

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

**Special Counsel, Petitioner,**

**v.**

**Johnnie S. Fields, Respondent, and  
Southeastern Center for Mental Health,  
Developmental Disabilities and Substance Abuse Service,  
Respondent.**

Docket Number CB1216920034T1

Date: April 12, 1993

Lynn Alexander, Washington, DC, for the petitioner.

Johnnie S. Fields, pro se.

**BEFORE**

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

**FINAL DECISION AND ORDER**

This case is before the Board on a Recommended Decision dated December 1, 1992, issued by the Board's Chief Administrative Law Judge, Edward J. Reidy (CALJ). For the reasons set forth herein the Board ADOPTS Judge Reidy's decision.

**BACKGROUND**

The decision was issued pursuant to an Office of Special Counsel (OSC) complaint for disciplinary action against the respondents, Johnnie S. Fields and Southeastern Center for Mental Health, Developmental Disabilities and Substance Abuse Service (SEC), Ms. Fields' employing agency and an executive agency of the State of North Carolina. The complaint alleged that Ms. Fields violated 5 U.S.C. § 1502(a)(3), the Hatch Political Activities Act (Hatch Act), when she was a candidate in a Democratic primary election for the North Carolina

House of Representatives, 98th District. File, Vol. 1, Tab 1. The OSC further alleged that Ms. Fields had been told telephonically and by mail that she was covered by the Hatch Act and that running as a candidate in a partisan election was a violation of the Hatch Act, and that she continued to pursue elective office. Id.

Upon receipt of OSC's complaint, the Board issued an Order assigning the case to the CALJ and informing the respondents of their right to answer the complaint within 35 days. File, Vol. 1, Tab 2. The following day the CALJ issued a Notice and Order explaining the procedures to be followed, including the 35-day limit for responding to OSC's complaint. He also advised the respondents that failure to respond would be considered an admission of the allegations made in the complaint. File, Vol. 1, Tab 3. When neither respondent answered, the CALJ offered the respondents another opportunity to respond. The CALJ again received nothing from the respondents.

In a decision issued on December 1, 1992, the CALJ found, consistent with 5 C.F.R. § 1201.125(a), that the alleged facts were true and that Ms. Fields knowingly violated section 1502(a)(3) by being a candidate in a partisan election. He also found that removal was the appropriate penalty for such a violation. File, Vol. 1, Tab 6.

On December 10, 1992, the Board received its first correspondence from Ms. Fields. In her correspondence she stated that she had previously written to the OSC. She enclosed that letter, dated November 20, 1992, which stated that she did not believe she had violated the Hatch Act and "P.S. My delay in responding is due to illness." File, Vol. 1, Tab 7. The Board considers Ms. Fields' December 10, 1992, submission as exceptions to the CALJ's Recommended Decision. 5 C.F.R. § 1201.129.

### **ANALYSIS**

In her exceptions, Ms. Fields apparently argues that her November 20, 1992, letter to the OSC was a response to the Board's and the CALJ's orders, and therefore the allegations in OSC's complaint may not be considered admitted for failure to respond. However, the three notices sent to Ms. Fields stated with specificity that she was required to file her answer with the CALJ. Additionally, she was made aware of the consequences of failing to answer the complaint. File, Vol. 1, Tabs 3 and 5; 5 C.F.R. § 1201.125.

The Federal Circuit has held that a party before the Board ignores a Board order at his/her own peril. *Mendoza v. Merit Systems Protection Board*, 966 F.2d 650, 653-54 (Fed. Cir. 1992) (en banc). There is no question that Ms. Fields was on notice regarding the filing requirements, nor is there any doubt that the CALJ did not receive a response. Therefore, the CALJ reached the only appropriate

result, and held in accordance with 5 C.F.R. § 1201.125(a) that by failing to answer the OSC's complaint the allegations were admitted. Accordingly, the CALJ properly found that Ms. Fields participated as a candidate in a partisan election and violated 5 U.S.C. § 1502(a)(3). *Special Counsel v. Dominguez*, 55 M.S.P.R. 652 (1992); *Special Counsel v. McDonald*, 42 M.S.P.R. 624 (1989); *Special Counsel v. Hamler*, 41 M.S.P.R. 182 (1989); *Special Counsel v. Johnson*, 26 M.S.P.R. 560 (1985).<sup>1</sup>

### ORDER

Accordingly, if the Southeastern Center for Mental Health, Developmental Disabilities and Substance Abuse Service does not remove respondent Johnnie Fields from her position within thirty (30) days of the date of this order, it shall be subject to the sanction of a withholding of federal funds, as provided in 5 U.S.C. § 1506.<sup>2</sup>

The Special Counsel is ORDERED to notify the Board within thirty (30) days of this final decision whether respondent, Ms. Fields, has been removed as ordered, unless this decision is stayed and Ms. Fields is suspended in accordance with 5 U.S.C. § 1508. It is FURTHER ORDERED that, after the first submission, the Special Counsel shall thereafter submit to the Board, at three six-month intervals, evidence that Ms. Fields has not been reemployed by any state or local agency in the State of North Carolina for a period of 18 months, as provided in 5 U.S.C. § 1506.

Pursuant to 5 U.S.C. § 1508, the respondents are hereby notified of the right to file a petition for review in the United States District Court for the district in which the respondent resides within thirty (30) days of the date of mailing of the

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<sup>1</sup> Even if Ms. Fields' correspondence was deemed to be an answer to OSC's complaint and were assumed to be timely, her arguments do not provide grounds for altering the result reached by the CALJ. She does not deny that she was an employee within the meaning of 5 U.S.C. § 1501(4), nor does she deny her candidacy for a partisan elective office. These are the two elements which the OSC must prove in order to show a violation of 5 U.S.C. § 1502(a)(3). OSC alleged both and neither was refuted.

<sup>2</sup> Ms. Fields' has asserted that she is no longer employed by SEC. However, because there is no evidence offered to support her statement, the Board must be provided with proof of Ms. Fields' removal. It should also be noted that the 18 month debarment runs from the date of this order, and not her last day of employment with the State of North Carolina. 5 U.S.C. § 1506; *Special Counsel v. Purnell*, 37 M.S.P.R. 184, 205 (1988), *aff'd sub nom. Fela v. Merit Systems Protection Board*, 730 F. Supp. 779 (N.D. Ohio 1989).

Board's final decision. This is the final order of the Merit Systems Protection Board.

For the Board  
Robert E. Taylor, Clerk  
Washington, D.C.