

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

LAWRENCE OLDHAM

v.

VETERANS ADMINISTRATION

Docket No.

DA075299010

OPINION AND ORDER

Appellant was removed for being absent without leave (AWOL). He appealed to the Board's Dallas Field Office and a hearing was held. The presiding official's initial decision affirmed the agency action.

Appellant petitioned for review, alleging that the initial decision was based upon erroneous interpretations of regulations and misapplications of established policy, and was of a precedential nature.

Specifically, appellant alleged that the presiding official had erred in ruling that the agency's listing of only one counseling letter in the advance notice of removal, rather than the two considered by the agency, was harmless error. An employee is entitled to the "specific reasons" for an agency proposed adverse action. 5 U.S.C. 7513(b). The presiding official properly found that the specific reasons for appellant's proposed removal were two instances of AWOL, both of which were listed. 5 C.F.R. 1201.56(b) (1) places the burden upon appellant to show that an agency's procedural error was harmful to him, such that its absence or cure might have caused the agency to reach a different conclusion from the one reached. The Board finds that the presiding official did not err in determining that appellant had not met his burden of proving harmful error.

Appellant further asserts that charging his tardiness to AWOL constitutes a precedential decision and denies him fair and equitable treatment. Agencies clearly have administrative discretion to excuse an unjustified absence or to charge it to AWOL. The presiding official found no evidence to support allegations that the discretionary agency decision was unreasonably or improperly made.

Appellant also asserts, in this regard, that the agency did not adequately disprove his allegations of premeditated and unequal treatment. The presiding official, having found that removal was within the authorized range of penalties for the

sustained offense, properly placed the burden upon appellant to establish that the penalty, in fact, constituted unequal treatment. Appellant offered no such evidence, and his petition fails to show that the presiding official erred in finding these allegations unfounded. Therefore, the Board finds that the initial decision was not based upon an erroneous interpretation of regulations or misapplication of established policy, nor that it was of a precedential nature. Accordingly, the petition for review is hereby DENIED.

This is the final decision of the Merit Systems Protection Board in this case. Appellant is hereby advised of his right to appeal this decision to the United States Court of Claims, or the appropriate circuit of the United States Court of Appeals, provided such appeal is filed within thirty (30) calendar days of receipt of this decision by appellant.

For the Board:

ROBERT E. TAYLOR,
Secretary.

Washington, D.C., *September 25, 1980*