UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2009 MSPB 85

Docket No. DC-0752-08-0714-I-1
DC-3443-08-0767-I-1

Stuart D. Miller,

Appellant,

v.

Department of Homeland Security,

Agency.

May 26, 2009

Stuart D. Miller, Stuart, Florida, pro se.

Quang D. Nguyen, Esquire, Arlington, Virginia, for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman

OPINION AND ORDER

¶1 The appellant petitions for review of an initial decision that dismissed these appeals for lack of jurisdiction. For the following reasons, we DENY the petition for review in MSPB Docket No. DC-0752-08-0714-I-1 for failure to meet the criteria for review set forth at 5 C.F.R. § 1201.115(d), GRANT the petition for review in MSPB Docket No. DC-3443-08-0767-I-1 (the involuntary retirement appeal), VACATE the initial decision with respect to the involuntary retirement appeal, and REMAND that appeal for further adjudication consistent with this Opinion and Order.

BACKGROUND

¶2 Effective August 6, 2006, the agency's Transportation Security Administration (TSA) reassigned the appellant from his K band position of Supervisory Transportation Security Specialist in Arlington, Virginia to the K band position of Transportation Security Specialist or TSA Representative (TSAR) in Brussels, Belgium. Initial Appeal File, MSPB Docket No. DC-0752-08-0767-I-1 (IAF-767), Tab 7, Subtab 1. The vacancy announcement for the position indicated that the tour of duty was "not to exceed four (4) years," and that at the end of the tour, the employee "shall have return rights in accordance with established policies and regulations." *Id*., Subtab 2. In a letter dated January 11, 2008, that addressed the "[s]ubject: End of Tour Notification," TSA notified the appellant that, "[b]ased on a continuing review of TSA's overseas presence and operational requirements, the Office of Global Strategies . . . has determined that the TSA Representative (TSAR) position, located in Brussels, Belgium, will be discontinued upon completion of your current foreign duty assignment to this position. Accordingly, the purpose of this letter is to notify you that your foreign tour of duty will not be extended beyond the current end date of 5 August 2008." IAF-767, Tab 7, Subtab 7. The agency informed the appellant that "[w]ith this notification, you are now eligible to exercise your return rights in accordance with TSA Management Directive No. 1100.30-16, Foreign Duty Assignments and Return Rights." *Id*. The agency indicated that it would begin working with the appellant to initiate his return rights. *Id*.

¶3 In a July 17, 2008 letter, the agency informed the appellant that he would be assigned to the J band position of Transportation Security Specialist at TSA headquarters in Arlington, Virginia, effective August 6, 2008, and would receive retained pay. *Id*., Subtab 12 at 2, and Subtab 14. By letter dated July 23, 2008, the appellant notified the agency that he was dismayed by the agency's letter demoting/downgrading him after nearly 20 years of federal service, he had decided to decline the agency's "offer," and he intended to retire on August 5,

2008. *Id.*, Subtab 16. The appellant indicated that he "deeply regret[s] being put in the position to have to make this incredibly difficult decision," and requested that his accrued annual leave and compensatory time be used to establish his eligibility for a discontinued service retirement. *Id.*; *see* IAF-767, Tab 7, Subtab 18. The agency disapproved the appellant's request for annual leave on August 1, 2008, finding that his situation did not satisfy the requirements for a discontinued service retirement because he was not being involuntarily separated and he was subject to the expiration of his 2-year foreign tour of duty with return rights to a position in the United States. *Id.*, Subtab 20. The appellant then informed the agency that "[s]ince you have declined to afford me my right to utilize annual leave to establish eligibility for discontinued service retirement and to avoid the likelihood of removal for not accepting a demotion outside my commuting area, I intend to retire under the eligibility of MRA [minimum retirement age] + 10 . . . ." *Id.*, Subtab 21. Effective August 5, 2008, the appellant retired under that provision. *Id.*, Subtab 7.

¶4 The appellant filed a timely Board appeal asserting that the agency improperly directed his assignment to the J band position and that he was challenging the agency's denial of his request to use annual leave to establish his eligibility for a discontinued service retirement annuity. Initial Appeal File, MSPB Docket No. DC-0752-08-0714-I-1 (IAF-714), Tab 1 at 6-7. In this regard, the appellant asserted that the agency failed to notify him that he was entitled to a discontinued service retirement and improperly refused to process such a retirement. IAF-767, Tab 1 at 10. The appellant thereafter filed a timely separate appeal asserting that his retirement under the "MRA + 10" provision was involuntary. *Id.* at 3. He alleged, among other things, that the agency improperly retroactively applied a management directive, which resulted in his tour of duty in Brussels being reduced from 36 months to 2 years, the agency misrepresented the appealability of his demotion and downgrade to the Arlington position, and the agency did not follow TSA, Federal Aviation Administration (FAA), or

Office of Personnel Management (OPM) rules in filling a TSAR position in Paris, France for which he had applied. *Id*. at 5, 8; *see* IAF-767, Tab 4 at 9.

¶5 The administrative judge (AJ) ordered the appellant to file evidence and argument proving that the Board had jurisdiction over the appeals. *See, e.g.*, IAF-767, Tab 2. After the appellant filed several responses, and based upon the written record, the AJ dismissed the appeals for lack of jurisdiction in a single initial decision, finding no nonfrivolous allegations of Board jurisdiction. IAF-714, Tab 22, Initial Decision (ID) at 2, 9. The AJ found that the agency exercised its management discretion in assigning the appellant to a different position, the appellant did not suffer a reduction in pay, and although the assignment would have resulted in a reduction in grade from the K band to the J band, the appellant retired before the effective date of any reduction in grade. ID at 4. The AJ further found that the appellant did not describe any event that rose to the level of coercion necessary to overcome the presumption that his retirement was voluntary. ID at 7. In this regard, the AJ held that the appellant was not guaranteed to remain in his TSAR position in Brussels for a specific period of time, and that the agency did not misinform the appellant by telling him that he was not entitled to a discontinued service retirement annuity. ID at 7-8.

ANALYSIS

¶6 The appellant asserts on review that he was entitled to have the agency process his request for a discontinued service retirement because he met all of the requirements for such a retirement, including his decision to decline a directed assignment outside his commuting area. Petition for Review (PFR) at 4-5, 13-16, 19. In this regard, he asserts that the agency misrepresented his right to obtain a discontinued service retirement, and that he relied upon this misrepresentation in deciding to retire under the "MRA + 10" provision. PFR at 21. He also contends that the agency improperly hired a non-federal employee for the TSAR position in Paris, contrary to the vacancy announcement requirement that applicants must

be TSA employees, and placed him in a "Catch-22" situation as to whether to accept the assignment to headquarters. PFR at 6-7.[1] These arguments are without merit.

¶7 We first find that the AJ correctly dismissed for lack of jurisdiction the appellant's first appeal in MSPB Docket No. DC-0752-08-0714-I-1. As the AJ found, the appellant did not nonfrivolously allege that the Board has jurisdiction over the agency's decision to notify the appellant that he would be assigned to the Arlington position at the end of his overseas tour of duty, or the agency's decision not to grant the appellant annual leave in connection with the agency's ultimate denial of his request to pursue a discontinued service retirement. ID at 4-5, 8; *see Gavette v. Department of the Treasury*, 44 M.S.P.R. 166, 181 n.7 (1990) (finding a denial of sick leave not reviewable absent a disciplinary action within the Board's jurisdiction based on absence without leave); *Brown v. Department of Justice*, 20 M.S.P.R. 524, 527 (1984) (finding an assignment not appealable absent a reduction in grade or pay). Therefore, we DENY the appellant's petition for review in connection with that appeal.

¶8 An employee-initiated action, such as a retirement, is presumed to be voluntary unless the appellant presents sufficient evidence to establish that the action was obtained through duress or coercion or shows that a reasonable person would have been misled by the agency. *Talley v. Department of the Army*, 50 M.S.P.R. 261, 263 (1991). A retirement action is involuntary if, for example, the agency made misleading statements upon which the employee reasonably relied to his detriment. *Scharf v. Department of the Air Force*, 710 F.2d 1572, 1574-75 (Fed. Cir. 1983). A decision made "with blinders on," based on

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[1] After the record closed on review, the appellant filed a reply to the agency's response to his PFR. PFR File, Tabs 2, 5. Because the Board's regulations do not provide for the filing and consideration of such a submission, we have not considered it. *See* 5 C.F.R. § 1201.114(b) (the Board normally will consider only issues raised in a timely filed PFR or in a timely filed cross PFR).

misinformation or a lack of information, cannot be binding as a matter of fundamental fairness and due process. *Middleton v. Department of Defense*, 185 F.3d 1374, 1382 (Fed. Cir. 1999). In this regard, there is no requirement that the misinforming be knowingly deceptive. *Id.* Moreover, an agency is required to provide information that is not only correct in nature, but adequate in scope to allow an employee to make an informed decision. *Exum v. Department of Veterans Affairs*, 62 M.S.P.R. 344, 348 (1994). In order to be entitled to an evidentiary hearing on a jurisdictional issue such as involuntariness, an appellant must make nonfrivolous allegations that, if proven, could establish Board jurisdiction. *Middleton*, 185 F.3d at 1379-80.

¶9 Under 5 U.S.C. § 8414(b), an employee who, among other things, is "separated from the service involuntarily," except by removal for cause on charges of misconduct or delinquency, after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.[2] OPM's regulations similarly provide that an employee who "separates from the service involuntarily" after becoming age 50 and completing 20 years of service is entitled to an annuity. 5 C.F.R. § 842.206(a). In the context of the Civil Service Retirement System version of the above statute, which is set forth at 5 U.S.C. § 8336(d) and which is substantially similar to section 8414(b), the Board's reviewing court has held that the type of involuntary separation to which the statute speaks is one that results from a lawful agency action, rather than a coerced, unlawful separation. *Nebblett v. Office of Personnel Management*, 237 F.3d 1353, 1359 (Fed. Cir. 2001).

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[2] The AJ cited to 5 U.S.C. § 8336(d) in setting forth the requirements for a discontinued service retirement. ID at 8. That statute, however, applies to employees covered under the Civil Service Retirement System. The appellant appears to have been a Federal Employees' Retirement System (FERS) employee. *See* IAF-767, Tab 7, Subtab 20 ("The Office of Human Capital has advised that as a FERS employee, you are eligible for optional retirement under the 'MRA + 10' provisions.").

¶10 Here, as the AJ and the agency found, the appellant was not lawfully involuntarily separated from his position when he decided to retire under the "MRA + 10" provision instead of accepting the offered assignment to Arlington. ID at 8. In fact, the agency had not even *proposed* the appellant's separation at the time the appellant retired; instead, it merely informed him that he would be assigned to the position of Transportation Security Specialist at TSA headquarters at the end of his overseas tour of duty, and that he would be expected to report to work on August 6, 2008. IAF-767, Tab 7, Subtab 12. Thus, contrary to the appellant's claims, he did not nonfrivolously allege that he met all of the criteria for a discontinued service retirement, and that the agency therefore provided him with misinformation in this regard upon which he reasonably relied in deciding to retire under the "MRA + 10" provision. The fact that the appellant's choices may have been limited to unpleasant alternatives does not make his decision to retire involuntary. *See Lawson v. U.S. Postal Service*, 68 M.S.P.R. 345, 350 (1995). Furthermore, although the appellant contends on review that the agency did not follow proper procedures in filling a vacant position for which he had applied, the Board generally lacks jurisdiction over such nonselections. *See Nakshin v. Department of Justice*, 98 M.S.P.R. 524, ¶ 9 (2005).

¶11 The appellant also contends on review that the AJ improperly required him to prove that his retirement was involuntary by preponderant evidence in order to obtain a hearing, the agency misrepresented the length of his overseas tour of duty by improperly retroactively applying a management directive, and the agency's decision to eliminate his position was arbitrary and capricious, unauthorized, and contrary to a national security decision directive. PFR at 21-22, 24, 27, 29-33. The appellant further claims that the agency should have followed reduction in force (RIF) procedures. PFR at 36-37.

¶12 Although the appellant claims that the AJ improperly required him to prove his claim by preponderant evidence in order to be granted a hearing, the AJ correctly notified the appellant that, if he was requesting a hearing, he would be

granted one only if he made allegations of duress, coercion, or misrepresentation supported by facts which, if proven, would establish that his retirement or resignation was involuntary. IAF-767, Tab 2; IAF-714, Tab 6. In the initial decision, the AJ held that "[a]lthough the appellant requested a hearing, he is not entitled to one because he did not raise nonfrivolous allegations of Board jurisdiction." ID at 2. Consistent with this finding, the AJ concluded in the initial decision that "[b]ased on the pleadings submitted in this appeal, I find the appellant has not described any event which rises to the level of coercion necessary to overcome the presumption of voluntariness associated with resignations and retirements." ID at 7. Thus, the appellant has shown no error by the AJ with respect to the burden of proving entitlement to a hearing.

¶13 We further find that the appellant did not nonfrivolously allege that the agency misrepresented the length of the appellant's overseas tour of duty. Under the vacancy announcement for the Brussels TSAR position, the appellant was notified that the position's tour of duty was "not to exceed" 4 years; thus, the vacancy announcement did not guarantee a tour of duty lasting 4 years. IAF-767, Tab 7, Subtab 2. In addition, Management Directive (MD) No. 1100.30-16, Foreign Duty Assignments and Return Rights (Apr. 25, 2007), *id*., Subtab 4, provides that a tour of duty will expire after 24 months unless the agency approves an extension. Moreover, the record reflects that under the Federal Aviation Personnel Manual (FAPM) Letter 352-1, which the appellant claims was in effect before TSA issued MD No. 1100.30-16, if an employee serves only one tour of duty overseas, the tour "should" total 36 months. *Id*., Subtab 5 at 3. Thus, even FAPM Letter 352-1 did not guarantee that the appellant's overseas tour would last more than 2 years. Therefore, regardless of whether MD No. 1100.30-16 applies here, when the agency informed the appellant that his tour of duty would end after 2 years, it did not provide him with misinformation, or even information that contradicted any prior information or policy regarding the length of the appellant's overseas tour of duty.

¶14 The appellant contends that the agency's decision to discontinue the TSAR position in Brussels was arbitrary and capricious, and that it violated a national security decision directive that provided that "all agencies with staffs operating under the authority of Chiefs of Mission will ensure that, in coordination with the Department of State, the Chiefs of Missions' approval is sought on any proposed changes in the size, composition, or mandate of such staff elements." PFR at 30-34; *see* IAF-767, Tab 7, Subtab 23. Thus, the appellant contends that the agency was not free to allocate its resources as it wished, as the AJ found, ID at 8, and appears to suggest that the agency's decision to the eliminate the TSAR position in Brussels was invalid.[3] This argument appears to address the merits of whether the agency had the authority to discontinue the appellant's position, an issue that is not before the Board at this time. The Board does not have jurisdiction over all matters that are alleged to be unfair or incorrect, such as whether the agency should not have decided to eliminate his position. *See Roberts v. Department of the Army*, 168 F.3d 22, 24 (Fed. Cir. 1999); *Pruitt v. Department of Veterans Affairs*, 97 M.S.P.R. 495, ¶ 14 (2004); *Preece v. Department of the Army*, 50 M.S.P.R. 222, 226 (1991).

¶15 Nevertheless, the appellant also claims on review that the agency's January 11, 2008 and July 17, 2008 letters failed to meet the requirements of a RIF notice, and that the agency was required to follow RIF procedures and notify him of a right to appeal a RIF action to the Board. PFR at 37. An agency shall follow the RIF regulations set forth at 5 C.F.R. part 351 when it releases a

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[3] The appellant similarly argues that the agency retaliated against him for equal employment opportunity activity by eliminating his position. PFR at 44-45. We find that this allegation does not rise to the level of a nonfrivolous allegation that the appellant's working conditions were made so difficult that a reasonable person in the appellant's position would have felt compelled to retire. *See, e.g., Markon v. Department of State*, 71 M.S.P.R. 574, 578 (1996) (evidence of discrimination or EEO retaliation goes to the ultimate question of coercion, i.e., whether working conditions were made so difficult that a reasonable person in the employee's position would have felt compelled to resign or retire).

competing employee from his or her competitive level by demotion when the release is required by a reorganization. 5 C.F.R. § 351.201(a)(2). The Board has held that a TSA non-screener may have the right to appeal a RIF action to the Board. *See Wilke v. Department of Homeland Security*, 104 M.S.P.R. 662, ¶ 16 (2007). Here, the appellant appears to assert that MD No. 1100.30-16 is invalid and does not apply to him, and that his tour of duty was not, therefore, scheduled to expire at the end of 2 years. Thus, he appears to claim that the agency should have followed RIF regulations, and not its return rights directive, because it abolished his position and released him from his competitive level before the expiration of his overseas tour of duty. *Cf. Cowan v. United States*, 710 F.2d 803, 805-06 n.11 (Fed. Cir. 1983) (the agency properly followed its RIF regulations, and not its return rights directive, when it abolished the appellant's position and separated him before the natural expiration of his overseas tour of duty). We find that the appellant has nonfrivolously alleged misinformation or a lack of information regarding notice of RIF appeal rights.

¶16 The appellant further asserts that "[a]t no time was Appellant advised of any rights to appeal or otherwise challenge" the agency's decision to downgrade him to a J band position, and that the misrepresentation of such appeal rights set forth in MD No. 1100.30-16 "vests the board with jurisdiction of the case." PFR at 22-24.[4] The appellant raised a similar argument below in his response to the AJ's jurisdictional order:

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[4] The appellant argues that the MD in question, which was signed by an Assistant Administrator for Human Capital, IAF-767, Tab 7, Subtab 4, is invalid because it was not issued by the Under Secretary for TSA, as required by 49 U.S.C. § 114(n), which permits modifications to the FAA personnel management system, PFR at 23, 25-26. To the extent that the agency may have been following the MD when it failed to provide the appellant with notice of Board appeal rights of his reduction in grade, the AJ shall, on remand, afford the parties an opportunity to present evidence and argument on the issue of whether this provision of MD 1100.30-16 is consistent with 49 U.S.C. § 40122(g)(3), as well as whether the MD was executed pursuant to a valid delegation of authority. *See Lara v. Department of Homeland Security*, 101 M.S.P.R. 190, ¶ 8

> **Misrepresentation of Appealability of Demotion and Downgrade**
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> Mr. Stein's letter[] dated January 11, 2008 . . . advised the appellant that his return and re-assignment would be processed in accordance with TSA Management Directive No. 1100.30-16 issued by an Assistant Administrator . . . more than 8 months after appellant reported for duty as TSAR. As indicated in Exhibit 1, as TSAR, and for three years previously, appellant was a K-Band. By letter dated July 17, 2008, . . . appellant received a directed re-assignment and a loss of grade to a J-Band position effective . . . August 6, 2008). MD 1100.30-16 which Mr. Stein has misrepresented as being applicable to appellant indicates at paragraph 7.H.(8), that the reduction of pay band is not an adverse action and cannot be appealed to the Merit Systems Protection Board. Contrary to the TSA's MD reduction in grade (pay band) are clearly appealable to the MSPB pursuant to 5 CFR 1201.3(a)(2). Appellant further relied on the misrepresentations as to the appealability of the downgrade and retroactive application of the Management Directive to make his decision to retire.

IAF-767, Tab 4 at 9. In connection with this claim of misinformation, the appellant has alleged that the agency was required to present him with, and afford him an opportunity to sign, an individualized contract that explained his return rights, which presumably would have notified him of his lack of Board appeal rights if he was assigned to a lower-graded position, but never did so. IAF-714, Tab 1 at 7; IAF-767, Tab 1 at 5, 8; PFR at 9, 18.

¶17 As a former employee of TSA, the appellant's appeal rights would have been governed by the Aviation and Transportation Security Act of 2001 (ATSA). *See Wilke*, 104 M.S.P.R. 662, ¶¶ 3, 11. The ATSA provides that the personnel management system established by the Administrator of the FAA under 49 U.S.C. § 40122 shall apply to employees of TSA, and that subject to the requirements of

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(2006); *Lara v. Department of Homeland Security*, 97 M.S.P.R. 423, ¶ 13 (2004); *Corbett v. Department of Homeland Security*, 97 M.S.P.R. 336, ¶ 10 (2004).

that section, the Under Secretary for TSA[5] may make such modifications as the Under Secretary considers appropriate. *Id.*, ¶ 11 (citing 49 U.S.C. § 114(n)). Under 49 U.S.C. § 40122(g)(3), however, TSA non-screeners may submit a Board appeal from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996. *Id.*, ¶¶ 13-14. Thus, the Board has held that under the personnel management system that was applicable to FAA employees as of March 31, 1996, the reduction in grade or pay of an individual who meets the definition of "employee" under 5 U.S.C. § 7511(a)(1) may be appealed to the Board. *Lara v. Department of Homeland Security*, 101 M.S.P.R. 190, ¶ 11 (2006). The appellant has alleged that he is an "employee" under 5 U.S.C. § 7511(a)(1)(C) as a non-preference eligible in the excepted service who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less. IAF-767, Tab 1 at 1, and Tab 7, Subtab 1.

¶18 We note that MD 1100.30-16 provides that, although every effort will be made to assign an employee like the appellant, who held a permanent K band position prior to the foreign duty assignment, to an available K band position upon return from such an assignment, "a K band position is not guaranteed. However, the employee is entitled to placement in a position no lower than a J band." IAF-767, Tab 7, Subtab 4 at 11. MD 1100.30-16 further provides that "[p]ersonnel actions associated with the reduction of a basic pay rate and/or pay band for an employee covered under the provisions of this directive are not adverse actions. As such, these actions are excluded from TSA's grievance process and cannot be appealed to TSA's Professional Review Board or the Merit

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[5] The Board has previously taken notice that the title of Under Secretary was changed to Administrator following TSA's transfer from the Department of Transportation to the Department of Homeland Security. *Wilke*, 104 M.S.P.R. 662, ¶ 5 n.3.

Systems Protection Board." *Id.* at 13. Nevertheless, it is not clear, and the parties have not had the opportunity to directly address, whether the removal of appeal rights for reductions in grade under MD 1100.30-16 is a valid modification of the FAA's personnel management system, especially in light of 49 U.S.C. § 40122(g)(3). *See Wilke*, 104 M.S.P.R. 662, ¶ 14 ("while . . . TSA may promulgate personnel management policies within the scope of the authority conferred by Congress, the ATSA makes clear that the TSA must promulgate such policies subject to the requirements of 49 U.S.C. § 40122, including the requirements that its personnel system is subject to 5 U.S.C. § 7701 and that employees in its personnel system may submit a Board appeal from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996."). To the extent that any reliance by the agency on MD 1100.30-16 contradicts the appellant's nonfrivolous allegation that the agency did not provide him with complete information regarding his appeal rights when it notified him of his assignment to a lower-graded position in Arlington, such evidence may not be dispositive at this stage of the proceedings. *See Ferdon v. U.S. Postal Service*, 60 M.S.P.R. 325, 329 (1994) (to the extent the agency's evidence constitutes mere factual contradiction of the appellant's otherwise adequate prima facie showing of jurisdiction, the AJ may not weigh the evidence and resolve conflicting assertions, and the agency's evidence may not be dispositive).

¶19 Thus, we find that the appellant has raised a nonfrivolous allegation that the agency improperly failed to provide him with notice of his right to appeal a RIF or his reduction in grade to the Board when it informed him of his assignment to the Arlington position, and that he reasonably relied upon that lack of information in deciding to retire, rather than accepting the downgrade and challenging it on appeal. *See Gutierrez v. U.S. Postal Service*, 90 M.S.P.R. 604, ¶¶ 8-9 (2002). The appellant is therefore entitled to a jurisdictional hearing on this issue. *Id.*

ORDER

¶20 Accordingly, we REMAND the appellant's alleged involuntary retirement appeal in MSPB Docket No. DC-3443-08-0767-I-1 to the Washington Regional Office for further adjudication, including a jurisdictional hearing, consistent with this Opinion and Order.

¶21 This is the final decision of the Merit Systems Protection Board in the appeal of MSPB Docket No. DC-0752-0714-I-1. 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 in mspb docket no. dc-0752-08-0714-i-1

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.