UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2009 MSPB 143

Docket No. CB-7521-08-0017-T-1

Social Security Administration,

Petitioner,

v.

London Steverson,

Respondent.

July 27, 2009

Angela R. White, Esquire, Baltimore, Maryland, for the petitioner.

Ronald P. Ackerman, Esquire, Culver City, California, for the respondent.

BEFORE

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

OPINION AND ORDER

¶1 The petitioner filed a complaint pursuant to 5 U.S.C. § 7521 proposing to remove the respondent from his administrative law judge (ALJ) position based on four charges. The ALJ assigned to hear the case issued an initial decision (ID) in which he sustained three of the charges, dismissed one of the charges, and found good cause to suspend the respondent for 35 days. The petitioner has now filed a petition for review (PFR) of the ID. For the reasons discussed below, we GRANT the PFR, SUSTAIN the dismissed charge, and FIND good cause to remove the respondent.

BACKGROUND

¶2 On June 20, 2008, the petitioner filed a complaint signed by Chief ALJ Frank A. Cristaudo proposing to remove the respondent based on four charges. Complaint File (CF), Tab 1, Statement of the Charges and Specifications. Under Charge I, Conduct Unbecoming an ALJ, the petitioner specified as follows: 1. On or about October 1, 2002, the respondent improperly used official agency letterhead for personal correspondence; 2. On or about October 13, 2002, the respondent improperly used official agency letterhead for personal correspondence and improperly used the title, "United States Administrative Law Judge" in that personal correspondence; 3. On or about June 30, 2003, the respondent improperly used official agency letterhead for personal correspondence and improperly used the title "United States Administrative Law Judge" in that personal correspondence; and 4. On or about March 30, 2007, the respondent improperly used official agency letterhead for personal correspondence and improperly used the title "United States Administrative Law Judge" in that personal correspondence. *Id.* at 2-5. Under Charge II, Misuse of Government Equipment, the petitioner specified as follows: 1. Beginning in and about 2001 and continuing until October 2007, the respondent stored sexually-oriented material on his government-issued computer; and 2. beginning in 2004 and continuing through 2005, the respondent used his government-issued computer to support a personal private business. *Id.* at 5-8. Under Charge III, Lack of Candor, the petitioner specified that, on or about February 13, 2008, when questioned regarding his misuse of his official title, agency letterhead, and agency equipment, the respondent provided misleading and incomplete responses. *Id.* at 8-10. Under Charge IV, Failure to Follow Agency Policy, the petitioner specified that, beginning in June 2004 and continuing until April 2007, the respondent used the agency's address and mail delivery services for his personal correspondence. *Id.* at 10-11.

¶3 After holding a hearing, the ALJ sustained Charges I, II, and IV (all specifications), dismissed Charge III, and found good cause for imposing a 35-day suspension. ID at 2-25. The ALJ rejected as unproven the respondent's affirmative defenses, which were based on alleged discrimination. *Id.* at 22 n.7; CF, Tab 6 at 7-8.

¶4 The petitioner has filed a PFR. PFR File, Tab 1. The respondent has filed an untimely response opposing the PFR. *Id.*, Tabs 2, 3. In response to the Clerk of the Board's notice of untimeliness, *id.*, Tab 4, the respondent filed a motion to waive the time limit or to accept his filing as timely, which the petitioner opposed, *id.*, Tabs 5, 6. We have considered the response to the PFR in adjudicating this case, but find that it does not warrant a different result.

ANALYSIS

¶5 The respondent has not filed a PFR contesting the ALJ's decision to sustain Charges I, II, and IV or to reject his affirmative defenses. Therefore, we have not further considered those issues. 5 C.F.R. § 1201.114(b) (stating that the Board normally will consider only issues raised in a timely filed PFR or in a timely filed cross-PFR). The petitioner asserts that the ALJ improperly dismissed Charge III and improperly weighed the relevant factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), in finding good cause to impose only a 35-day suspension instead of removal. PFR at 5.

¶6 Charge III: Lack of Candor: The petitioner specified as follows: When asked by Hearing Office Chief ALJ (HOCALJ) Cynthia Minter[1] to explain his use of agency stationery in 2002 and 2003, the respondent stated that he believed that

[1] The petitioner asserts that the ALJ incorrectly observed that Minter was not the respondent's supervisor. PFR at 2 n.3; ID at 2, 23 n.8. It contends that Minter and Cristaudo testified regarding Minter's supervisory responsibilities. PFR at 2 n.3. Minter specifically testified, though, that she did not actually supervise the other ALJs' work and that there was not "really a supervisory relationship between the HOCALJ and judges." Transcript (Tr.) at 81, 126.

the stationery he used for the 2002 letters was obsolete and that it was like pulling old stationery out of the garbage and using it. Concerning the 2003 letter, he stated that he was under stress, believed that his use of his official title and official stationery was inadvertent, and did not realize the significance of his actions. His explanations were misleading because he was aware that he was prohibited from using his official title and stationery for personal correspondence and neither the stationery's age nor his stress would account for his actions. CF, Tab 1, Statement of the Charges and Specifications at 8-9.

¶7 The petitioner further specified as follows: The respondent's answers to questions regarding using government equipment to create, download, view, store, copy or transmit sexually explicit or sexually oriented materials were also misleading. *Id.* at 9. His explanations included his belief that "sometimes things just pop up and a person has a hard time getting rid of it when learning how to use the computer," and "it was a long time before he was able to open, close, and delete items on his computer." *Id.* at 9. He informed Minter that he neither created files to save sexually explicit material on his computer nor recalled storing such items on his computer, and that, if he did so, it was accidental. His explanations were belied by the numerous user-created folders that contained sexually explicit material. He denied sending sexually explicit material to his agency e-mail address from his personal e-mail address, explaining that sometimes his wife sent items from his home e-mail to him; that she had a different standard of appropriateness; and that, if she sent something, it would remain on his computer only until he viewed and deleted it. His explanation conflicted with his first statement concerning the difficulty of deleting items. Also, a February 12, 2004 document stored in a user-created folder titled "Rcerna" showed that he sent an e-mail containing sexually explicit material from his personal e-mail address to his government e-mail address using his initials, not his wife's initials, and it remained on his computer until at least May 2007. His lack of candor undermined the agency's trust in him. *Id.* at 9-10.

¶8 The ALJ dismissed the charge. He acknowledged the petitioner's citation to *Ludlum v. Department of Justice*, 278 F.3d 1280, 1284 (Fed. Cir. 2002), for the proposition that a lack of candor charge, unlike a falsification charge, does not require proving the intent to deceive. He also acknowledged Minter's testimony that she was unsure whether the respondent's answers concerning his computer skills were truthful, that his answers concerning his use of the agency's letterhead "didn't make a lot of sense to me," and that his response that he did not recall storing the e-mails with the sexually explicit pictures was less than honest. ID at 16-17. The ALJ found, though, that the agency "must show something more than the fact that it did not believe . . . all of the assertions made by [the respondent] during the interview," and "the fact that I was not convinced by them either, to the extent that they were repeated at trial, still does not necessarily support the imposition of discipline." *Id.* at 17. He stated that:

> To make the point clearer, judges often conclude that testimony of witnesses given under oath is less than candid. I have made such conclusions in prior proceedings involving this Agency, and some have involved Agency officials. But there is no showing that the Agency has disciplined other employees for a lack of candor, even if under oath. The answers given by [the respondent], when taken in their entirety, do not rise to the level [of] incomplete or misleading responses that warrant discipline.

Id. The ALJ also acknowledged the petitioner's argument that employees have an obligation to cooperate with agency investigations, but found that the respondent "appeared for the interview and answered all the questions put to him." *Id.*

¶9 The petitioner asserts that the ALJ improperly dismissed Charge III. It contends that a federal employee, especially an ALJ who judges witness credibility, is obligated to perform all official duties with candor; that this duty includes the duty of candor during official investigations; that the agency has a specific policy that requires all employees to cooperate with investigations; and that the respondent did not cooperate with the investigation into his behavior because the information he provided was either untruthful or did not assist the

agency in reaching the common goal of understanding his conduct. It contends that the ALJ erred in finding that merely appearing at the meeting and providing misleading and nonsensical explanations for serious misconduct constituted cooperation and was sufficient to defeat a lack of candor charge. It asserts that, if the respondent is not expected to tell the truth in dealing with his employer, the public cannot have confidence that he will be truthful in judging credibility and issuing decisions. PFR at 6-7, 11-12.

¶10 Specifically, concerning Charge I, specifications 1 through 3,[2] the petitioner asserts that the explanations the respondent gave during his interview with Minter – that he used obsolete, superseded stationery for the 2002 and 2003 correspondence – were not candid, contending that the most current stationery was generated by a macro requiring his initiation and citing Minter's testimony that the identifying information contained on the letterhead was current as of the date of the letters. PFR at 7; Tr. at 94-95. It asserts that, at the hearing, the respondent attempted to justify his interview statement that the stationery was obsolete by noting that the name of the office as indicated on the stationery had changed. PFR at 7-8; Tr. at 183. It contends that Minter and Cristaudo testified, though, that the office name change did not occur until 2006, and that, when confronted with information that the letters pre-dated the name change, the respondent admitted that his explanation was wrong by 3 years. PFR at 7-8; Tr. at 95, 183, 325. It points out that the ALJ found the respondent's testimony

---

[2] We note that the ALJ in his ID and the petitioner in its PFR also discuss the respondent's explanations concerning Charge I, specification 4, i.e., the March 30, 2007 letter. ID at 15-16; PFR at 8. The petitioner did not specifically cite that letter in Charge III, however. CF, Tab 1, Statement of Charges and Specifications at 8-10; *see also* Tr. at 147. Therefore, we have not considered the petitioner's arguments concerning it in determining whether to sustain Charge III. *See, e.g.*, *Gottlieb v. Veterans Administration*, 39 M.S.P.R. 606, 609 (1989) (stating that the Board is required to review the agency's decision on an adverse action solely on the grounds invoked by the agency; the Board may not substitute what it considers to be a more adequate or proper basis).

unconvincing. *Id.* at 8. It contends that, at the hearing, the respondent provided yet another explanation for using the agency letterhead, admitting that he thought that he "could write any letter that I wanted," thereby showing that his statement during the February 2008 meeting was not candid. PFR at 9; Tr. at 376-77. It also cites Minter's testimony that the respondent's statements regarding the letterhead did not make a lot of sense to her and Cristaudo's testimony that he did not find credible the respondent's explanation regarding the letterhead and use of title. PFR at 9; Tr. at 113, 334.

¶11 Concerning Charge II, specification 1,[3] the petitioner refers to the respondent's comments during the February 2008 interview as noted above, and contends that it introduced testimony from Supervisory Information Technology Specialist Sandra Pyatt and Information Technology Specialist Ora Buck to establish the respondent's untruthfulness regarding accidental storage of sexually explicit photographs. It contends that they testified that the type of files found on the respondent's computer were files created by the user and required several separate and volitional acts by him. PFR at 9-10; Tr. at 70, 295-96. It notes that the ALJ found that the respondent's testimony that he stored the pictures unintentionally was not credible. PFR at 10. It contends that the respondent admitted that his interview statements were not true, testifying that he thought he could store the pictures and "sneak a pe[e]k." *Id.*; Tr. at 378. It notes that the ALJ found credible Hearing Office Systems Administrator Maxine White's testimony that she denied authorizing the respondent to store personal items on

[3] We note that the ALJ in his ID and the petitioner in its PFR also discuss the respondent's explanations concerning Charge II, specification 2, i.e., the respondent's use of his government-issued computer to support a personal private business. ID at 16; PFR at 11. The petitioner did not specifically cite that use in Charge III, however. CF, Tab 1, Statement of Charges and Specifications at 8-10; *see also* Tr. at 147. Therefore, we have not considered the petitioner's arguments concerning it in determining whether to sustain Charge III. *See, e.g., Gottlieb,* 39 M.S.P.R. at 609.

the computer. PFR at 10; ID at 9; Tr. at 402-03. It thus asserts that the ALJ erred in not sustaining Charge III. PFR at 10.

¶12 We agree with the petitioner that it established Charge III by preponderant evidence. *See Carr v. Social Security Administration*, 185 F.3d 1318, 1321 (Fed. Cir. 1999) (stating that before the Board, the petitioner has the burden of establishing the charges against the respondent by a preponderance of the evidence). In *Ludlum*, 278 F.3d 1280, our reviewing court explained that a lack of candor charge may be proven by showing that the respondent failed "to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete." *Id.* at 1284. It cited with approval the Board's explanation in *Gootee v. Veterans Administration*, 36 M.S.P.R. 526, 529-30 (1988), of its holding in *Boyd v. Department of Justice*, 14 M.S.P.R. 427, 430 (1983), that "when an underlying misconduct charge has been proven, a concealment or lack of candor charge must also be sustained based on appellant's failure to respond truthfully or completely when questioned about matters relating to the proven misconduct." *Ludlum*, 278 F.3d at 1284 (quoting *Gootee*, 36 M.S.P.R. at 530).

¶13 Here, as the petitioner asserts, the ALJ not only sustained Charges I and II, but, regarding the matters at issue in Charge III, found that the respondent was not credible. Specifically, as the petitioner asserted, the ALJ found "not at all convincing" the respondent's statement that he was using an obsolete macro letterhead and that it was like using discarded stationery. ID at 6. Similarly, as the petitioner asserted, the ALJ rejected as "not credible" the respondent's testimony that he unintentionally downloaded the pictures. *Id.* at 10. Indeed, as the petitioner asserts, the respondent admitted that he intentionally stored pictures that were the subject of Charge II, Tr. at 270-72, thereby contradicting his February 2008 interview representations. Because the respondent failed to respond truthfully to Minter's questions during the February 2008 interview, we find that the ALJ erred in dismissing the charge and we sustain Charge III.

¶14 Penalty: The ALJ found that good cause existed to discipline the respondent, but that a 35-day suspension was the appropriate penalty. Concerning what the Board would consider to be aggravating factors, the ALJ found as follows: The respondent engaged in serious misconduct when he used agency letterhead and his official title for personal matters on four occasions and when he viewed and stored sexually explicit material on his work computer, the conduct at issue in Charges I and II. ID at 22. The respondent had a very high level position and was "held to a higher standard of integrity and moral character than other employees." *Id.* at 23. His pattern of failing to follow the agency's rules was not something that should be expected from the agency's ALJs. *Id.* at 23-24. His misconduct, especially his March 30, 2007 letter to the Superior Court of California, County of Los Angeles, brought negative notoriety to the agency's reputation. He was clearly charged with notice that his conduct was improper. *Id.* at 24.

¶15 Concerning what the Board would consider to be mitigating factors, the ALJ found as follows: The respondent engaged in less serious misconduct when he received personal mail at the office, the conduct at issue in Charge IV. ID at 22. There was no direct evidence that he engaged in any of the misconduct during working time or that the misconduct had any serious impact on the quality or efficiency of his work or the work of other employees. *Id.* at 22-23. He had no past disciplinary record. *Id.* at 24. The ALJ also stated that he saw "little negative impact" on the respondent's ability to continue to perform his essential functions as an ALJ and "a full potential for [the respondent's] rehabilitation." *Id.* He stated that he had "little doubt" that the respondent would not repeat his misconduct and emphasized the respondent's "lifetime commitment to public service and the outstanding contributions he has made in the past to that service." *Id.* The ALJ noted that there were no comparators or table of penalties to assess the appropriateness of removal, but cited Cristaudo's indication that the agency uses progressive levels of discipline and that termination is considered only when

the matter is so serious that lower levels of discipline are inappropriate. The ALJ concluded that the respondent's misconduct did not meet the level where lesser levels are inappropriate, and that, weighing all the factors, termination was inappropriate. *Id*. Rather he stated that, "given the serious nature of the misconduct and the repeated disregard for the [a]gency's rules I conclude that a suspension of 35 days is appropriate." *Id*.

¶16 The petitioner asserts that the ALJ improperly weighed the relevant *Douglas* factors in finding a 35-day suspension, rather than removal, to be reasonable. It contends that it considered the relevant *Douglas* factors. It argues that the experience the respondent gained over his decades of federal employment should have prevented him from committing such obvious and blatant violations of the good conduct expected of federal employees in significant positions. It asserts that Cristaudo testified that he considered many of the *Douglas* factors, including the seriousness of the offense, lack of remorse, notice that the conduct was prohibited, notoriety or impact on official duties, and rehabilitation potential, and that his selection of penalty was reasonable. It contends that Cristaudo also testified that he considered lesser penalties, but found them inappropriate given the duration of time and the volume of sexually explicit material stored and the cumulative effect of the violations of obvious agency policy and rules. It asserts that the offenses in Charges I and II caused Cristaudo to doubt the respondent's integrity and his willingness to follow agency policies and rules. It further asserts that the ALJ missed the point when he discounted its concern about the effect on others of the sexually explicit photographs by finding that only one agency employee, "perhaps unnecessary to the task at hand" viewed the pictures. It contends that the pictures would not have been available for viewing but for the respondent's misconduct, and that there was no evidence that the agency employee did anything improper. PFR at 12-14.

¶17 The petitioner also specifically asserts that the ALJ erred in finding that the respondent had rehabilitation potential. In that regard, it contends that the ALJ

erred in finding a basis for rehabilitation in the respondent's few remorseful statements at the hearing, noting that the respondent did not express remorse until the hearing – except perhaps with regard to the March 30, 2007 letter – and that any such remorseful statements were grossly outweighed by the ALJ's many findings that the respondent's hearing testimony was incredible. It asserts that the ALJ's penalty determination would allow the respondent to assess others' credibility as part of his duties and require the agency to vouch for the credibility of an employee who had been less than candid regarding his own misconduct. It contends that the serious nature of the offenses makes retention unreasonable. PFR at 15-16.

¶18 In an original jurisdiction case, where the Board is the first entity to consider the evidence of the charged conduct as well as any mitigating factors, the choice of the penalty is for the Board. The Board has adopted for guidance in assessing a penalty in an original jurisdiction case the same standards required of an agency in an appellate case. Thus, the Board will examine the record in this case with a view to balancing the relevant factors suggested in *Douglas*, 5 M.S.P.R. at 305-06. *Social Security Administration v. Brennan*, 27 M.S.P.R. 242, 251 (1985), *aff'd*, 787 F.2d 1559 (Fed. Cir. 1986); *see also Social Security Administration v. Davis*, 19 M.S.P.R. 279, 282 n.5 (stating that, although *Douglas* deals with penalty selection and mitigation in traditional adverse action cases that are governed by the efficiency of the service standard, the considerations it details for selecting a penalty are equally appropriate to cases under 5 U.S.C. § 7521 where it is the Board, rather than the employing agency, that selects the appropriate penalty), *aff'd*, 758 F.2d 661 (Fed. Cir. 1984) (Table). The Board will consider whatever evidence of record affects the choice of penalty. *Social Security Administration v. Glover*, 23 M.S.P.R. 57, 79 (1984). In evaluating whether a penalty is reasonable, however, the Board will consider, first and foremost, the nature and seriousness of the misconduct and its relation to the

employee's duties, position, and responsibilities. *E.g., Jackson v. Department of the Army*, 99 M.S.P.R. 604, ¶ 6 (2005).

¶19 We find good cause for imposing removal in this case. We recognize, as did the ALJ, the mitigating factors of the respondent's lengthy government service and lack of a prior disciplinary record. *See, e.g., Jackson*, 99 M.S.P.R. 604, ¶ 8. We also find that the petitioner errs to the extent that it considers lengthy service as an aggravating factor in evaluating the penalty. *See, e.g., Parbs v. U.S. Postal Service*, 107 M.S.P.R. 559, ¶ 23 (2007), *aff'd*, 301 F. App'x 923 (Fed. Cir. 2008); *Brown v. Department of the Treasury*, 91 M.S.P.R. 60, ¶ 17 (2002). Further, we acknowledge as unrebutted the ALJ's findings that the petitioner did not show that the respondent shared the sexually explicit pictures with other employees or engaged in misconduct during working hours. ID at 11, 22-23.

¶20 Those mitigating factors, though, are outweighed by the aggravating factors in this case. The respondent holds the position of ALJ, a position of prominence, whose incumbents usually engender great respect and whose cooperation within the office should be taken for granted. *See Brennan*, 27 M.S.P.R. at 251. Moreover, the respondent's offenses are both extremely serious and longstanding. In addition, to the extent that the ALJ found evidence of rehabilitation, rehabilitation is just one of the factors to be considered and does not preclude a finding that removal is warranted. *See Davis*, 19 M.S.P.R. at 283. In any event, the ALJ's heavy reliance on the respondent's alleged rehabilitation potential is inconsistent with his repeated findings that the respondent's hearing testimony was incredible. ID at 6 ("I do not credit this plainly unbelievable assertion," and "again this testimony is not at all convincing"), 10 ("[t]o the extent that [the respondent] gave such testimony at the trial, I reject it as not credible"), 12 (the respondent's "attempt at the hearing to explain how this was not a business enterprise was entirely unconvincing"), 18 (the respondent's "testimony [that he attempted to restrict the delivery of his personal mail to the

office] is belied by the following"). Thus, we find good cause for removing the respondent. *See, e.g., Von Muller v. Department of Energy*, 101 M.S.P.R. 91, ¶¶ 2, 23 (finding that removal of a non-supervisory GS-14 Economic Development Account Executive, for, inter alia, sending sexually explicit e-mails from his agency e-mail address, in some cases to agency constituents, and failure to follow supervisory instructions, warranted removal despite his good performance, length of service, and lack of prior discipline based on the seriousness of the sustained misconduct), *aff'd*, 204 F. App'x 17 (Fed. Cir. 2006); *Jackson*, 99 M.S.P.R. 604, ¶¶ 2, 6, 8 (finding that removal of GS-7 Lead Police Officers was a reasonable penalty for conspiracy and lack of candor, despite the significant mitigating factors of their performance records and years of service, noting that lack of candor is a serious offense that strikes at the heart of the employer-employee relationship); *Byrnes v. Department of Justice*, 91 M.S.P.R. 551, ¶¶ 2, 8-9 (2002) (finding that, in light of the great level of trust and responsibility an Assistant United States Attorney must have with the courts, other federal agencies, and the public, the penalty of removal was reasonable based on the seriousness of the sustained charges of dishonest conduct, failure to follow department and office policies regarding plea agreements, and violation of department policy by accessing pornographic websites using a government-owned computer and the charges' relationship to the appellant's duties, position, and responsibilities).[4]

---

[4] The respondent asserts that Board precedent does not support removal, stating that in *Morrison v. National Aeronautics & Space Administration*, 65 M.S.P.R. 348 (1994), the Board found that a 35-day suspension and reassignment was a reasonable penalty where the employee had "over 500 unauthorized files on his agency computer," many of which were sexually explicit and some of which he showed to other employees. PFR File, Tab 3 at 8. In *Morrison*, however, the agency suspended the appellant for 35 days and reassigned him and the Board simply found that the agency-imposed penalty was reasonable. 65 M.S.P.R. at 351-52, 358.

ORDER

¶21 The Board authorizes the petitioner to remove the respondent from his position as an ALJ for good cause shown pursuant to 5 U.S.C. § 7521. This is the final decision of the Merit Systems Protection Board in this matter. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE RESPONDENT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request further review of this final decision.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review this final decision on your discrimination claims. *See* Title 5 of the United States Codes, section 7702(b)(1) (5 U.S.C. § 7702(b)(1)). You must send your request to EEOC at the following address:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, DC 20036

You should send your request to EEOC no later than 30 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 EEOC no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time.

Discrimination and Other Claims: Judicial Action

If you do not request EEOC to review this final decision on your discrimination claims, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States district court. *See* 5 U.S.C. § 7703(b)(2). You must file your civil action with the district court no later than 30 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 district court no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e5(f); 29 U.S.C. § 794a.

Other Claims: Judicial Review

If you do not want to request review of this final decision concerning your discrimination claims, but you do want to request review of the Board's decision without regard to your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review this final decision on the other issues in your appeal. 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:

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