

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

2006 MSPB 337

Docket No. AT-3443-05-0538-I-1

**James R. Walker,
Appellant,**

v.

**Department of the Army
Agency.**

November 27, 2006

James R. Walker, Jackson, Tennessee, pro se.

Steven L. Parker, Esquire, APO, APO/FPO Pacific, for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman
Barbara J. Sapin, Member

OPINION AND ORDER

¶1 The agency petitions for review of the August 15, 2005 initial decision which ordered corrective action under the Veterans Employment Opportunities Act of 1998 (VEOA) with respect to the agency's failure to allow the appellant to compete for an Equal Employment Specialist position under vacancy announcement KOEZ04056132R. We DENY the agency's petition for failure to meet the review criteria set forth under 5 U.S.C. § 1201.115. However, for the reasons set forth below, we REOPEN this appeal on our own motion pursuant to 5 C.F.R. § 1201.118, and AFFIRM the initial decision AS MODIFIED by this Opinion and Order.

BACKGROUND

¶2 The parties stipulated that the appellant is a “disabled veteran” as that phrase is defined 5 U.S.C. § 2108(2), Initial Appeal File (IAF), Tab 20, and he therefore qualifies as a preference eligible, 5 U.S.C. § 2108(3)(C); *see* 5 C.F.R. § 1201.63 (the parties may stipulate to any matter of fact, and a stipulation will satisfy a party’s burden of proving the fact alleged). In October 2004, in accordance with the agency’s procedures for applying for vacancies, the appellant nominated himself for a position as an Equal Employment Specialist under vacancy announcement KOEZ04056132R. IAF, Tab 10, Subtab 4i. This vacancy announcement indicated that those eligible to apply included, *inter alia*, all federal employees serving on a career or career-conditional appointment and “Veterans eligible under Veterans Employment Opportunity Act of 1998.” *Id.*, Subtab 4j. The agency conceded that the Human Resources Assistant responsible for entering the appellant’s self-nomination for this vacancy into the appropriate database failed to do so. *Id.*, Subtabs 1, 4b. On December 15, 2004, after the agency discovered its error, it notified the appellant that it would give him priority consideration for the next appropriate vacancy of the same grade and occupation in accordance with its internal regulations. *Id.*, Subtab 4c.

¶3 On December 17, 2004, the appellant filed a complaint with the Department of Labor, claiming that the agency violated his veterans’ preference rights with respect to the application he filed in response to vacancy announcement KOEZ04056132R. IAF, Tab 1, Subtab A. In a letter dated April 6, 2005, the Department of Labor notified the appellant that it was closing its investigation into the appellant’s complaint “[d]ue to a lack of response from the Dept. of Army.” *Id.*, Subtab D. The letter also advised the appellant that he could file his complaint with the Board within 15 days from his receipt of the letter. *Id.*

¶4 The appellant filed his complaint with the Board on April 18, 2005. IAF, Tab 1. After the agency filed its response, in which it conceded that it did not

properly process the appellant's nomination for the position, the administrative judge issued an order which stated that it appeared that the agency had acknowledged that it violated the appellant's rights under VEOA, and it further stated that the only issues left to be resolved in the appeal were whether the violation was willful and what the appropriate remedy should be. IAF, Tab 11. While the appeal was pending before the administrative judge, the Board issued *Dean v. Department of Agriculture*, 99 M.S.P.R. 533 (2005), *recons. denied*, 2006 MSPB 318 (MSPB Docket No. AT-0330-03-0076-R-1) (Oct. 26, 2006), which, according to the administrative judge, resolved the issue regarding what the appropriate remedy should be for a violation of the appellant's right to compete for the advertised position, i.e., reconstruction of the selection process. IAF, Tab 26. Shortly thereafter, the administrative judge issued an initial decision on the written record in which she found (1) that the agency had violated the appellant's right to compete for the vacant position guaranteed to him as a preference eligible by 5 U.S.C. § 3304(f), and (2) that this subsection is a statute relating to "veterans' preference rights." IAF, Tab 29, Initial Decision (ID) at 7. Accordingly, the administrative judge granted the appellant's request for corrective action and ordered the agency to reconstruct the hiring process for the Equal Employment Specialist position for which the agency denied the appellant the opportunity to compete. *Id.* The initial decision advised the appellant that he could file a petition seeking compensation for loss of wages or benefits and liquidated damages within 60 calendar days of the date the initial decision became final. *Id.* at 9. However, the administrative judge determined that it was inappropriate to order interim relief. *Id.* at 8.

¶5 The agency filed a timely petition for review in which it contests several of the findings in the initial decision. Petition For Review File (PFRF), Tab 1. The appellant did not file a response.

ANALYSIS

¶6 We DENY the agency’s petition for review for failure to meet the review criteria set forth at 5 C.F.R. § 1201.115(d). The agency has not established that new and material evidence is available that, despite due diligence, was not available when the record closed nor that the decision of the administrative judge is based on an erroneous interpretation of statute or regulation. In addition, we agree with the administrative judge’s conclusions that the agency’s failure to process the appellant’s self-nomination for the Equal Employment Specialist position violated the appellant’s right as a preference eligible under 5 U.S.C. § 3304(f) to compete for the position, and that the proper remedy in this case was an order requiring the agency to reconstruct the hiring process to afford the appellant proper consideration for the position. However, the Board has not addressed several issues that the agency has raised during the course of this appeal in a precedential decision, and we are therefore reopening this appeal to address those issues because our analysis may provide beneficial guidance to parties before the Board in similar cases.

¶7 In its petition for review, the agency raises three main arguments. It first argues that its failure to properly include the appellant on the list of candidates for the Equal Employment Specialist position did not violate the appellant’s veterans’ preference rights because the position was filled through an internal merit promotion action, and veterans’ preference does not apply to such actions. PFRF, Tab 1. In *Brandt v. Department of the Air Force*, 103 M.S.P.R. 671 (2006), the Board held that where, as here, an agency announces a vacancy open to internal candidates and external “status” candidates,¹ it must permit preference eligibles and other veterans described at 5 U.S.C. § 3304(f)(1) to apply, but the

¹ “Status candidates” are individuals “who are eligible for non-competitive movement within the competitive service because they either are now or were serving under career-type appointments in the competitive service.” Office of Personnel Management *VetsInfo Guide* at 4 (April 2003).

agency may make a selection under merit promotion procedures and is not required to follow veterans' preference rules.

¶8 Nevertheless, the agency has not contested the fact that it indicated the position would be filled through merit promotion procedures and that it would accept applications from outside its own workforce. *See* 5 C.F.R. § 335.103(b)(4) (selection procedures under a merit promotion plan will provide for management's right to select from among a group of best qualified candidates and from other appropriate sources, such as reemployment priority lists, reinstatement, transfer, handicapped, or Veteran Readjustment Act eligibles or those within reach on an appropriate OPM certificate). Thus, while § 3304(f)(1) does not grant the appellant any advantage, beyond the right to compete for particular positions, to which he is not otherwise entitled, there is no question that § 3304(f)(1) precluded the agency from denying the appellant the opportunity to compete for the position at issue in this case. Because the appellant timely filed his application in accordance with the agency's instructions, we discern no error in the administrative judge's conclusion that the agency's failure to properly process the application, and its failure to include the appellant among the list of candidates referred to the selecting official for consideration, denied the appellant the right to compete for the position guaranteed to him by § 3304(f)(1).

¶9 However, while the agency essentially conceded that it denied the appellant the right to compete for the position, it also argued that such a denial does not fall within the realm of veterans' preference violations that can be remedied under VEOA. We reject the agency's argument for the following reasons.

¶10 First, while the agency correctly asserts that 5 U.S.C. § 3304(f) does not appear in the list of veterans' preference requirements enumerated in 5 U.S.C. § 2302(e)(1), PFRF, Tab 1, the remedial provisions of VEOA are not limited to providing a remedy for a violation of the "veterans' preference requirements." Rather, VEOA provides a remedy for a violation of an "individual's rights under any statute or regulation related to veterans' preference." 5 U.S.C.

§§ 3330a(a)(1), 3330c; *see Dean*, 99 M.S.P.R. 533, ¶¶ 16-17 (a statute or regulation “relates to” veterans’ preference if the statute or regulation “stands in some relation to,” has a bearing on, concerns, and “has a connection with” veterans’ preference rights). Thus, the fact that 5 U.S.C. § 3304(f) does not appear in the list of “veterans’ preference requirements” does not mean that a violation of the right to compete under that subsection is not remediable under VEOA; it merely means that an agency’s failure to comply with 5 U.S.C. § 3304(f) does not amount to a personnel practice prohibited by 5 U.S.C. § 2302(b)(11) (an employee shall not take or fail to take any personnel action that would violate a veterans’ preference requirement), *see Ramsey v. Office of Personnel Management*, 87 M.S.P.R. 98, ¶ 11 (2000) (the regulations implementing 5 U.S.C. § 3304(f) cannot be a basis for committing a personnel practice prohibited by 5 U.S.C. § 2302(b)(11) because Congress specifically excluded the provisions of 5 U.S.C. § 3304(f) from the “veterans’ preference requirements”), and that the individuals responsible for the agency’s failure to comply with 5 U.S.C. § 3304(f) are not subject to disciplinary action under 5 U.S.C. § 1215 for violating § 2302(b)(11), *see* 5 U.S.C. § 2302(e)(2) (although there is no authority to order corrective action with respect to a personnel practice prohibited by 5 U.S.C. § 2302(b)(11), nothing in 5 U.S.C. § 2302(e) shall be considered to affect any authority under 5 U.S.C. § 1215 (relating to disciplinary action)).

¶11 In addition to pointing out that § 3304(f) is not listed as a “veterans’ preference requirement,” the agency further contends that § 3304(f) is not a “statute or regulation relating to veterans’ preference.” There is some authority to support the agency’s contention. For example, in *Hunt v. United States*, 154 F. Supp. 2d 1047, 1051 (E.D. Mich. 2001),² the district court, relying on the Board’s

² We note that decisions of United States district courts are not binding on the Board, *Boulineau v. Department of the Army*, 57 M.S.P.R. 244, 249 n.7 (1993), but the Board may follow such decisions if it is persuaded by their reasoning, *see, e.g., Heidel v. U.S.*

decision in *Ramsey* and on the language in § 3304(f)(3), specifically found that 5 U.S.C. § 3304(f) “is not a statute or regulation relating to veterans’ preference,” and the judge therefore concluded that the district court did not have jurisdiction under 5 U.S.C. § 3330b to consider the appellant’s allegations that the Department of the Army violated his right to compete for various positions. Furthermore, in *Schott v. Department of Homeland Security*, 97 M.S.P.R. 35, ¶ 30 (2004), the Board cited its decision in *Ramsey* for the proposition that, while 5 U.S.C. § 3304(f) mandates that agencies shall give preference eligibles the opportunity to compete for vacant positions, it does not provide preference eligibles with a remedy should an agency violate this provision.

¶12 We find, however, that the weight of authority establishes that a violation of the opportunity to compete guaranteed by 5 U.S.C. § 3304(f) is remediable under VEOA. First, we find that *Hunt* and *Schott* misinterpreted the Board’s findings in *Ramsey*. *Ramsey* was a regulation-review case under 5 U.S.C. § 1204(f), which authorizes the Board to review provisions of rules and regulations issued by the Director of the Office of Personnel Management (OPM) and to declare such provisions invalid if their implementation would require any employee to commit a personnel practice prohibited by 5 U.S.C. § 2302(b). The issue the Board decided in *Ramsey* was whether OPM’s application of minimum qualification standards to VEOA appointments required agencies to commit prohibited personnel practices by obstructing a veteran’s right to compete for employment. *Ramsey*, 87 M.S.P.R. 98, ¶ 8. The Board ultimately determined that OPM’s regulations did not obstruct a veteran’s right to compete, and it specifically found that the regulations implementing 5 U.S.C. § 3304(f) could not be a basis for committing a personnel practice prohibited by 5 U.S.C.

Postal Service, 69 M.S.P.R. 511, 520-21 (1996) (relying on, *inter alia*, a district court decision interpreting the Selective Service Act, as amended). For the reasons set forth in the remainder of this Opinion and Order, we decline to follow the district court decision in *Hunt*.

§ 2302(b)(11) because “section 3304 is not included as a ‘veterans’ preference requirement,’ at 5 U.S.C. § 2302(e)(1).” *Id.*, ¶ 11. Thus, the Board in *Ramsey* merely determined that 5 U.S.C. § 3304(f) was not a “veterans’ preference requirement.” It did not determine that this section was not a “statute or regulation relating to veterans’ preference.”

¶13 Second, in the case of *Abell v. Department of the Navy*, 92 M.S.P.R. 397, ¶ 9 (2002), *aff’d*, 343 F.3d 1378, 1384-85 (Fed. Cir. 2003), the Board and the Federal Circuit each issued a precedential decision addressing the merits of the appellant’s claim that the agency interfered with his right to compete for positions guaranteed by 5 U.S.C. § 3304(f)(1). *Cf. Champion v. Merit Systems Protection Board*, 326 F.3d 1210, 1214 n.2 (Fed. Cir. 2003) (because the court concluded that VEOA provided no right of appeal to the non-preference eligible appellant, it expressed no opinion regarding whether the Board would have jurisdiction over a preference-eligible veteran’s appeal alleging a violation of 5 U.S.C. § 3304(f)(1)).³ In *Abell*, the Board and the Federal Circuit each reached the merits of the appellant’s claim and determined that the agency’s cancellation of a vacancy announcement without making a selection for a position for which the appellant applied did not violate the appellant’s right under § 3304(f)(1) to compete for the position. While the appellant in *Abell* did not prevail, neither the Board nor the Federal Circuit dismissed the appellant’s VEOA claim on the basis that a preference eligible’s right to compete under 5 U.S.C. § 3304(f) is not remediable under VEOA.

¶14 Third, Congress amended 5 U.S.C. § 3330a(a)(1) in 2004 to specifically allow “[a] veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran [to] file a complaint with the

³ The court’s holding in *Champion*, i.e., that VEOA provides no right to appeal a violation of 5 U.S.C. § 3304(f) to a non-preference-eligible veteran, was arguably superseded when Congress amended 5 U.S.C. § 3330a in 2004. *See infra*, ¶ 14.

Secretary of Labor.” Veterans Benefits Improvement Act of 2004, Pub. L. No. 108-454, Title VIII, § 804(a), 118 Stat. 3598, 3626 (2004). The report issued by the Senate Committee on Veterans’ Affairs indicated that the purpose of the amendment was to afford the non-preference eligible veterans who have been separated from the armed forces under honorable conditions after 3 years of active service, to whom Congress granted the same right as preference eligibles to compete under § 3304(f), the same right to seek redress for a violation of that right that VEOA previously provided to preference eligibles. S. Rep. No. 108-352, at 11-12 (2004), *as reprinted in* 2004 U.S.C.C.A.N. 3148, 3159. Because non-preference eligible veterans entitled to compete for positions under 5 U.S.C. § 3304(f)(1) have the right to file complaints with the Department of Labor, these veterans also presumably have the right to file a Board appeal if the Department of Labor is unable to resolve their complaints. *See* 5 U.S.C. § 3330a(d)(1) (“If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merits Systems Protection Board . . .”). Although the view of a later Congress cannot control the interpretation of an earlier enacted statute, *see Huffman v. Office of Personnel Management*, 263 F.3d 1341, 1354 (Fed. Cir. 2001) (citing *O’Gilvie v. United States*, 519 U.S. 79, 90, (1996)), the legislative history of VEOA suggests that Congress always intended to provide a right to a preference eligible to file a complaint if he believed an agency violated his right to compete for a position guaranteed by VEOA. *See, e.g.,* H.R. Rep. No. 105-40(I), at 12 (1997) (“Veterans who believe their veterans’ preference rights or their right to compete for positions under this Act have been violated may file a complaint with the Secretary of Labor.”). In addition, an interpretation of the statute that would preclude preference eligibles from filing complaints regarding an agency’s denial of the opportunity to compete guaranteed by § 3304(f)(1) would lead to the absurd result that non-preference eligible veterans have greater remedial rights under VEOA than preference

eligibles with respect to the right to seek redress regarding such a denial. *See Wassenaar v. Office of Personnel Management*, 21 F.3d 1090, 1092 (Fed. Cir. 1994) (in construing a statute, it should be read to avoid an absurd result when it can be given a reasonable application consistent with its words and legislative purpose).

¶15 Finally, § 3304(f)(1) is more closely related to veterans' preference than § 3304(b), the subsection that the Board determined was a statute "related to" veterans' preference in *Dean*. Although § 3304(b) does not specifically refer to "veterans' preference" or "preference eligibles," the Board in *Dean* determined that it was a statute related to veterans' preference because, "[b]y establishing the principle that examinations are the norm and that individuals may not be appointed in the competitive service unless they have passed an examination or are specifically excepted from examination under 5 U.S.C. § 3302," this subsection ensured that the veterans' preference provisions that provide an advantage to preference eligibles in the competitive examination process will generally be applied to the appointment process for positions in the competitive service. *Dean*, 99 M.S.P.R. 533, ¶ 17. In other words, despite the fact that § 3304(b) does not, standing alone, provide any advantage to preference eligibles, the Board determined that it was related to "veterans' preference" because it ensured the applicability of other statutory provisions that do explicitly provide the preference in the competitive examining process. In contrast to § 3304(b), § 3304(f)(1) specifically refers to "preference eligibles" as being among the group to which the benefit provided by the subsection applies, despite the fact that § 3304(f)(3) provides that "[t]his subsection shall not be construed to confer an entitlement to veterans' preference that is not otherwise required by law." Thus, while § 3304(f)(1) does not provide preference eligibles with any advantage beyond the opportunity to compete for particular positions, *see Abell*, 92 M.S.P.R. 397, ¶ 8 ("We find that 5 U.S.C. § 3304(f) permits the appellant and others in like circumstances to apply, but otherwise they receive no special

treatment in the process of filling a position under merit promotion procedures.”), preference eligibility granted to an individual pursuant to 5 U.S.C. § 2108 is one basis under which an individual can qualify for the benefit provided by the subsection.

¶16 For the reasons set forth above, we find that § 3304(f)(1) stands in some relation to, has a bearing on, concerns, and has a connection with veterans’ preference rights and is, therefore, a statute “relating to veterans’ preference” for which VEOA provides a remedy in the event of a violation thereof. *Dean*, 99 M.S.P.R. 533, ¶¶ 16-17. Accordingly, we overrule *Schott v. Department of Homeland Security*, 97 M.S.P.R. 35 (2004), to the extent that decision is inconsistent with this finding.

¶17 The agency’s final argument is that the Board has no authority to grant relief under § 3330c(a) for a violation of § 3304(f) and that *Dean* provides no legal authority for the Board to order the agency to reconstruct the selection process in this case. PFRF, Tab 1. First, our acceptance of the administrative judge’s conclusion that the agency violated § 3304(f)(1) by denying the appellant the opportunity to compete for the Equal Employment Specialist position through its failure to process his application and our conclusion that § 3304(f)(1) is a statute “related to veterans’ preference” inexorably leads to the conclusion that the agency violated the appellant’s “rights under any statute or regulation relating to veterans’ preference.” 5 U.S.C. § 3330a(a)(1). VEOA clearly authorizes the Board to grant a remedy for such a violation. *See* 5 U.S.C. § 3330c(a).⁴

⁴ This subsection provides:

If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, [(i.e., an individual’s rights under any statute or regulation relating to veterans’ preference),] the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the

¶18 Previously, when an agency has improperly denied an appellant consideration for a position, the Board has generally stated that the appropriate remedy is to provide the appellant with priority consideration for a future vacancy, as the agency agreed to do in this case. *See* ¶ 2 *supra*; *Azdell v. Office of Personnel Management*, 87 M.S.P.R. 133, ¶ 52 (2000) (priority consideration for future vacancies is the proper remedy for an appellant who was denied consideration for a position for which he was qualified), *aff'd on reconsideration*, 89 M.S.P.R. 88 (2001), *rev'd on other grounds sub nom. Meeker v. Merit Systems Protection Board*, 319 F.3d 1368 (Fed. Cir. 2003). Yet, priority consideration for a future vacancy is a remedy that provides prospective relief for the denial of the opportunity to compete, but it does not correct the agency's error with respect to the actual position for which the agency denied the appellant consideration. In the context of a VEOA appeal, such relief would be inappropriate because VEOA requires the Board to do more than merely provide a remedy for a past wrong; it mandates that the Board "shall order the agency to comply with" the violated provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation. *See Dean*, 99 M.S.P.R. 533, ¶ 44 (under VEOA, an appellant whose veterans' preference rights were violated with respect to a selection process is entitled to a selection process consistent with law). In addition, VEOA provides that the Board shall award an amount equal to back-pay as liquidated damages if it determines that the violation was willful. 5 U.S.C. § 3330c(a). Therefore, where an agency violates a statute related to veterans' preference by denying an appellant the right to compete for a particular position, the Board must craft a remedy that allows the appellant to compete for that position, allows the Board to determine whether the appellant suffered any loss of wages or benefits by reason of the violation, and, assuming that the Board finds

violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

that the violation was willful, allows the Board to determine whether the appellant might be entitled to backpay for the purposes of awarding liquidated damages. Reconstruction of the selection process requires the agency to comply with the provisions it violated, allows the Board to make the determinations necessary to award the appropriate relief, and, at the same time, is consistent with the principle that § 3304(f)(1) requires that agencies give preference eligibles the right to compete for particular positions but does not guarantee these preference eligibles a position. *See Abell*, 343 F.3d at 1384-85. Therefore, contrary to the agency's argument, we reaffirm our determination in *Dean* that § 3330c authorizes the Board to require agencies to reconstruct a selection process when it has improperly prevented an appellant from competing for a position by violating such appellant's rights with respect to a statute or regulation related to veterans' preference. Accordingly, we find that the agency failed to establish that the administrative judge erred in ordering the agency to reconstruct the selection process under the circumstances of this case.

ORDER

¶19 We ORDER the agency to reconstruct the selection process for the Equal Employment Specialist position under vacancy announcement KOEZ04056132R and to afford the appellant his right to compete for this position under 5 U.S.C. § 3304(f)(1). *See Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 1984). The agency must complete this action no later than 30 days after the date of this decision.

¶20 We further ORDER the agency to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and to describe the actions it took to carry out the Board's Order. The appellant, if not notified, should ask the agency about its progress. *See* 5 C.F.R. § 1201.181(b).

¶21 No later than 30 days after the agency tells the appellant that it has fully carried out the Board's Order, the appellant may file a petition for enforcement

with the office that issued the initial decision in this appeal if the appellant believes that the agency did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes that the agency has not fully carried out the Board's Order, and should include the dates and results of any communications with the agency. 5 C.F.R. § 1201.182(a).

¶22 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE APPELLANT
REGARDING
YOUR RIGHT TO REQUEST
ATTORNEY FEES AND COSTS

You may be entitled to be paid by the agency for your reasonable attorney fees, expert witness fees, and other litigation expenses. To be paid, you must meet the requirements set out at Title 5 of the United States Code (5 U.S.C.), section 3330c(b). The regulations may be found at 5 C.F.R. §§ 1201.202, 1201.203 and 1208.25. If you believe you meet these requirements, you must file a motion for attorney fees **WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION**. You must file your attorney fees motion with the office that issued the initial decision on your appeal.

NOTICE TO THE APPELLANT REGARDING
YOUR RIGHT TO REQUEST DAMAGES

You may be entitled to be compensated by the agency for any loss of wages or benefits you suffered because of the agency's violation of your right to compete for a position pursuant to 5 U.S.C. § 3304(f)(1). 5 U.S.C. § 3330c(a); 5 C.F.R. § 1208.25(a). If you are entitled to such compensation, and the violation is found to be willful, the Board has the authority to order the agency to pay an amount equal to back pay as liquidated damages. 5 U.S.C. § 3330c(a); 5 C.F.R. § 1208.25(a). You may file a petition seeking compensation for lost wages and

benefits or damages with the office that issued the initial decision on you appeal WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION.

NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. 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 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, <http://fedcir.gov/contents.html>. Of particular relevance is the

court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

Bentley M. Roberts, Jr.
Clerk of the Board
Washington, D.C.

CERTIFICATE OF SERVICE

I certify that this Opinion and Order was sent today to each of the following:

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November 27, 2006

(Date)

Dinh Chung

Case Management Specialist