UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2012 MSPB 32

Docket No. AT-0839-10-1110-I-1

Alice W. Poole,

Appellant,

v.

Department of the Army,

Agency.

March 8, 2012

Alice W. Poole, Glennville, Georgia, pro se.

C. Daniel Gibson, Fort Stewart, Georgia, for the agency.

BEFORE

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

OPINION AND ORDER

¶1 The appellant has petitioned for review of an initial decision that found she was ineligible to accrue further retirement benefits as a reemployed annuitant of the Department of Defense (DOD). For the following reasons, we DENY the appellant's petition for review and AFFIRM the initial decision as MODIFIED to address the basis for Board jurisdiction in the appeal.

BACKGROUND

¶2 It is undisputed that the appellant retired from a GS-11 position as an accountant with DOD (the agency) in 1998 after approximately 29 years of federal service and received a Civil Service Retirement System (CSRS) annuity, that she returned to federal service as a reemployed annuitant at the Federal Law Enforcement Training Center (FLETC) in 2003, and that she began working for the Department of the Army at Fort Stewart in 2005. Initial Appeal File (IAF), Tab 1 at 8-9; Tab 6 at 5-6, 22. It is further undisputed that the appellant had CSRS coverage for her approximately 2 years of service with FLETC. *Id.*, Tab 1 at 19; Tab 6 at 7, 20. By letter dated September 2, 2010, the agency informed the appellant that its review of her retirement records indicated that three errors had been made in her retirement coverage, and that corrective action was required. *Id.*, Tab 6 at 20-21. The first error was the appellant's placement under the Federal Insurance Contributions Act (FICA), i.e., the Social Security retirement system, upon her return to federal service at FLETC. *Id.* at 20. The agency determined that the appellant should have had no retirement coverage in the absence of a written election to contribute to a retirement plan. *Id.* The second error the agency found was that the appellant was placed under the CSRS-Offset retirement system while still employed at FLETC. *Id.* The third error the agency found was that the appellant was required by statute to be placed under the FICA retirement system upon her conversion to a term employment with the Department of the Army in 2005. *Id.* The agency informed the appellant of her right to appeal its determination to the Board. *Id.* at 21. The appellant filed a Board appeal challenging the agency's determination that she was not eligible for CSRS coverage for her employment with the agency from 2005 forward, but rather was subject to the FICA retirement system. *Id.*, Tab 1 at 4, 10. The appellant did not request a hearing, and the administrative judge issued an initial decision based on the written record. *Id.*, Tab 1 at 2; Tab 7 at 1; Tab 13 at 1.

¶3 The administrative judge found that there was Board jurisdiction under 5 U.S.C. § 8347(d)(1) and sustained the agency's decision. IAF, Tab 13 at 1. The administrative judge held that the appellant's CSRS eligibility is governed by § 1101 of the National Defense Authorization Act for fiscal year 2004, P.L. 108-136, enacted November 25, 2003, and now codified at 5 U.S.C. § 9902(g). *Id.* at 2. The statute provides that an individual receiving a CSRS annuity who becomes reemployed in a DOD position[1] is not an employee for purposes of 5 U.S.C. chapter 83, subchapter III, which governs CSRS, or the comparable provision of the Federal Employees' Retirement System (FERS). 5 U.S.C. § 9902(g)(1). The administrative judge therefore concluded that the appellant was ineligible under 5 U.S.C. § 9902(g) to accrue CSRS credit for her agency employment starting in 2005. IAF, Tab 13 at 6. The administrative judge also held that the appellant did not have a right to appeal the agency's decision of September 2, 2010, under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA).

¶4 In her petition for review, the appellant contends that the initial decision was incorrect because she retired under discontinued service retirement authority pursuant to 5 U.S.C. § 8336(d)(1). Petition for Review File (PFR File), Tab 1 at 1. She asserts that her job was abolished and that there is a Standard Form (SF) 50 in the record in support of her claim. *Id.*

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[1] The Department of the Army is a "military department," whereas the Department of Defense is an "Executive agency." *See* 5 U.S.C. §§ 101, 102, & 105. The regulations implementing the Federal Erroneous Retirement Coverage Corrections Act, which are discussed below, define "agency" as including executive agencies under section 105, but do not mention military departments under section 102. 5 C.F.R. § 839.102. For a variety of purposes under title 5 of the United States Code, the Board has viewed military departments as components of the Department of Defense, and therefore as executive agencies within the meaning of 5 U.S.C. § 105. *See White v. Department of the Army*, 115 M.S.P.R. 664, ¶¶ 6-10 (2011). We therefore view the appellant's reemployment with the Department of the Army as constituting reemployment with the Department of Defense for purposes of 5 U.S.C. § 9902(g).

ANALYSIS

CSRS Coverage

¶5 A reemployed annuitant of DOD is not considered an employee for purposes of the CSRS. 5 U.S.C. § 9902(g)(1).[2] Specifically, the statute states as follows:

> Except as provided in paragraph (2), [regarding discontinued service retirement,] if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of subchapter III of chapter 83 [governing the CSRS] or chapter 84 [governing the FERS].

Id. Section 9902(g)(2)(A) provides an exception for individuals who were retired under 5 U.S.C. § 8336(d)(1). The latter provision, referred to as discontinued service retirement, is available to an employee who "is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency." 5 U.S.C. § 8336(d)(1). A qualifying involuntary separation may result from such actions as a reduction-in-force (RIF) action, abolishment of position, unacceptable performance determination, or transfer of function or reassignment outside the commuting area, which results in a "separation against the will and without the consent of the employee." *Gaghan v. Office of Personnel Management*, 111 M.S.P.R. 397, ¶ 11 (2009), *aff'd*, 370 F. App'x 119 (Fed. Cir. 2010); Office of Personnel Management (OPM) *CSRS and FERS Handbook (Handbook)*, § 44A1.1-2A.[3] An individual who retired under 5 U.S.C. § 8336(d)(1) and is reemployed by DOD may elect to continue CSRS coverage. 5 U.S.C. § 9902(g)(2)(A).

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[2] Typically, a CSRS reemployed annuitant's salary is offset by his annuity, he may elect to have further deductions withheld from his salary, and he may receive a supplemental or recomputed annuity depending on years of additional service. 5 U.S.C. § 8344(a).

[3] The *Handbook* may be found at http://www.opm.gov/retire/pubs/handbook/hod.htm.

¶6 The appellant contends that she retired under discontinued service retirement under 5 U.S.C. § 8336(d)(1). The SF-50 documenting the appellant's retirement identifies the nature of the action taken as "retirement - special option," and the authority cited was 5 U.S.C. § 8336(d)(2). IAF, Tab 1 at 28; Tab 6 at 92. Under 5 U.S.C. § 8336(d)(2), an employee meeting age and service requirements may take a *voluntary* early retirement when OPM has determined that the employee's agency is undergoing a major RIF, reorganization, or transfer of function. *See also Handbook*, § 43A1.1-4; *see generally Allen v. Office of Personnel Management*, 77 M.S.P.R. 212, 214 (1998) (early-out retirements effected under 5 U.S.C. § 8336(d)(2) during postal service nationwide restructuring). In addition, the SF-50 shows that the appellant received a separation incentive under 5 U.S.C. § 5597. IAF, Tab 1 at 28; Tab 6 at 92. This separation pay statute permitted a DOD component to offer an employee up to $25,000 as an incentive to avoid involuntary separations due to RIFs, base closures, transfers of function, reorganizations and other restructuring during 1997-2003. 5 U.S.C. § 5597; *Cook v. Department of Defense*, 63 M.S.P.R. 270, 274 (1994). The appellant received the maximum amount. IAF, Tab 1 at 8.

¶7 However, the appellant's SF-50 also states in the remarks section that the reason for the appellant's retirement was "position abolished." IAF, Tab 1 at 28; Tab 6 at 92. By itself, such a notation on an SF-50 does not establish that a retirement was involuntary. *Ogden v. Department of Commerce*, 61 M.S.P.R. 36, 39 (1994). Moreover, OPM defines job abolishment for purposes of discontinued service retirement as "the actual termination of the job, with the duties being eliminated entirely" or combined with those of another position. *Handbook*, § 44A2.1-4. The agency must identify the position as abolished within the organizational structure, and there must be no successor position within the organization. *Id.* Here, there is no such evidence to show that the agency eliminated the duties of the appellant's former position or abolished it within the organizational structure.

¶8 Therefore, we find that the appellant has not shown that she received a discontinued service retirement in 1998 and would therefore be eligible to continue her CSRS coverage as a reemployed annuitant of DOD. The record establishes instead that she took voluntary retirement with a separation incentive. Therefore, the initial decision correctly held that the appellant is precluded from CSRS coverage for her DOD employment starting in 2005.

Jurisdiction

¶9 Although neither party raised a jurisdictional challenge on appeal or petition for review, the issue requires discussion to clarify the proper basis for Board jurisdiction in this appeal. The issue of Board jurisdiction is always before the Board and may be raised by either party or sua sponte by the Board at any time during a Board proceeding. *E.g.*, *Hasanadka v. Office of Personnel Management*, 116 M.S.P.R. 636, ¶ 19 (2011); *Edwards v. Department of State*, 98 M.S.P.R. 481, ¶ 4 (2005). The existence of Board jurisdiction is a threshold issue in adjudicating an appeal. *Giove v. Department of Transportation*, 89 M.S.P.R. 560, ¶ 8 (2001), *aff'd*, 50 F. App'x 421 (Fed. Cir. 2002).

5 U.S.C. § 8347(d)(1)

¶10 The administrative judge found Board jurisdiction under 5 U.S.C. § 8347(d)(1). IAF, Tab 13 at 1. The Board's jurisdiction over CSRS retirement cases is granted by 5 U.S.C. § 8347(d)(1), which states "an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter [subchapter III of chapter 83] may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board." The Board generally has jurisdiction over a determination on the merits of a retirement matter only after OPM has issued a final decision. 5 U.S.C. § 8347(d)(1); *Hasanadka*, 116 M.S.P.R. 636, ¶ 19; 5 C.F.R. § 831.110. "[T]he scope of an appeal involving federal retirement benefits is limited to those matters addressed in OPM's reconsideration decision." *Hasanadka*, 116 M.S.P.R. 636, ¶ 21;

Dragonette v. Office of Personnel Management, 71 M.S.P.R. 384, 386 (1996). Where OPM's decision contains no determination on a particular issue, the Board lacks jurisdiction over that issue. *See Deese v. Office of Personnel Management*, 116 M.S.P.R. 166, ¶ 9 (2011).

¶11 The Board has found jurisdiction in retirement appeals despite the absence of a final decision from OPM where OPM has improperly failed or refused to issue a reconsideration decision after issuing an initial decision. *McNeese v. Office of Personnel Management*, 61 M.S.P.R. 70, 73–74, *aff'd*, 40 F.3d 1250 (Fed. Cir. 1994) (Table). The Board has also recognized an exception for the decision of an employing agency denying an employee enhanced law enforcement officer (LEO) credit under CSRS and FERS. *Olszak v. Department of Homeland Security*, 117 M.S.P.R. 75, ¶ 3 n.1 (2011); *Davis v. Department of Defense*, 82 M.S.P.R. 347, ¶ 5 (1999).

¶12 In this case, the appellant did not appeal from an OPM final decision, nor did OPM improperly fail to issue such a decision. The appeal does not involve a claim for LEO credit that was denied by the appellant's employing agency. Therefore, we find that the administrative judge improperly found Board jurisdiction in this appeal under 5 U.S.C. § 8347(d)(1).

FERCCA

¶13 FERCCA was enacted September 19, 2000. *See* P.L. 106-265, Title II, 2000 U.S.C.C.A.N (114 Stat.) 762, 770, codified at 5 U.S.C. § 8331 note. As explained by the U.S. Court of Appeals for the Federal Circuit,

> FERCCA 'addresses the problems created when employees are in the wrong retirement plan for an extended period.' 5 C.F.R. § 839.101(a). An employee can seek relief under FERCCA if that employee experienced a qualifying retirement coverage error. A 'qualifying retirement coverage error' is 'an erroneous decision by an employee or agent of the Government as to whether Government service is CSRS covered, CSRS Offset covered, FERS covered or Social Security-Only covered that remains in effect for at least 3 years of service after December 31, 1986. . . .' 5 C.F.R. § 839.102 . . . If an employee has been the subject of a qualifying retirement

> coverage error under FERCCA, he may be entitled to various forms of relief including a choice of retirement plans.

Malette v. Department of the Treasury, 89 F. App'x 695, 697 (2004); *see generally Wallace v. Office of Personnel Management*, 88 M.S.P.R. 375, ¶¶ 7-9 (2001).[4] OPM's regulations implementing FERCCA were issued and became effective March 19, 2001. *See* 66 Fed. Reg. 15,606-01, codified at 5 C.F.R. part 839.

¶14 Here, the agency initially placed the appellant in the FICA (i.e., Social Security) retirement plan when she was hired in February 2005. IAF, Tab 1 at 8; Tab 6 at 78. Pursuant to guidance received from OPM, the agency changed the appellant's designation from FICA to CSRS in September 2006, retroactive to the date she was hired. *Id.*, Tab 1 at 9; Tab 6 at 76; Tab 12 at 1. After the appellant requested a retirement benefits estimate, the agency changed her retirement plan designation again in February 2010, placing her back under FICA retroactive to the date of her hire. *Id.*, Tab 1 at 9; Tab 6 at 25. In September 2010, the agency issued a decision on the appellant's erroneous retirement coverage and informed her she could appeal to the Board. *Id.*, Tab 6 at 20. As discussed above, a reemployed annuitant of DOD is not an employee for purposes of the CSRS, and the appellant does not fall under the exception for individuals who were retired under discontinued service retirement. 5 U.S.C. §§ 9902(g)(1), 9902(g)(2)(A). Therefore, the agency correctly determined that the appellant was subject to the Social Security retirement system, rather than the CSRS. *See id.*; IAF, Tab 6 at 20-21, 56-58, 67. However, she was subject to an erroneous decision about her

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[4] FERCCA defines CSRS covered service as service that is subject to the provisions of subchapter III of 5 U.S.C. chapter 83, other than CSRS-Offset covered service (i.e., service subject to section 8334(k) of title 5.) FERCCA, § 2002(4). CSRS-Offset covered service means service that is subject to the provisions of subchapter III and to section 8334(k) of chapter 83. *Id.*, § 2002(5). Social Security-Only covered service means government service that is service that is subject to old age, survivors, and disability taxes under the Social Security Act. *Id.*, § 2002(18). Such taxes are calculated under FICA. 26 U.S.C chapter 21.

retirement coverage that lasted for more than 3 years, i.e., a qualifying retirement coverage error, when she was placed in the CSRS system from September 2006 through February 2010.

¶15 The administrative judge held that the Board did not have jurisdiction over this appeal under FERCCA. IAF, Tab 13 at 3. He explained as follows:

> [T]o qualify for coverage under FERCCA, an individual must be considered an 'employee' for purposes of § 2002 [of] the Act. This section defines 'employee' to include only individuals who are deemed employees under 5 U.S.C. § 8331(1) or [§ 8401(11), the comparable provision under FERS]. Thus, FERCCA only applies to individuals who satisfy the employee definition listed at 5 U.S.C. § 8331(1) – which is part of 5 U.S.C. Chapter 83, subchapter III governing CSRS retirements -- [or § 8401(11)].

Id. Further, "[s]ince FERCCA rights are tied to the employee definitions at 5 U.S.C. § 8331 (for CSRS) or § 8401 (for FERS), and the appellant is precluded by 5 U.S.C. § 9902(g) from satisfying either of those definitions, I find that she is not eligible to invoke FERCCA to challenge her retirement system coverage." IAF, Tab 3 at 6.

¶16 FERCCA provides that the "[t]erm 'employee' has the meaning given such term under section 8331(1)" of 5 U.S.C. FERRCA, § 2002(6). Employee is defined in 5 U.S.C. § 8331(1)(A)-(L) as an employee as defined by 5 U.S.C. § 2105. That statute defines "employee," in relevant part, as an individual: appointed in the civil service by a named federal official acting in his official capacity; (2) engaged in the performance of a federal function under authority of law or an executive act; and (3) under the supervision of a named federal official while engaged in the performance of the duties of his position. *Usharauli v. Department of Health and Human Services*, 116 M.S.P.R. 383, ¶ 16 (2011) (citing 5 U.S.C. §§ 2105(a)); *see also Horner v. Acosta*, 803 F.2d 687, 691 (1986). The definition of "employee" under 5 U.S.C. § 8331(1) also contains some exclusions which are not relevant here. 5 U.S.C. § 8331(1)(L)(i)-(xii).

¶17 In *McKnight v. Department of Defense*, the Board held that

> We do not extrapolate from [5 U.S.C. § 9902(g)[5]] that an annuitant reemployed by DoD is not an 'employee' for any purpose under title 5 of the United States Code. Indeed, the specific language of [the section] suggests that Congress intended exclusion from CSRS and FERS only. Further, a reemployed annuitant may be an employee for purposes of other parts of title 5. *See Acting Special Counsel v. U.S. Customs Service*, 31 M.S.P.R. 342, 347 (1986) (a reemployed annuitant is an 'employee' protected against prohibited personnel practices set forth at 5 U.S.C. § 2302(b)). Indeed, the specific language of section [9902(g)] suggests that Congress intended exclusion from CSRS and FERS only.

McKnight v. Department of Defense, 103 M.S.P.R. 255, ¶ 6 (2006), *aff'd*, 237 F. App'x 913 (Fed. Cir. 2007). In other words, Congress intended in 5 U.S.C. § 9902(g) that DOD reemployed annuitants should not receive further coverage or benefits under CSRS or FERS.[6] It does not follow that an individual is precluded from rights under FERCCA merely because that statute uses the same definition of employee as 5 U.S.C. § 8331(1). Thus, we find that the appellant is not precluded by 5 U.S.C. § 9902(g) from satisfying the definition of an employee under FERCCA but rather is precluded from accruing further CSRS or FERS coverage.

¶18 OPM's regulations provide a right of appeal to the Board from agency decisions affecting an individual's rights or interests under FERCCA. 5 C.F.R. § 839.1302. Further, the regulations state that "[t]hese rules apply to employees who had a qualifying retirement coverage error" that lasted at least 3 years. 5 C.F.R. § 839.201. "It does not matter whether you have left Federal service,

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[5] The cited decision refers to 5 U.S.C. § 9902(j). However, the statute was later amended and the sections renumbered.

[6] CSRS coverage, i.e., eligibility for an annuity, is provided by 5 U.S.C. § 8333(a)-(b), which states that an employee is eligible for an annuity after completing 5 years of civilian service and 1 of the last 2 years before separation in a position subject to CSRS. Coverage is not provided by § 8331(1), which contains the definition of an employee.

retired or have been reemployed as an annuitant, as long as you had a qualifying retirement coverage error." *Id.* OPM's FERCCA regulations define a "reemployed annuitant" as "a CSRS or FERS retiree who is reemployed under conditions that do not terminate the CSRS or FERS annuity." 5 C.F.R. § 839.102. As noted above, 5 U.S.C. § 9902(g) provides that the annuity of a DOD reemployed annuitant "shall continue."

¶19 OPM has not addressed the impact of 5 U.S.C. § 9902(g)(1) on FERCCA claims in its regulations governing either FERCCA at 5 C.F.R. part 839 or reemployed annuitants at 5 C.F.R. parts 553 and 837.[7] Therefore, because OPM's FERCCA regulations define a reemployed annuitant as a CSRS or FERS retiree who is reemployed under conditions that do not terminate his annuity, 5 C.F.R. § 839.102, and there is no termination of a reemployed retiree's annuity under 5 U.S.C. § 9902(g), we find that reemployed DOD annuitants are subject to FERCCA and entitled to seek relief for a qualified retirement coverage error lasting more than 3 years. As noted above, the appellant experienced such an error when she was placed in the CSRS system, rather than under Social Security-Only, from September 2006 through February 2010.

¶20 Further, the FERCCA regulations provide that one may appeal to the Board from a determination by his employer either that his error is not subject to the FERCCA rules or that he is not eligible to elect retirement coverage under these rules. 5 C.F.R. § 839.1302. If an agency makes the latter determination, it must provide a written decision with notice of the individual's right to appeal the decision to the Board. 5 C.F.R. § 839.1301(a). In this case, the agency provided a written decision with Board appeal rights without citing FERCCA or any other basis for Board jurisdiction. IAF, Tab 6 at 21. The mere fact that the agency

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[7] Further, the legislative history of 5 U.S.C. § 9902(g) is not enlightening in this regard. The conference committee report on the National Defense Authorization Act for fiscal year 2004, House Conf. Rpt 108-354, 2003 WL 22696926, does not contain any relevant discussion, nor does the House or Senate debate on the conference report.

informs an appellant of a right of appeal to the Board does not confer jurisdiction on the Board. *Morales v. Social Security Administration*, 108 M.S.P.R. 585, ¶ 5 (2008). However, the decision stated as follows in pertinent part:

> Because you were converted to a new appointment with the Department of Defense on or after November 25, 2003, Public Law 108-136 requires you to be covered by the retirement plan of FICA. . . . Because the law specified your retirement coverage, you do not have a choice of whether to stay under your current retirement plan or change to the plan under which you should have been covered. The errors must be corrected.

IAF, Tab 6 at 20-21. Although the agency did not state that it was providing appeal rights to the Board because it had determined that she was not eligible to elect retirement coverage under the FERCCA rules, it is clear that this was the import of the agency's decision. FERCCA provides for a Board appeal in this situation. 5 C.F.R. §§ 839.1301(a), 1302. Therefore, we conclude that the appellant had appeal rights under FERCCA from the agency's decision of September 2, 2010, and the administrative judge incorrectly found that the Board did not have jurisdiction under FERCCA.

¶21 Nevertheless, we do not find it necessary to remand the case for further proceedings under FERCCA, including providing the appellant an opportunity to make a retirement system election. We find that the parties were afforded a full opportunity below to address the dispositive issue in their written submissions, and the record is sufficiently developed on this matter. *See Minor v. U.S. Postal Service*, 115 M.S.P.R. 307, ¶ 10 (2010); *Davis*, 82 M.S.P.R. 347, ¶ 12.

¶22 FERCCA provides that an employee who should have been covered by Social Security-Only but was erroneously placed in CSRS will generally have the opportunity to elect between CSRS-Offset and Social Security. 5 U.S.C. § 2121(b); *Warren v. Department of Transportation*, 116 M.S.P.R. 554, ¶ 6 (2011); 5 C.F.R. §§ 839.241, .402. However, as discussed above, the agency correctly found that the appellant was subject to 5 U.S.C. § 9902(g), which precludes her from coverage under CSRS (which includes CSRS-Offset, also

authorized under 5 U.S.C. chapter 83, subchapter III). Thus, the appellant was precluded by law from electing the CSRS-Offset option. In other words, while the appellant has appeal rights under FERCCA, the statute cannot provide her with the remedy she seeks.

¶23 It is well settled that Congress is presumed to be aware of existing law when it passes new legislation. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990); *McCandless v. Merit Systems Protection Board*, 996 F.2d 1193, 1201 (Fed. Cir. 1993). Congress is thus presumed to have been aware of FERCCA, which was passed in 2000, when it enacted the National Defense Authorization Act for fiscal year 2004, containing the exclusionary language of 5 U.S.C. § 9902(g)(1). We find that Congress has not provided for reemployed annuitants of DOD, who are subject to the Social Security system only, to be able to obtain CSRS-Offset coverage under FERCCA – i.e., to be given an election between Social Security and CSRS-Offset, which consists of service subject to both CSRS and Social Security. Instead, the law provides that these individuals are not employees for purposes of CSRS. Therefore, the appellant was ineligible to accrue further retirement benefits as a DOD reemployed annuitant.

ORDER

¶24 This is the final decision of the Merit Systems Protection Board in this appeal. 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

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.