UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, Complainant, v. THOMAS P. GIVENS, Respondent.	Docket No. HQ75218510010 Date: APR 26 1985

FINAL ORDER

The employing agency initiated a complaint against respondent, an administrative law judge, under 5 U.S.C. § 7521.1/ The complaint charged that respondent used a government-owned motor vehicle for other than official purposes in violation of 45 C.F.R. § 735-304(a) and (a)(2) and allowed the vehicle to be driven by an unauthorized person who drove it carelessly and in a manner to reflect adversely on the government. The agency proposed a 30-day suspension.

Agreeing that it would be in their best interests to effect a speedy resolution of the matter with a minimum of controversy and disruption of the employment relationship, the parties jointly submitted a proposed settlement. The Board's presiding Administrative Law Judge reviewed the terms and conditions of the settlement, found the proposed disposition fair and just, and recommended that the settlement be accepted.

1/ Under 5 U.S.C. § 7521, an employing agency may take disciplinary action against an administrative law judge only for good cause established and determined by the Board on the record after opportunity for hearing.

Under the settlement, the parties specify that in its complaint the agency is charging a violation of regulation and not a violation of statute; respondent agrees he will not contest the complaint or a suspension of two weeks for the acts alleged in the complaint; the agency agrees that a 14-day suspension is appropriate under the circumstances set forth in the proposed agreement.2/

Settlements, where possible, avoid the unnecessary expenditure of resources in litigation. The Board favors the settlement of actions between an agency and its employees, including those actions initiated by the employing agency against one of its administrative law judges. See In re King, 3 MSPB 29 (1980) (retirement agreement approved; complaint dismissed); see also Social Security Administration v. Haley, MSPB Docket No. HQ75218210052 (April 20, 1984) (agreement approved providing minimum penalty for violation of statute barring unofficial use of government vehicle).

2/ As stated in para. 1 supra, the complaint in fact charged only a violation of regulation. Referring to 31 U.S.C. § 1349, the regulation, 45 C.F.R. § 735-304(a) and (a)(2) in the agency's Standards of Conduct states that misuse of a government vehicle may result in at least a 30-day suspension or removal. If the basis for the allegations here were 31 U.S.C. § 1349, the minimum penalty would be a 30-day suspension. See Social Security Administration v. Haley, MSPB Docket No. HQ75218210052 (April 20, 1984). The subject of the regulation is a proper exercise of the agency's authority to regulate the conduct of its employees. We conclude, therefore, that the agency may initiate an action under its regulation independent of the statute. We do not read the regulation as precluding a settlement under the regulation with a penalty of less than the statutory 30-day suspension.

The Board finds the proposed agreement freely entered and not unlawful. Accordingly, the Board finds good cause for discipline in the uncontested allegations of misconduct and AUTHORIZES the agency to impose the penalty of 14 days suspension without pay that respondent has agreed to accept.

FOR THE BOARD:

Robert E. Taylor
Clerk of the Board

Washington, D.C.