

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

2010 MSPB 137

Docket Nos. CB-1215-08-0014-N-1

CB-1215-08-0015-N-1

Special Counsel,

Petitioner,

v.

Richard F. Lee,

Diane L. Beatrez,

Respondents.

July 15, 2010

Anne M. Gullick, Esquire, Dallas, Texas for the petitioner.

Robert Bruce, Esquire, Washington, D.C. for the respondent.

BEFORE

Susan Tsui Grundmann, Chairman

Anne M. Wagner, Vice Chairman

Mary M. Rose, Member

OPINION AND ORDER

¶1 This case is before the Board on the motion of the respondent, Diane L. Beatrez, for a stay of the Board's final decision in *Special Counsel v. Lee and Beatrez*, Nos. CB-1215-08-0014-T-1 & CB-1215-08-0015-T-1 (May 14, 2010). In that decision, the Board found that the respondents committed a prohibited personnel practice in violation of [5 U.S.C. § 2302\(b\)\(6\)](#) by granting a preference to an employee of the U.S. Coast Guard that improved his prospects for obtaining a promotion. Respondent Beatrez's motion, filed July 9, 2010, seeks a stay of the

discipline imposed on her by the Board, a ten-day suspension without pay, pending judicial review of the Board's decision.

¶2 The Board may exercise its discretion to stay the enforcement of a final decision pending judicial review. *Special Counsel v. Campbell*, [58 M.S.P.R. 455](#) (1993); *In re Frazier*, [1 M.S.P.R. 280](#) (1979). In determining whether to grant a stay, the Board evaluates four criteria: (1) whether the stay applicant has made a strong showing that he or she is likely to prevail on the merits; (2) whether the applicant will be irreparably harmed absent a stay; (3) whether the issuance of the stay will substantially harm the other parties interested in the proceeding; and (4) where the public interest lies. *Special Counsel v. Byrd*, [60 M.S.P.R. 649](#), 651 (1994). The Board balances the likelihood of success on appeal with the last three criteria. If the stay applicant convincingly argues that the last three criteria are met, we will grant a stay if a serious legal question exists on the merits. If support for a stay on the basis of the last three criteria is slight, we will issue a stay if there is a strong possibility of success on appeal. However, the Board will not address the first criterion if the applicant fails to demonstrate any support for a stay based on the last three criteria. *Rose v. Office of Personnel Management*, [85 M.S.P.R. 490](#), ¶ 2 (2000); *Andrada v. Office of Personnel Management*, [73 M.S.P.R. 117](#), 119 (1997).

¶3 Here, the respondent's motion for a stay is based entirely on the argument concerning the merits of her appeal. The motion makes no effort to demonstrate that she will suffer irreparable harm in the absence of a stay or that there is

support for granting a stay based on any of the last three criteria. Accordingly, the Board DENIES the respondent's stay request.

FOR THE BOARD:

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