UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2010 MSPB 217

Docket No. DE-3443-10-0041-I-1

Scott E. Secrist,

Appellant,

v.

United States Postal Service,

Agency.

November 9, 2010

Scott E. Secrist, Acworth, Georgia, pro se.

Jennifer C. Rowe, Esquire, Denver, Colorado, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

OPINION AND ORDER

¶1 This matter comes before the Board on the appellant's petition for review of the February 27, 2010 initial decision dismissing his appeal for lack of appellate jurisdiction. We DENY the petition because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. For the reasons discussed below, however, we REOPEN the appeal on the Board's own motion under 5 C.F.R. § 1201.118, and AFFIRM the initial decision AS MODIFIED by this Opinion and Order. To the extent that the appellant's claims constitute a possible

compliance matter, we FORWARD those claims to the Denver Field Office for docketing as a petition for enforcement.

BACKGROUND

¶2 The appellant resigned from the agency on June 12, 2009, pursuant to the terms of the parties' settlement agreement. *See Secrist v. U.S. Postal Service*, MSPB Docket No. DE-0752-08-0382-I-3, Settlement Agreement; *see also id.* (Initial Decision, June 12, 2009). He subsequently filed a Board appeal, which purported to challenge the merits of the agency's action seeking to collect a $7,361.86 debt from him. Initial Appeal File (IAF), Tab 1. In an acknowledgment order, the administrative judge informed the appellant that the Board may not have jurisdiction over his appeal and ordered him to file evidence and argument to show Board jurisdiction. *Id.*, Tab 2. The administrative judge subsequently discussed the jurisdictional issue during a telephone conference with the parties. *Id.*, Tab 12.

¶3 After affording the parties the opportunity to file additional evidence and argument, the administrative judge dismissed the appeal for lack of jurisdiction, finding that the Board has no authority to review the merits of the underlying debt. IAF, Tab 17, Initial Decision (ID) at 1-2. The administrative judge further found, however, that the Board has limited jurisdiction to determine whether the agency complied with due process requirements prior to collection of the debt, but that the appellant failed to make a nonfrivolous allegation that he was denied due process. ID at 2-4. The appellant, proceeding pro se, has timely filed a petition for review of the initial decision. Petition for Review File, Tab 1.

ANALYSIS

¶4 The Board will grant a petition for review only when significant new evidence is presented that was previously unavailable or the administrative judge made an error interpreting a law or regulation. *Lopez v. Department of the Navy*, 108 M.S.P.R. 384, ¶ 16 (2008); 5 C.F.R. § 1201.115(d). On petition for review,

the appellant has presented neither new evidence, nor any argument showing error in the administrative judge's decision in any respect. Therefore, we deny the appellant's petition for review. We reopen the appeal on our own motion under 5 C.F.R. § 1201.118, however, to address the scope of the Board's authority to adjudicate this case.

¶5 The instant appeal appears to be a request for the assistance of the Board in avoiding the agency's collection of a debt purportedly owed by the appellant. The Board's jurisdiction is not plenary; it is limited to those matters over which it has been given jurisdiction by law, rule or regulation. *Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985). We are aware of no law, rule, or regulation which grants the Board jurisdiction over a debt collection action except in the context of the recovery of an overpayment in retirement benefits by the Office of Personnel Management (OPM). *See* 5 C.F.R. § 1201.3. However, the Board may address a debt collection issue when it is integral to the disposition of an underlying appealable action. *See Green v. Department of the Army*, 55 M.S.P.R. 88, 91 (1992); *cf. Brathwaite v. U.S. Postal Service*, 34 M.S.P.R. 239, 241 (1987) ("The Board may address certain actions that are not otherwise appealable to the Board only where the issues are integral to the disposition of an underlying appealable action.").

¶6 Accordingly, as the administrative judge correctly recognized, to the extent that the appellant is attempting to appeal the propriety of the agency's finding that he was liable for a debt, his appeal did not raise a matter within the Board's jurisdiction. ID at 2. The administrative judge also indicated, however, that "[w]ith regard to administrative offsets or debt collection actions, the Board has . . . limited jurisdiction to determine whether the agency complied with due process requirements prior to collection," and further, that "[t]he Board has jurisdiction over an employee's procedural claim that he requested and was denied a hearing on the merits of the underlying debt." ID at 2-3 (footnote omitted) (citing *Ramirez v. Department of the Army*, 86 M.S.P.R. 211 (2000)).

This overstates the limited scope of the Board's authority to consider such matters. As set forth above, the Board may consider such issues only when they are integral to the disposition of an underlying appealable action. In *Ramirez*, the Board considered the appellant's claim that his former employing agency should have granted him a hearing concerning a debt that the agency apparently collected by having OPM offset the debt from his retirement account. 86 M.S.P.R. 211, ¶¶ 2, 6. The Board held that, although the merits of the underlying debt issue between the appellant and the creditor agency were excluded from the Board's purview, the appellant's procedural claim "fairly read, is one that comes within OPM's scope of review and, derivatively, the Board's." *Id.*, ¶¶ 5-6. Significantly, the holding in *Ramirez* is limited to situations where an agency seeks to recover a debt by having OPM offset an individual's retirement account or benefits. *Ramirez*, 86 M.S.P.R. 211, ¶¶ 5, 8.

¶7 Here, however, the appellant does not allege that the agency has requested OPM to proceed with collection of the debt through an administrative offset, nor is there any indication in the record that the appellant has retired or is eligible to retire. Thus, *Ramirez* is inapposite. Accordingly, the issue regarding whether the agency complied with due process requirements prior to its debt collection efforts is not within the Board's jurisdiction, and the administrative judge exceeded her authority in considering it.

¶8 We note, however, that the appellant's submissions suggest a possible intent to file a petition for enforcement of the settlement agreement pursuant to the terms of which the appellant resigned from the agency. *See, e.g.*, IAF, Tab 16 at 4 ("At the time that I learned that the [agency] claimed that I owed back health insurance bills I was . . . in the process of settlement and leaving the postal system for good.").[*] When issues are raised concerning the interpretation of a

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[*] The settlement agreement provided, in part, that the parties desired to settle amicably and with finality "all claims, issues, and demands related to Mr. Secrist's employment with the Postal Service." IAF, Tab 6 at 34.

settlement agreement that is enforceable by the Board and whether a party has breached the agreement, such claims are properly addressed in the first instance by the administrative judge via a petition for enforcement. *Carlson v. General Services Administration*, 101 M.S.P.R. 70, ¶ 8 (2006); *Owen v. U.S. Postal Service*, 87 M.S.P.R. 449, ¶ 9 (2000).

¶9 We therefore AFFIRM AS MODIFIED the initial decision dismissing the instant appeal for lack of jurisdiction, and FORWARD the appellant's allegations of noncompliance with the settlement agreement to the regional office for processing as a petition for enforcement.

ORDER

¶10 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 the United States Court of Appeals for the Federal Circuit to review this final decision. 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 Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

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William D. Spencer
Clerk of the Board
Washington, D.C.