

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

64 M.S.P.R. 215

Docket Number BN-0752-94-0084-I-1

WILLARD WRIGHT, Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS, Agency.

Date: August 22, 1994

Willard Wright, Wallingford, Connecticut, pro se.

Cynthia L. Tyler, Esquire, Hartford, Connecticut, for the agency.

BEFORE

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

OPINION AND ORDER

The agency petitions for review of the initial decision, issued May 3, 1994, that mitigated the agency's removal action to a 45-day suspension, and ordered the agency to afford the appellant interim relief. The appellant filed a motion to dismiss the petition. For the reasons set forth below, the Board GRANTS the appellant's motion, and DISMISSES the petition for failure to effect interim relief in accordance with statute.

Under 5 U.S.C. § 7701(b)(2)(A), the agency must grant "the relief provided in the (initial) decision effective upon the making of the decision ... pending the outcome of any petition for review...." The Board's implementing regulations provide that, when interim relief is ordered, any petition for review filed by the agency "must be accompanied by evidence that the agency has provided the interim relief required." The agency's failure to submit such evidence "will result in the dismissal" of its petition for review. 5 C.F.R. § 1201.115(b)(1)-(4).

Accompanying the agency's petition for review is a letter to the appellant stating that the agency has "returned you to the agency rolls as of June 7, 1994." Petition for Review File, Tab 1 (May 24, 1994, letter to the appellant). Also accompanying the petition is a copy of an SF-52 indicating

that the appellant would receive an interim appointment effective "6/7/94." *Id.*

The "relief provided in the [initial] decision" in this appeal was the substitution of a 45-day suspension for the removal. Absent a petition for review, the relief would have been effected as of December 10, 1993, the date of the appellant's removal. See Initial Appeal File, Tab 7, Subtab 4d. Thus, the agency was to suspend the appellant retroactively for 45 days, beginning on December 10, 1993, and then return him to full pay status. Since the 45 days would have passed by the date on which the initial decision was issued, May 3, 1994, to comply with the interim relief order "effective upon the making of the decision," the agency should have returned the appellant to pay status at his prior grade level retroactive to May 3, 1994. See *Stevenson v. Department of Defense*, 55 M.S.P.R. 625 (1992). Because the agency made the appellant's interim appointment effective June 7, 1994, rather than the date of the initial decision, May 3, 1994, it has not fulfilled its statutory interim relief obligations. See *Moore v. Department of the Navy*, 55 M.S.P.R. 73, 74 (1992).

Accordingly, we DISMISS the petition for review.

ORDER

We ORDER the agency to cancel the appellant's removal and to substitute a 45-day suspension. See *Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 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.

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

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,
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
Washington, D.C.