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UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

PHILIP M. HARRIS,  
Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,  
Agency.  
(CSA 3 214 069)

DOCKET NUMBER  
SL08319110235

DATE: JAN 20 1982

Sophia E. Davis, Cohen, Weiss and Simon, New York, New York, for the appellant.

Andrea S. Minniear, Washington, D.C., for the agency.

BEFORE

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

ORDER

The appellant has filed a petition for review of a July 16, 1991 initial decision that sustained a reconsideration decision issued by the Office of Personnel Management (OPM). OPM has moved to dismiss the appellant's appeal as moot. For the reasons discussed below, we VACATE the initial decision, GRANT OPM's motion, and DISMISS the appellant's appeal as moot.

The appellant received a disability retirement from the Postal Service in 1977, and subsequently elected workers'

compensation benefits in lieu of the disability retirement annuity. On December 3, 1988, he was reemployed by the Postal Service after receiving a rehabilitation job offer. He separated from his position on January 28, 1990, and applied for immediate retirement. See Initial Appeal File, Tab 1; Agency File, Tab 6.

OPM found that the appellant was not entitled to service credit for the period of time that he was receiving workers' compensation benefits because it had not been asked to determine that he was medically recovered or restored to earning capacity, and thus he was considered a reemployed annuitant governed by 5 U.S.C. § 8344(a), not an employee governed by 5 U.S.C. § 8332(f). The administrative judge agreed with OPM and sustained its reconsideration decision.

The appellant filed a petition for review of the initial decision, asserting among other things, that he had asked OPM to make a finding of recovery retroactively and that OPM had refused. While the petition was pending, however, OPM moved to dismiss the appellant's appeal as moot on the basis that it had reversed its reconsideration decision. It stated that on the basis of the appellant's request for a retroactive finding of recovery, it had found him recovered administratively retroactive to the date of his reemployment and that it would recompute his annuity upon separation from reemployment with credit for the time he was receiving workers' compensation benefits. See Petition For Review File, Tab 7.

The Clerk of the Board issued an order directing the appellant to respond to OPM's motion and informing the appellant that the Board would dismiss his appeal as moot if he did not submit a timely response. In response, the appellant has indicated that he does not object to having his case dismissed as moot.

Accordingly, the appellant's appeal is DISMISSED. See, e.g., *Beasley v. Defense Logistics Agency*, 38 M.S.P.R. 25, 27-28 (1988) (withdrawal of an appeal is an act of finality that removes the appeal from the Board's jurisdiction).

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

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). 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

30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board