF, Tab 17 at 2-3. It also submitted a May 12, 2003 letter to the appellant from the agency noting that, effective May 17, 2003, the appellant would return to his prior Customer Service Manager position at the Highlander Station, start his suspension on that date, and return to duty on August 15, 2003. *Id.* at 4. The letter also notifies the appellant that "[t]he applicable pay differentials between [his] present position and that of Manager, Customer Service … should be automatically paid as a result of cancellation of the reduction in grade action on [his] PS Form 50." *Id.* at 4. The

agency submitted additionally a PS Form 50 showing that it canceled retroactively the appellant's demotion, effective on August 24, 2002. *Id.* at 5.

¶14 The AJ ordered the agency to provide interim relief to the appellant in accordance with 5 U.S.C. § 7701(b)(2)(A). ID at 52. We find, however, that the agency has timely exceeded the requirements of the interim relief order by canceling the demotion and awarding the appellant back pay pursuant to the AJ's order regarding the agency's compliance requirements when the ID becomes final. ID at 51. Although an argument could be made that the cross PFR should be dismissed because the cancellation action effectively rendered the cross PFR moot, the Board has held that such an action does not require dismissal. *See Nanette v. Department of the Treasury*, 92 M.S.P.R. 127, ¶ 13 n.1 (2002); *Moscato v. Department of Education*, 72 M.S.P.R. 266, 270-71 (1996) (the Board will not dismiss an agency's PFR as moot where the agency has in good faith and inadvertently exceeded the requirements of an interim relief order), *aff'd*, 155 F.3d 568 (Fed. Cir. 1998) (Table).

¶15 Accordingly, the Board exercises its discretion not to dismiss the agency's cross PFR despite the fact that it failed to submit with its cross PFR certification of compliance with the interim relief granted by the ID and, instead, submitted later evidence that it actually exceeded the interim relief order. *See, e.g.*, *Byers v. Department of Veterans Affairs*, 89 M.S.P.R. 655, ¶ 13 (2001) (the Board may exercise its discretion not to dismiss an agency's PFR even if the agency is in noncompliance with an interim relief order).

The AJ Erred in Mitigating the Penalty.

¶16 The agency argues that the AJ erred in mitigating the demotion penalty to a 90-day suspension. PFRF, Tab 11 at 21-25. We agree.

¶17 The Board will give deference to an agency's decision regarding a penalty unless that penalty exceeds the range of allowable punishment specified by statute or regulation or unless the penalty is "so harsh and unconscionably

disproportionate to the offense that it amounts to an abuse of discretion." *Parker v. U.S. Postal Service*, 819 F.2d 1113, 1116 (Fed. Cir. 1987); *see Lachance v. Devall*, 178 F.3d 1246, 1251 (Fed. Cir. 1999). This is because the agency has primary discretion in maintaining employee discipline and efficiency. *Gmitro v. Department of the Army*, 95 M.S.P.R. 89, ¶ 6 (2003); *Stuhlmacher v. U.S. Postal Service*, 89 M.S.P.R. 272, ¶ 20 (2001). The Board will not displace management's responsibility in this respect, but will instead ensure that managerial judgment has been properly exercised. *Id.*

¶18 The Board has articulated factors to be considered in determining the propriety of a penalty, such as the nature and seriousness of the offense, the employee's past disciplinary record, the supervisor's confidence in the employee's ability to perform his assigned duties, the consistency of the penalty with the agency's table of penalties, and the consistency of the penalty with those imposed on other employees for the same or similar offenses. *Gmitro*, 95 M.S.P.R. 89, ¶ 7 (citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-06 (1981)). The Board places primary importance upon the nature and seriousness of the offense and its relation to the appellant's duties, position, and responsibilities. *Rackers v. Department of Justice*, 79 M.S.P.R. 262, 282 (1998), *aff'd*, 194 F.3d 1336 (Fed. Cir. 1999) (Table). All of the factors will not be pertinent in every instance, and so the relevant factors must be balanced in each case to arrive at the appropriate penalty. *Douglas*, 5 M.S.P.R. at 306.

¶19 Mitigation of a penalty by the Board is only appropriate where the agency failed to weigh the relevant factors, or the agency's judgment clearly exceeded the limits of reasonableness. *Id.* The deciding official need not show that he considered all the mitigating factors in determining the penalty. *Wynne v. Department of Veterans Affairs*, 75 M.S.P.R. 127, 135 (1997). The Board will independently weigh the relevant factors only if the deciding official failed to demonstrate that he considered any specific, relevant mitigating factors before deciding upon a penalty. *Id.* If the penalty is unreasonable, the Board will

mitigate it to the maximum reasonable penalty. *Payne v. U.S. Postal Service*, 72 M.S.P.R. 646, 651 (1996).

¶20 Here, deciding official Rodriguez stated that he considered the *Douglas* factors. IAF, Tab 7, Subtab 4B at 3-5. Rodriguez considered the nature and seriousness of the appellant's misconduct in relation to his supervisory duties; the degree of trustworthiness required of a manager and the detrimental effect the misconduct had on the agency's confidence in the appellant's ability to perform effectively the duties of his position; the consistency of the demotion penalty imposed on other employees for the same or similar offenses; the appellant's prior disciplinary record consisting of a December 4, 2001 Letter of Warning charging the appellant with Unsatisfactory Performance – Failure to Follow Instructions; the appellant's lack of honesty in responding to the charges; and the appellant's lack of potential for rehabilitation as a result of his prior disciplinary record and lack of candor concerning the underlying misconduct. *Id.*; IAF, Tab 7, Subtabs 4E, 4L. Rodriguez found that the appellant's 13 years of service did not warrant mitigation in light of the seriousness of the misconduct. *Id.*, Subtab 4B at 4.

¶21 In mitigating the penalty, the AJ considered the fact that the agency proved only its second specification under its Charge 1, the appellant's 13 years of service with the agency, his emotional condition at the time he engaged in the misconduct, the absence of malice involved in the appellant's misconduct, and the lack of evidence indicating that the appellant's performance was ever anything other than satisfactory. ID at 49-51. With regard to the appellant's emotional state at the time of his misconduct, the AJ relied on the appellant's response to the proposal notice and testimony that his wife underwent surgery in January 2002 and that his one-year old son was hospitalized for pneumonia from April 15-19, 2002. ID at 50; IAF, Tab 7, Subtab 4C; HT at 356-58, 361-62. The AJ acknowledged that the appellant failed to submit any medical evidence to corroborate his claim that his wife was operated on and his son was hospitalized.

ID at 50. Regardless, the AJ concluded that "[i]t is conceivable that the appellant, worried at the time about his wife's and son's health, could have fallen short of his job duties during this period." *Id.* Thus, the AJ found that these factors warranted mitigation. ID at 49-51.

¶22 It was appropriate for the AJ to consider the appellant's emotional condition at the time he engaged in the charged misconduct. *See Crouse v. Department of the Treasury*, 70 M.S.P.R. 623, 630 (1996) (the Board considered as a mitigating factor the appellant's non-job related personal problems), *aff'd as modified on recons.*, 75 M.S.P.R. 57 (1997), *rev'd on other grounds and remanded sub nom. Lachance v. Merit Systems Protection Board*, 147 F.3d 1367 (Fed. Cir. 1998). However, we find notable the fact that the AJ rejected as not credible the appellant's testimony regarding his inability to follow route inspection and adjustment procedures. ID at 41-42; HT at 356-58. Indeed, the AJ stated: "I find … not credible any of the appellant's rationalizations for what happened [with regard to Charge 2]." ID at 42. The AJ further noted "that the appellant's demeanor during the hearing seemed somewhat suspicious, or at least raised the possibility that he was trying to hide something. When he testified on a number of the critical points at issue … he seemed overly defensive and was not very persuasive on most of his assertions with respect to [Charge 2]." *Id.* We find that the record evidence in this case does not demonstrate that the appellant's emotional condition, if any, played a part in his misconduct. *See Gaines v. Department of the Air Force*, 94 M.S.P.R. 527, ¶ 13 (2003). The appellant provided no specific explanation as to how the health concerns of his wife and son directly contributed to his inability to conduct the requisite consultations under Charge 2. *See id.*

¶23 Under all of these circumstances, we find that, notwithstanding the mitigating factors upon which the AJ relied, the sustained Charge 2 alone is sufficient to warrant the appellant's demotion. *See Doe v. U.S. Postal Service*, 95 M.S.P.R. 493, ¶¶ 14-17 (2004). In *Doe*, the Board held that, despite the

appellant's 18 years of service, the AJ erred in mitigating the appellant's demotion – from EAS-17 Customer Services Supervisor to a PS-5 Part-Time Flexible Clerk – to a 45-day suspension based upon a single charge of performance-related misconduct involving the appellant's failure to follow instructions. *Id.* Like this case, the appellant's misconduct did not involve personal gain or malice. *Id.*, ¶ 15. The deciding official in that case found, however, that, because the appellant had intentionally failed to follow instructions, his potential for rehabilitation was poor. *Id.*, ¶ 16. Similarly, in this case, Rodriguez found that the appellant "knew [the] consultations [in Charge 2] were required and just chose not to do them[,]" manifesting "an obvious and intentional disregard for [the agency's] interests." IAF, Tab 7, Subtab 4B at 4. Thus, as in *Doe,* "the agency may have reasonably determined that the appellant was unsuitable for any supervisory position." 95 M.S.P.R. 493, ¶ 16.

¶24 Accordingly, we REVERSE the ID insofar as it mitigated the penalty and SUSTAIN the appellant's demotion.

ORDER

¶25 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request further review of this final decision.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review this final decision on your discrimination claims. *See* Title 5 of the United States Codes, section 7702(b)(1) (5 U.S.C. § 7702(b)(1)). You must send your request to EEOC at the following address:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, DC 20036

You should send your request to EEOC no later than 30 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with EEOC no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time.

Discrimination and Other Claims: Judicial Action

If you do not request EEOC to review this final decision on your discrimination claims, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States district court. *See* 5 U.S.C. § 7703(b)(2). You must file your civil action with the district court no later than 30 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the district court no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e5(f); 29 U.S.C. § 794a.

Other Claims: Judicial Review

If you do not want to request review of this final decision concerning your discrimination claims, but you do want to request review of the Board's decision without regard to your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review this final decision on the

otherissues in your appeal. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in 5 U.S.C. § 7703. You may read this law as well as review the Board's regulations and other related material at our web site, http://www.mspb.gov.

FOR THE BOARD:

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Bentley M. Roberts, Jr.
Clerk of the Board

Washington, D.C.