UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

ROY A. SHIELDS v. UNITED STATES POSTAL SERVICE	DOCKET NUMBER CH07528310257

OPINION AND ORDER

Roy A. Shields (appellant) was suspended for seven days and demoted from his PS-6 position of Tractor Trailer Operator to the part time PS-4 position of Mailhandler by the United States Postal Service (agency).

On appeal to the Board's Chicago Regional Office, the presiding official denied appellant's request for a hearing finding that the appellant had not presented a non-frivolous allegation which if true, would establish an involuntary adverse action subject to the Board's jurisdiction. In dismissing appellant's appeal for lack of jurisdiction, the presiding official found that despite appellant's allegation that his demotion was involuntary, appellant's request for reassignment in lieu of removal rendered his demotion voluntary. The presiding official also found that since the agency's suspension action was for less than 14 days, the Board had no jurisdiction to consider his appeal from that action.

Under 5 U.S.C. § 7701(a)(1) an appellant has a right to a hearing on an appeal filed with the Board. Since an involuntary demotion is tantamount to an adverse action, a non-frivolous allegation of the involuntariness of a

demotion warrants a hearing on that issue. See Bell v. Groark, 371 F.2d 202, 204 (7th Cir. 1966); Goodman v. United States, 358 F.2d 532, 533 (D.C. Cir. 1965); Paroczay v. Hodges, 219 F. Supp 89 (D.C.D.C. 1963); Spiegel v. Department of the Army, 2 MSPB 297 (1980).

Appellant's written request for a "transfer" to another craft (Agency File, Tab IV) and his assertion that he did not agree to accept nor was he given notice that he was being demoted to a part time flexi position raise issues of fact which cannot be labeled frivolous. Given these issues, appellant's lack of counsel in filing his appeal, and his explicit request for a hearing, it was error for the presiding official to decide the issue of voluntariness without affording the appellant a hearing on that issue.

As to the timeliness of appellant's appeal, an issue not reached by the presiding official, we find that there is no indication that appellant was informed that if his demotion was involuntary, he had a right of appeal and a limited time in which to exercise that right. Moreover, appellant's delay of less than three months was reasonable in light of the fact that he was not represented by counsel. Therefore, petitioner's delay in appealing is excused for good cause, pursuant to 5 C.F.R. § 1201.12. Alonzo v. Department of the Air Force, 4 MSPB 262 (1980).

Accordingly, the initial decision dated May 31, 1983, is AFFIRMED with regard to the suspension action and REVERSED with regard to the presiding official's denial of appellant's request for a hearing. The case is REMANDED to the Chicago Regional Office for the purpose of affording appellant a hearing on the issue of the voluntariness of his demotion and for such further processing as may then be appropriate.

FOR THE BOARD:

MAR 1 1984
(Date)

Robert E. Taylor
Secretary

Washington, D.C.