

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

2010 MSPB 251

Docket No. CB-1205-10-0021-U-1

**Craig S. Ragland,
Petitioner,
v.
Office of Personnel Management,
Agency.**

December 23, 2010

Craig S. Ragland, Odenton, Maryland, pro se.

Antonio A. San Martin, Jr., Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

OPINION AND ORDER

¶1 The petitioner requests that the Board review the Office of Personnel Management (OPM) regulations at Part 550, Subpart E of Title 5 of the Code of Federal Regulations. For the reasons set forth below, we deny the petitioner's request for regulation review.

BACKGROUND

¶2 The petitioner, a U.S. Postal Service employee, applied for a Laboratory Worker position with the Forensic Toxicology Drug Testing Laboratory at Fort Meade, Maryland with the intention of holding dual employment. Request File

(RF), Tab 1 at 1. The Department of the Army denied the request for dual employment, stating that Title 5 of the United States Code does not permit dual federal employment unless the position is “hard to fill.” *Id.* (attached email dated Aug. 3, 2010). The Army advised the petitioner that dual employment would be permissible only if he limited his weekly hours to 20 hours for the Postal Service and 20 hours for the Army. *Id.*

¶3 The petitioner asserts that the Army’s denial of his bid for dual federal employment violates [39 U.S.C. § 1001\(d\)](#) and [5 U.S.C. § 5533](#). *Id.* at 1-2. OPM responds that the Board lacks jurisdiction because the petitioner is not challenging an OPM regulation. RF, Tab 6 at 2. In addition, OPM argues that the petitioner failed to state a claim. *Id.* at 3. In his reply to OPM, the petitioner alleges that, in addition to the aforementioned statutes, the Army did not comply with the OPM regulations at [5 C.F.R. §§ 550.501](#) and 550.504(b). RF, Tab 7 at 3.

ANALYSIS

¶4 The Board has original jurisdiction to review rules and regulations promulgated by OPM. [5 U.S.C. § 1204\(f\)](#). In exercising its jurisdiction, the Board is authorized to declare an OPM rule or regulation invalid on its face if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to commit a prohibited personnel practice as defined by [5 U.S.C. § 2302\(b\)](#). *Id.* at § 1204(f)(2)(A). Similarly, the Board has the authority to determine that an OPM regulation has been invalidly implemented by an agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to commit a prohibited personnel practice. *Id.* at § 1204(f)(2)(B). *See Prewitt v. Merit Systems Protection Board*, [133 F.3d 885](#), 887 (Fed. Cir. 1998).

¶5 The Board’s regulations, at [5 C.F.R. § 1203.11\(b\)](#), direct the individual requesting review to provide the following information: the requester’s name, address, and signature; a citation identifying the regulation being challenged; a statement (along with any relevant documents) describing in detail the reasons why the regulation would require an employee to commit a prohibited personnel practice, or the reasons why the implementation of the regulation requires an employee to commit a prohibited personnel practice; specific identification of the prohibited personnel practice at issue; and a description of the action the requester would like the Board to take. *See DiJorio v. Office of Personnel Management*, [54 M.S.P.R. 498](#), 500 (1992).

¶6 Here, the petitioner has identified [5 C.F.R. §§ 550.501](#) and 550.504(b) as the OPM regulations at issue. RF, Tab 7 at 3. He alleges that the Army misconstrued these regulations because it “erroneously concluded that the Petitioner can only qualify for authorization to do dual employment under the exception that allows agencies to obtain required personal [sic] services when they cannot be readily obtained otherwise, i.e. [the] hard to fill position exception.” *Id.* Although the petitioner cites [5 U.S.C. § 2302\(b\)\(12\)](#), he has failed to provide reasons explaining why the Army’s purportedly incorrect interpretation requires an employee to commit the prohibited personnel practice described therein. Therefore, the petitioner has not articulated a regulation review claim that is within the Board’s jurisdiction under 5 U.S.C. § 1204(f). *DiJorio*, 54 M.S.P.R. at 500.

ORDER

¶7 Accordingly, the petitioner’s request for regulation review is DENIED. This is the final decision of the Merit Systems Protection Board in this proceeding.

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:

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