UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2012 MSPB 53

Docket No. DC-3330-10-0370-I-1

Nathaniel Jerome Willingham,

Appellant,

v.

Department of the Navy,

Agency.

April 13, 2012

Nathaniel Jerome Willingham, Jacksonville, North Carolina, pro se.

Courtney E. Walsh and Ralph H. Kohlmann, Esquire, Camp Lejeune, North Carolina, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman

OPINION AND ORDER

¶1 This case is before the Board on the appellant's petition for review of an initial decision that dismissed his Veterans Employment Opportunities Act of 1998 (VEOA) appeal for a lack of jurisdiction and held that, if the Board had jurisdiction, the appellant failed to show that he was entitled to relief under VEOA. For the reasons explained below, the initial decision is AFFIRMED as MODIFIED by this opinion and order.

BACKGROUND

¶2 The Marine Corps Community Services (MCCS) at Camp Lejeune, North Carolina, is a Non-Appropriated Fund Instrumentality (NAFI) operating under the authority of the Department of the Navy. Initial Appeal File (IAF), Tab 11 at 5, 7. The MCCS Human Resources Division (HRD) published a vacancy announcement seeking to use "merit staffing procedures" to fill a position as an Equal Employment Specialist. IAF, Tab 14 at 101-02, 117. The appellant applied for the position and was referred as a "best qualified" (BQ) candidate. *Id*. at 106. A panel interviewed all BQ candidates including the appellant, but management ultimately opted to cancel the merit staffing vacancy announcement and to fill the position through the lateral reassignment of a current NAFI employee, Ms. Marshall. *Id*. at 117-18.

¶3 In a timely manner, the appellant sought relief from the Department of Labor (DOL) for an alleged violation of his veterans' preference rights stemming from his nonselection. IAF, Tab 12 at 21; *see* IAF, Tab 11 at 108. On March 5, 2010, DOL notified the appellant that it had completed its investigation and his case had been closed. IAF, Tab 13. The appellant filed a timely appeal with the Board. IAF, Tab 1.

¶4 On appeal, the appellant contended that his nonselection amounted to a denial of his privileges as a preference eligible employee and asserted Board jurisdiction under VEOA. *Id*.; *see* IAF, Tab 23 at 7-14. After conducting a hearing, the administrative judge held that the Board lacks jurisdiction over this appeal because the appellant sought a position in a NAFI, and he determined that NAFI positions are not within the Board's VEOA jurisdiction. IAF, Tab 25, Initial Decision (ID) at 8-10. He further determined that, if the Board had jurisdiction, the appellant was not entitled to corrective action. ID at 11-15. The appellant filed a timely petition for review, and the agency filed a timely response in opposition. Petition for Review (PFR) File.

ANALYSIS

¶5 We must determine whether the appellant has made nonfrivolous allegations of Board jurisdiction over his VEOA claim before we can address the merits of such a claim. *Burroughs v. Department of the Army*, 115 M.S.P.R. 656, ¶ 10, *aff'd*, 445 F. App'x 347 (Fed. Cir. 2011); *see Schmittling v. Department of the Army*, 219 F.3d 1332, 1337 (Fed. Cir. 2000) (holding that the Board must address the matter of its jurisdiction before proceeding to the merits of an individual right of action appeal). VEOA provides that a "preference eligible who alleges that an agency has violated such individual's rights under any statute or regulation relating to veterans' preference may file a complaint with the Secretary of Labor." 5 U.S.C. § 3330a(a)(1)(A). If the Secretary of Labor is unable to resolve the complaint within 60 days after the date on which it is filed, the complainant may appeal the alleged violation to the Merit Systems Protection Board. 5 U.S.C. § 3330a(d)(1).

¶6 Consequently, to establish Board jurisdiction over an appeal brought under VEOA, an appellant must: (1) show that he exhausted his remedy with the Department of Labor; and (2) make nonfrivolous allegations that (i) he is a preference eligible within the meaning of VEOA, (ii) the actions at issue took place on or after October 30, 1998, and (iii) an agency violated his rights under a statute or regulation relating to veterans' preference.[1] *Searcy v. Department of Agriculture*, 115 M.S.P.R. 260, ¶ 13 (2010); *see* 5 U.S.C. § 3330a; *Abrahamsen v. Department of Veterans Affairs*, 94 M.S.P.R. 377, ¶ 6 (2003). For the reasons set forth below, we find that the appellant has made nonfrivolous allegations of Board jurisdiction under VEOA, but has not shown that he is entitled to relief.

[1] It is undisputed that the appellant exhausted his remedy before DOL and that the actions at issue took place in 2009-2010. IAF, Tab 13 at 3, Tab 14 at 101-114.

The appellant made nonfrivolous allegations that he was a preference eligible and that his rights were denied by an agency under a regulation related to veterans' preference.

¶7 A statement made under penalty of perjury, if not inherently incredible and not disputed or rebutted by the other party, proves the facts it asserts. *See Crawford v. Department of State*, 60 M.S.P.R. 441, 445 (1994); *Anthony v. Department of Commerce*, 78 M.S.P.R. 246, 249, *review dismissed*, No. 98-3264, 1998 WL 780901 (Fed. Cir. Oct. 26, 1998) (Table). In sworn affidavits, the Director and Deputy Director of HRD each stated that MCCS's actions occurred "[p]er the regulations set forth in Marine Corps Order P12000.11A . . . ." IAF, Tab 14 at 116, 122. The agency's statement of facts concedes that it acted under Marine Corps Order P12000.11A and that this order contains "regulations." *Id*. at 6-7; *see id*. at 18 (referring to discretion granted by this policy as "regulatory"), 20 (stating that the action was taken in accordance with the agency's "regulations"). On petition for review, the agency continues to describe the governing documents as regulations. PFR File, Tab 3 at 11, 13, 15. Thus, we find that the appellant has made a nonfrivolous allegation that Marine Corps Order P12000.11A is a regulation.

¶8 As the administrative judge discussed thoroughly in his initial decision, the appellant has made a nonfrivolous allegation that he is an honorably discharged veteran entitled to preference under title 5 as a result of a service-connected disability. ID at 6-8; IAF, Tab 19 at 19-21; 5 U.S.C. § 2108(2), (3)(C). The agency does not challenge this finding on petition for review. PFR File, Tab 3 at 9. Because the agency regulation in question also provides "preference" to honorably discharged veterans with service-connected disabilities, we need not determine whether the appellant's preference derives from 5 U.S.C. § 2108 or from the agency's regulation. IAF, Tab 14 at 46; *see Wilks v. Department of the Army*, 91 M.S.P.R. 70, ¶ 11 (2002) (holding that the term "preference eligible" in section 3330a is broad enough to encompass applicants for title 10 positions). It

is sufficient that the appellant has made a nonfrivolous allegation that he is preference eligible. *See* 5 U.S.C. § 3330a; *Searcy*, 115 M.S.P.R. 260, ¶ 13; *Abrahamsen*, 94 M.S.P.R. 377, ¶ 6.

The appellant made nonfrivolous allegations that the MCCS is an "agency" within the meaning of 5 U.S.C. § 3330a.

¶9 This appeal presents an issue of first impression, namely whether the MCCS – which is undisputedly a NAFI – can be considered an "agency" within the meaning of section 3330a(a)(1)(A) for purposes of Board jurisdiction. IAF, Tab 11 at 5. As always, in interpreting Congressional enactments, we begin with the language of the statute. *Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 5 (1985) (the starting point for statutory interpretation is the text of the statute itself). If the statute is clear on its face, then the inquiry ends. *See Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1338 (Fed. Cir. 2006) (quoting *Chevron v. Natural Res. Def. Council*, 467 U.S. 837, 842 (1984)). However, if the statute is silent or ambiguous, then we must "resort to other means of statutory construction" in discerning Congressional intent. *Id.* (citing *Kilpatrick v. Principi*, 327 F.3d 1375, 1384 (Fed. Cir. 2003)).

¶10 Unfortunately, VEOA does not define "agency" and there is nothing in that Act's legislative history to illuminate the meaning of that word in the context of 5 U.S.C. § 3330a.[2] *See* P.L. 105-339; 112 Stat. 3182 (1998); S. Rep. No. 105-340 (1998). The provisions of VEOA are primarily codified in title 5 of the U.S.

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[2] In *Sedgwick v. The World Bank*, 106 M.S.P.R. 662, ¶ 6 (2007) *aff'd*, 276 F. App'x 1000 (Fed. Cir. 2008), the Board rejected the administrative judge's reliance on the definition of "agency" in 5 U.S.C. § 3330(a) - which despite its proximity to 5 U.S.C. § 3330a, was not enacted as part of, or otherwise affected by, the VEOA - in finding that the World Bank was not an agency for purposes of 5 U.S.C. § 3330a. The Board saw nothing in the mere circumstance of the provisions' placement in the U.S. Code to make that definition of agency "more relevant to [a VEOA] appeal than definitions in other parts of title 5 . . ." We also note that, in section 3330(a), Congress specifically provided that the definition of "agency" set forth therein was "[f]or purposes of this section."

Code. It is true that 5 U.S.C. § 105 stipulates that "for the purpose of" title 5, an "executive agency" is defined as an Executive department, a Government corporation, and an independent establishment," and that at least one circuit court of appeals[3] has found that a NAFI, like the one at issue here, did not meet that statutory definition because it was a part of the Department of Defense (DoD). *Honeycutt v. Long*, 861 F.2d 1346, 1349 (5th Cir. 1988) (holding that the head of the Army and Air Force Exchange Service was not a proper defendant under the Age Discrimination in Employment Act because he was not the head of the agency). However, section 3330a uses the term "agency" without the "executive" qualifier in 5 U.S.C. § 105. In the context of other legislation relating to the employment of veterans in the federal government, Congress's definition of "agency" *encompasses* the definition of "executive agency" in 5 U.S.C. § 105, among other things. *See* 38 U.S.C. § 4211(5). It is, therefore, not at all clear that Congress intended that the unqualified and seemingly broader use of "agency" in section 3330a be constricted by the definition of "executive agency" in 5 U.S.C. § 105. Given this ambiguity, we look to other sources for guidance in interpreting the scope of our jurisdiction under VEOA. *See Garcia*, 437 F.3d at 1338.

¶11 As a threshold matter, we note that when Congress has intended to exclude federal hiring from VEOA, or to preclude Board jurisdiction over VEOA claims, it has explicitly done so through legislated exemptions. For example, in *Scarnati v. Department of Veterans Affairs*, 344 F.3d 1246 (Fed. Cir. 2003), the court held that title 38 explicitly stated that no provision of title 5 would apply if it was inconsistent with the discretionary power given to the Department of Veterans Affairs with respect to the hiring of certain medical professionals. *Id.* at 1248.

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[3] The decision of the U.S. Court of Appeals for the Fifth Circuit is not controlling authority in Board adjudication. *See generally Fairall v. Veterans Administration*, 33 M.S.P.R. 33, 39 (decisions of the U.S. Court of Appeals for the Federal Circuit are controlling authority for the Board, and decisions of other federal circuit courts may be persuasive, but are not controlling, authority), *aff'd*, 844 F.2d 775 (Fed. Cir. 1987).

Therefore, VEOA was not applicable to such hiring actions. *Id*. Similarly, in *Vores v. Department of the Army*, 109 M.S.P.R. 191, ¶¶ 22-23 (2008), *aff'd*, 324 F. App'x 883 (Fed. Cir. 2009), the Board held that a recruitment action to hire a medical professional, conducted by the Army under the authority of 38 U.S.C. § 7406, was outside the Board's VEOA jurisdiction because title 38 contained an explicit exemption from title 5.

¶12 In *Morse v. Merit Systems Protection Board*, 621 F.3d 1346 (Fed. Cir. 2010), the court reached a similar conclusion with respect to positions within the Transportation Security Administration (TSA). TSA is managed under the personnel provisions of the Federal Aviation Administration (FAA). *Id*. at 1348. The statute that governs FAA's personnel management system states that, except for specifically enumerated provisions, title 5 does not apply to FAA. *Id*. at 1349. The court held that because section 3330a was not included as an exception to the rule that title 5 would not apply to FAA, the Board did not have VEOA jurisdiction over TSA hiring decisions. *Id*. at 1351.

¶13 Unlike in *Morse*, *Scarnati*, and *Vores*, we have found no statutory basis for exempting NAFI recruitment and selection processes from VEOA's scope. *See Morse*, 621 F.3d at 1351; *Scarnati*, 344 F.3d at 1248; *Vores*, 109 M.S.P.R. 191, ¶¶ 22-23. Although, with a few exceptions not pertinent here, NAFI employees are not to be considered employees "for purposes of laws administered by the Office of Personnel Management," *see* 5 U.S.C. § 2105, the right to seek redress under 5 U.S.C. § 3330a attaches to a "preference eligible," regardless of the individual's status as an employee. As such, we do not read 5 U.S.C. § 2105 as dispositive of, or even particularly relevant to, the question of whether the Board's VEOA jurisdiction extends to claims arising out of the MCCS recruitment and selection process.

¶14 The Board has long and consistently applied the well-established maxim that a remedial statute should be broadly construed in favor of those whom it was meant to protect. *See Weed v. Social Security Administration*, 107 M.S.P.R. 142,

¶ 8 (2007). But when the remedial statute involves veterans' rights and benefits, that principle of statutory construction is even more compelling. Recently, in *Henderson ex rel. Henderson v. Shinseki*, 131 S. Ct. 1197, 1205 (2011) (quoting *United States v. Oregon*, 366 U.S. 643, 647 (1961)), the Supreme Court recognized that the "solicitude of Congress for veterans is of long standing." Deciding an issue concerning judicial review of veterans' claims under a law enacted in 1988, the Court noted that that solicitude was "plainly reflected in [that law] as well as in subsequent laws that place a thumb on the scale in the veteran's favor in the course of administrative and judicial review . . . ." *Id.* (internal punctuation omitted). It further stated that when interpreting statutes, it has "long applied the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Id.* at 1206.

¶15 Another bedrock rule of statutory interpretation is that statutes must be construed in light of their purpose. *See Wassenaar v. Office of Personnel Management*, 21 F.3d 1090, 1096 (Fed. Cir. 2000) (citing *Best Power Technology Sales Corp. v. Austin*, 984 F.2d 1172 (Fed. Cir. 1993)). In this regard, our reviewing court has clearly recognized that "[t]he purpose of [] VEOA is to assist veterans in obtaining gainful employment with the federal government and to provide a mechanism for enforcing this right." *Kirkendall v. Department of the Army*, 479 F.3d 830, 841 (Fed. Cir.) (en banc), *cert. denied*, 552 U.S. 948 (2007).[4] The court went on to characterize VEOA as "an expression of gratitude

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[4] In the underlying administrative review of Kirkendall's VEOA claims, the Board held that it lacked jurisdiction over VEOA appeals that were untimely filed in light of the statute's edict that "in no event" could such appeals be brought to the Board if they were filed "later than 15 days" after receipt of DOL's decision. *See* 5 U.S.C. § 3330a(d)(1); *Kirkendall*, 479 F.3d at 834; *see also Williams v. Department of the Navy*, 94 M.S.P.R. 400, ¶ 11 (2003), *aff'd*, 89 F. App'x 714 (Fed. Cir. 2004). The Federal Circuit rejected the Board's construction of the phrase, "in no event," finding instead that Congress intended for the Board to apply principles of equitable tolling to excuse VEOA claims filed outside the statutory 15-day period. *Kirkendall*, 479 F.3d at 841-43.

by the federal government to the men and women who have risked their lives in defense of the United States." *Id.* In light of the foregoing, we are mindful that, in resolving this question of Board jurisdiction, the remedial purpose of VEOA and the Congressional solicitude for veterans reflected therein strongly favor reading section 3330a broadly in favor of the veteran when possible.

¶16 Fortunately, this appeal does not require that we decide whether all NAFIs are agencies within the meaning of 5 U.S.C. § 3330a. Rather, the history of the military NAFIs generally and the organizational structure of the MCCS, in particular, demonstrate that the MCCS operates as a component of the Marine Corps, and as such, comes within the purview of VEOA.[5]

¶17 In 1895, the War Department ordered the creation of post exchanges as NAFIs. *Standard Oil Co. of California v. Johnson*, 316 U.S. 481, 483-84 (1942). The unique relationship between the government and the exchanges was brought before the Supreme Court in 1942 in *Standard Oil*, when the State of California passed a tax on gasoline that applied to the private sector, but not to the federal government. *Standard Oil*, 316 U.S. at 482. The question before the Court was whether the Army Post Exchanges in California were exempt from the tax on the basis that the gasoline was for the "official use of [the federal] government." *Id*. The Court concluded that post exchanges were "arms of the government deemed by it essential for the performance of governmental functions. They [were] integral parts of the War Department, share[d] in fulfilling the duties entrusted to it, and part[ook] of whatever immunities it [had.]" *Id*. at 485.

¶18 Indeed, according to the Marine Corps NAF Personnel Policy Manual, the MCCS is an instrumentality operating under the authority of the Marine Corps with the "Commandant of the Marine Corps [] responsible for all personnel

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[5] The Board has held that the civil service portion of the Department of the Navy is an agency subject to VEOA. *See Phillips v. Department of the Navy*, 110 M.S.P.R. 184 (2008).

policy matters related to nonappropriated fund employees." IAF, Tab 14 at 34. It further provides that "NAFI personnel policy is governed or guided by DoD directives, instruction, manuals, executive orders, public laws, OPM issuances, DoD circulars, and other regulations." *Id.* at 36. While these DoD documents are not part of the record below, our regulations authorize us to take "official notice" of "matters that can be verified." *See* 5 C.F.R. § 1201.64. Exercising such authority here, we note that DoD Instruction No. 1400.25, Volume 1401 (Oct. 18, 2011), [6] entitled "DoD Civilian Personnel Management System: General Information Concerning Nonappropriated Fund (NAF) Personnel Policy," identifies its purpose as "to establish policy, assign responsibilities, and provide general information concerning personnel policy covering DoD NAF employees and positions." *Id.* at 1. The Instruction further indicates that the Deputy Assistant Secretary of Defense for Civilian Personnel Policy shall "[d]evelop and administer DoD-wide NAF personnel policies, procedures, programs, and guidance covering NAF employees," and that "Heads of the DoD Components shall," inter alia, "[r]ecruit, select, place…and accomplish other related personnel transactions involving NAF employees." *Id.* at 5. Given the extent to which the MCCS is integrated into the DoD civilian personnel system, we believe that it can and should be viewed as an agency for purposes of the VEOA provision at 5 U.S.C. § 3330a.

¶19 Because we find that the appellant exhausted his remedy with DOL and has made nonfrivolous allegations that he is a preference eligible and that an agency, after 1998, violated his rights under a regulation relating to veterans' preference, we find that the Board has jurisdiction over this appeal. *See* 5 U.S.C. § 3330a; *Searcy*, 115 M.S.P.R. 260, ¶ 13; *Abrahamsen*, 94 M.S.P.R. 377, ¶ 6.

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[6] This DoD Instruction is publicly available at the Department of Defense Civilian Personnel Management System's website at http://www.cpms.osd.mil/NAFPPO/NAFPPO_index.aspx.

The administrative judge did not err in holding that the appellant failed to show he was entitled to relief under VEOA.

¶20 To be entitled to relief under VEOA, the appellant must prove by preponderant evidence that the agency's action violated one or more of his statutory or regulatory veterans' preference rights. *Isabella v. Department of State*, 106 M.S.P.R. 333, ¶ 22 (2007); *Dale v. Department of Veterans Affairs*, 102 M.S.P.R. 646, ¶ 10, *review dismissed*, 199 F. App'x 948 (Fed. Cir. 2006). The appellant contends that his rights under VEOA were violated because the agency canceled the vacancy announcement and subsequently reassigned an MCCS employee into the position. IAF, Tab 1; PFR File, Tab 1 at 18-19.

¶21 The authority of an agency to cancel a vacancy in a NAFI is a question of first impression for the Board. However, in the competitive service, "[a]n agency may cancel a vacancy announcement for any reason that is not contrary to law." *Abell v. Department of the Navy*, 343 F.3d 1378, 1384 (Fed. Cir. 2003). The Board has held that the cancellation of a competitive service vacancy announcement and placement of an individual in the available position through other authorized means may be permissible under VEOA. *See, e.g.*, *Scharein v. Department of the Army*, 91 M.S.P.R. 329, ¶ 12 (2002) (holding that VEOA was not violated when the agency redesignated a civilian position as military and filled it with a military officer), *aff'd*, No. 02-3270, 2008 WL 5753074 (Fed. Cir. Jan. 10, 2003); *Sherwood v. Department of Veterans Affairs*, 88 M.S.P.R. 208, ¶¶ 8-10 (2001) (holding that the agency did not violate an appellant's veterans' preference rights by appointing a candidate via reinstatement instead of using competitive examining).

¶22 In the instant case, Marine Corps Order P12000.11A expressly provides that "[t]he head of the local NAFI or designee is authorized to change or cancel a vacancy announcement at any time or nonselect referred candidates." IAF, Tab 14 at 94 (internal punctuation omitted). Furthermore, a "[r]eassignment or change to lower grade or level of a current employee to a position with no higher

potential than the currently held continuing position" is excluded from the merit staffing procedures. *Id*. at 95. "The head of the local NAFI or designee, at any time, is authorized to appoint individuals non-competitively in all actions excluded from the Merit Staffing Program." *Id*. at 94. Thus, the regulation at issue did not require the agency to make a selection from the referral list, nor did it prohibit the non-competitive reassignment of an employee who was already at that same grade. *Id*. at 94-95.

¶23 However, bad faith in deciding to cancel a vacancy may be a factor in determining if a cancellation affects a veteran's right to compete. *See Abell*, 343 F.3d at 1384. When an administrative judge's credibility findings are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing, the Board may overturn such determinations only when it has "sufficiently sound" reasons for doing so. *Haebe v. Department of Justice*, 288 F.3d 1288, 1301-02 (Fed. Cir. 2002). The Board has held that it does not owe deference to the administrative judge's credibility determination where his findings are incomplete, inconsistent with the weight of the evidence, and do not reflect the record as a whole. *Faucher v. Department of the Air Force*, 96 M.S.P.R. 203, ¶ 8 (2004); *see Edwards v. Department of Transportation*, 117 M.S.P.R. 222, ¶ 11 (2012).

¶24 The Director and Deputy Director of HRD for MCCS testified that they were interested in selecting Ms. Marshall prior to the issuance of the vacancy announcement. IAF, Tab 22, Hearing Disc (HD) at 0:55:25-0:56:00 (testimony of Andrew Ennett, Director), 2:19:00-2:19:45 (testimony of Patricia Turner, Deputy Director). Ms. Marshall testified that management officials spoke with her about the possibility of a reassignment in November 2009, but she informed them that she felt that she could not leave her position because she was needed there at that time. HD at 2:04:00-2:04:45. The administrative judge determined that these witnesses were credible because they testified to this issue in a straightforward manner, their testimonies corroborated each other, and their testimonies were

consistent with the record. ID at 13-14; *see* IAF, Tab 14 at 116. He then determined that the agency had not acted in bad faith for the purpose of depriving the appellant of an opportunity to compete for the position. ID at 15.

¶25 On petition for review, the appellant asserts that Ms. Marshall's testimony regarding her reason for not participating in the selection process for the vacancy announcement while later accepting the reassignment was pretextual and made "no sense." PFR File, Tab 1 at 23. He contends that this is evidence that the agency canceled the announcement and selected Ms. Marshall in bad faith. *Id*. The vacancy announcement opened on November 23, 2009, and closed on December 2, 2009. IAF, Tab 14 at 101. The interview panel made its recommendation on January 22, 2010, and the announcement was canceled on January 26, 2010. *Id*. at 109. Ms. Marshall testified that the obligations that prevented her from accepting a reassignment in November wrapped up in mid-January and were fully completed by early February 2010. HD at 1:55:20-1:56:00. Because the witness's testimony is consistent with the record, we discern no basis to disturb the administrative judge's findings. Therefore, we find that the agency's actions were authorized by its regulation and the appellant has not shown that the agency exercised its discretion in bad faith. Accordingly, the appellant's request for relief is denied.

ORDER

¶26 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 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, www.cafc.uscourts.gov. 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:

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William D. Spencer
Clerk of the Board
Washington, D.C.