

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL,
Petitioner,

v.

BRENDA S. JUDSON,
Respondent.

DOCKET NUMBER
HQ12068910029

DATE: DEC 26 1989

Catherine A. McMullen, Esquire, Washington, D.C.,
for petitioner.

Ronald M. Gaswirth, Esquire, and David T. Fenton,
Esquire, Gardere & Wynne, Dallas, Texas, for
respondent.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman

FINAL DECISION AND ORDER

This is a disciplinary action under 5 U.S.C. § 1206 (1982). The case originated with a complaint brought by the Special Counsel against respondent, an employee of the Occupational Safety and Health Administration (OSHA), Department of Labor. On August 23, 1989, the Chief Administrative Law Judge issued a Recommended Decision, recommending that the Board grant a Joint Motion For Approval Of Settlement submitted by the parties. Under

the settlement agreement the Special Counsel moves for the dismissal of Counts II, III and IV, and the respondent admits the allegations of Count I. Count I charges a violation of 5 U.S.C. § 2302(b)(5), which makes it a prohibited personnel practice for an employee who has authority to "take, direct others to take, recommend, or approve any personnel action" to "influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment." Respondent was charged with violating this statutory provision by influencing an eligible candidate, Glenn Wright, to withdraw from competition for the position of clerk-typist, for the purpose of improving the prospects of another candidate.

The settlement provides for the respondent to be suspended from duty, without pay, for thirty days. In making the recommendation to approve the settlement the Chief Administrative Law Judge considered the penalty in light of the factors described in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), and concluded that the penalty is within the bounds of reasonableness. No exceptions to the Recommended Decision were filed by the parties.

The Board has authority to adjudicate this matter under 5 U.S.C. §§ 1205, 1207 (1982). Respondent has admitted that, by virtue of her position, she has

authority to take, direct others to take, recommend, or approve personnel actions. Record, Tab 11, paragraph 2. Therefore she is subject to the prohibitions of 5 U.S.C. § 2302(b)(5).

The Board agrees with the Chief Administrative Law Judge that the agreed upon penalty is within the bounds of reasonableness. The proposed settlement also accommodates the need to penalize those who violate merit employment principles, and the approval of the motion will result in a conservation of time, effort and expense. Thus no reasonable purpose would be served by insisting upon continued processing of this case.

Accordingly, the Board ADOPTS the Recommended Decision and GRANTS the Joint Motion For Approval Of Settlement. Counts II, III and IV are hereby DISMISSED. Within 30 days from the date of this order, OSHA shall SUSPEND the respondent without pay for a period of thirty days. The Special Counsel shall submit proof of compliance within 60 days of the date of the Board's order.

This is the final order of the Merit Systems Protection Board in this case. The respondent is hereby notified of the right to seek judicial review of the Board's action as provided in 5 U.S.C. § 1207(c) (1982).

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.