

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

HERMAN LAWRENCE

v.

DISTRICT OF COLUMBIA

GOVERNMENT—DEPARTMENT OF
HUMAN RESOURCES

Docket No.
075209107

ORDER

Appellant has petitioned for review of the initial decision of the presiding official pertaining to denial of appellant's motion for judgment and interlocutory appeal on the following procedural grounds: (1) that responsive pleadings by the respondent agency were filed twenty-five (25) days late after two requests were made by the presiding official for said pleadings, (2) that the agency failed to defend its appeal on the grounds that the responsive pleadings it did file failed to comply with 5 C.F.R. 1201.25; and (3) that the presiding official abused his discretionary authority by failing to impose sanctions against the agency under 5 C.F.R. 1201.43(b). The Board, having fully considered appellant's claims, DENIES the petition.

In the matter of Larry Bohannon, 1 MSPB 15 (1979), the Board held that mere failure to comply with a single isolated order of a presiding official does not constitute a failure to prosecute. In the instant case, although a delay in responding did occur, there is no evidence of repeated violations by respondent agency to the presiding official's requests.

In Hersman v. National Science Foundation, 2 MSPB 132 (1980) at 134, the Board discussed 5 C.F.R. 1201.25 with regard to failure by an agency to provide specific responses to specific allegations in an appellant's petition. We hold in the instant case, as we did in *Hersman*, that an agency's response is sufficient if it contains the agency's reasons for taking an action against appellant, accompanied by supporting documentation. The agency, therefore, did not fail to prosecute.

Holding as we do that the presiding official's conduct did not contravene the rule in *Bohannon* with regard to his discretionary authority to impose sanctions under 5 C.F.R. 1201.43, we find no abuse of discretion. It is clear from the record that, while the agency did not meet the timeliness requirements of the regula-

tions, the appellant was afforded all statutory rights including a hearing. Therefore, no harmful error exists in the record.

This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five days from the date of this order. 5 C.F.R. 1201.113(b).

Appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. 7703. A petition for judicial review must be filed in the appropriate court not later than thirty (30) days after appellant's receipt of this order.

For the Board:

RUTH T. PROKOP.

Washington, D.C., November 28, 1980