

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

WILLIAM STEINHAUER,
Appellant,

v.

DEPARTMENT OF THE ARMY,
Agency.

DOCKET NUMBER
SE0752930132-I-1

DATE: NOV - 4 1993

Weldon W. Dickson, DeSoto, Texas, for the appellant.

CPT Steven L. Gross, HQ, 2d Infantry Division, Korea, for
the agency.

BEFORE

Ben L. Erdreich, Chairman
Jessica L. Parks, Vice Chairman
Antonio C. Amador, Member

OPINION AND ORDER

The agency has petitioned for review of the May 27, 1993 initial decision reversing its removal action against the appellant. For the reasons discussed below, we DISMISS the agency's petition for review for failure to comply with the Board's interim relief regulations.

BACKGROUND

The agency removed the appellant from his position as Community Support Program Manager, GM-13, for allegedly falsifying time and attendance records. Initial Appeal File

(IAF), Vol. 1, Tab 1, Attachment B. The appellant filed a timely appeal of his removal with the Board. IAF, Vol. 1, Tab 1. The administrative judge found that the agency failed to establish that the appellant acted with the requisite intent to deceive, and ordered the agency to cancel the appellant's removal and restore him retroactive to the date of his removal. IAF, Vol. 4, Tab 29. The administrative judge also ordered the agency, upon the filing of a petition for review, to provide interim relief in accordance with Section 6 of the Whistleblower Protection Act (WPA) of 1989, Pub.L. No. 101-12, codified at 5 U.S.C. § 7701(b)(2)(A). *Id.*

In its petition for review, the agency declined to provide evidence of compliance with interim relief, asserting that, because the appellant did not raise a claim of retaliation for whistleblowing, it is not required to provide interim relief under 5 U.S.C. § 7701(b)(2)(A). Petition for Review File, Tab 1.

ANALYSIS

There is no support for the agency's contention that it need not provide interim relief in the absence of a whistleblower claim. Section 6 of the WPA provides, in relevant part, that:

If an employee or applicant for employment is the prevailing party in an appeal under this subsection [§ 7701(b)], the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review....

5 U.S.C. § 7701(b)(2)(A). This provision expressly affords appellants interim relief in actions appealable to the Board under Section 7701.* Moreover, Board regulations applicable to non-whistleblower appeals provide that an agency's failure to submit evidence of compliance with an interim relief order will result in dismissal of an agency's petition for review. 5 C.F.R. § 1201.115(b)(4); *Wallace v. U.S. Postal Service*, 48 M.S.P.R. 270, 271-72 (1991).

Accordingly, since the agency has not submitted evidence that it complied with the interim relief order, we must dismiss its petition. The initial decision is now final. 5 C.F.R. § 1201.113(c).

ORDER

We ORDER the agency to cancel the appellant's removal and to restore the appellant effective January 4, 1993. See *Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir.

* The legislative history of the WPA also establishes that interim relief was afforded to all appellants prevailing before the Board:

H.R. 25 insures that if an employee wins in adverse action appeal before an administrative judge of MSPB, that employee can be granted interim relief pending any review by the full Board.

H.R. 100-274 at 28.

This section would amend 7701 of title 5 to provide that employees or applicants who win an appeal before a regional office of the Board be granted the relief offered by the deciding official pending any further appeal to the full Board.

S. 100-413 at 35.

1984). The agency must accomplish this action within 20 days of the date of this decision.

We also ORDER the agency to issue a check to the appellant for the appropriate amount of back pay, interest on back pay, and other benefits under the Office of Personnel Management's regulations, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to compute the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it comply. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to issue a check to the appellant for the undisputed amount no later than 60 calendar days after the date of this decision.

We further ORDER the agency to inform the appellant in writing of all actions taken to comply with the Board's Order and of the date on which the agency believes it has fully complied. If not notified, the appellant should ask the agency about its efforts to comply.

Within 30 days of the agency's notification of compliance, the appellant may file a petition for enforcement with the regional office to resolve any disputed compliance issue or issues. The petition should contain specific reasons why the appellant believes that there is insufficient compliance, and should include the dates and results of any communications with the agency about compliance.


NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). 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 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.