UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2013 MSPB 76

Docket No. CH-0752-10-0514-C-1

Greg K. Shirley,

Appellant,

v.

Department of the Interior,

Agency.

September 27, 2013

Jonathan Bell, Esquire, Carle Place, New York, for the appellant.

Patricia A. Woods, Esquire, Knoxville, Tennessee, for the agency.

Terri L. Wales, Gatlinburg, Tennessee, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mark A. Robbins, Member

OPINION AND ORDER

¶1 The appellant has petitioned for review of the initial decision that denied his petition for enforcement of the settlement agreement that resolved his removal appeal. For the reasons set forth below, we DENY the appellant's petition.[1]

[1] Except as otherwise noted in this decision, we have applied the Board's regulations that became effective November 13, 2012. We note, however, that the petition for review in this case was filed before that date. Even if we considered the petition under the previous version of the Board's regulations, the outcome would be the same.

BACKGROUND

¶2 The appellant was formerly employed as a Park Ranger (Protection) with the National Park Service (NPS or agency) at Cumberland Gap National Historical Park (CUGA). Initial Appeal File (IAF), Tab 3, Subtab 4A. As a requirement of his position, he held a Level II law enforcement commission. Compliance File (CF), Tab 6, Martin Declaration.

¶3 The Law Enforcement, Security and Emergency Services Division (LESES) of NPS operates a Commission Office at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, at which it maintains an official file for each NPS employee who is a commissioned law enforcement officer. *Id.*; CF, Tab 6, Exhibit 1 at 9. The commission file records the status—valid, suspended, revoked, et cetera—of each law enforcement officer's commission, but does not contain any documents from the employee's Official Personnel Folder (OPF). CF, Tab 6, Martin Declaration. Each NPS unit is required to submit to the Commission Office information about and copies of documents effecting any action regarding the status of a commission. *Id.* NPS regulations require that when a law enforcement officer's commission is suspended, revoked, or expires, or the officer ceases employment with NPS, his commission and badge are relinquished to the employing park, which then returns the commission and badge to the Commission Office. *Id.*; CF, Tab 6, Exhibit 1 at 43.

¶4 On November 12, 2009, Supervisory Park Ranger Eugene Wesloh suspended the appellant's law enforcement commission for a period of 30 days pending completion of an investigation into alleged misconduct. CF, Tab 6, Martin Appendix B. The appellant was required to surrender his commission and badge, which were returned to the Commission Office. *Id.*, Martin Appendices A, B. A record of the suspension was placed in the appellant's commission file. *Id.*, Martin Declaration, Martin Appendix B; *see also id.*, Appendix D at 3.

¶5 Nine days later, on November 21, 2009, Wesloh proposed the appellant's removal. IAF, Tab 3, Subtab 4I. The charges included the alleged misconduct

for which the appellant was being investigated. *Id.*; CF, Tab 6, Martin Appendix B. The proposal notice referred repeatedly to the appellant's status as a law enforcement officer, but made no direct reference to the appellant's law enforcement commission or the fact that it had been suspended. IAF, Tab 3, Subtab 4I. On December 15, 2009, the appellant submitted a written response and the following day, the appellant responded orally to the deciding official, CUGA Superintendent Mark Woods. *See id*., Subtabs 4B, 4G.

¶6 While the removal proceedings were pending, the suspension of the appellant's commission remained in effect. On December 3, 2009, the Regional Director, Southeast Region, approved Woods's initial request for a 30-day extension of the suspension of the appellant's commission. CF, Tab 6, Martin Appendix D at 5. Southeast Regional Chief Ranger Mike Anderson requested an additional 30-day extension, and on January 6, 2010, Greg Jackson, Deputy Chief, Operations and Policy, LESES, approved Anderson's request. *Id*. at 6-9. By email dated February 2, 2010, Woods notified Anderson that he needed an additional extension of the suspension to await the receipt of additional information regarding the proposal to remove the appellant. *Id*. at 10. Anderson forwarded the email to Jackson, who authorized the extension effective February 8, 2010. *Id*. On March 11, 2010, the Acting Regional Director signed a request for another 30-day suspension, and Jackson concurred with the request by email that same day. *Id*. at 11-13. Copies of the extension requests and approvals were maintained in the appellant's commission file. *See id*. at 2, 7, 8, 11.

¶7 By letter dated March 19, 2010, Woods notified the appellant of his decision to remove him from his position, effective the following day. IAF, Tab 3, Subtab 4B. Like the proposal notice, the decision letter included multiple references to the appellant's status as a law enforcement officer, but did not refer directly to his law enforcement commission or the fact that it had been suspended. *Id*. In an email dated March 19, 2010, CUGA Chief Ranger Dirk Wiley informed

Anderson that Woods had decided to remove the appellant. CF, Tab 6, Martin Appendix D at 14. On March 22, 2010, Anderson forwarded Wiley's email to an unknown individual or individuals, and a copy of that email is contained in the same agency exhibit that includes the documents retained in the appellant's commission file. *Id*.

¶8 The appellant timely appealed his removal to the Board. IAF, Tab 1. On June 20, 2010, the appellant and NPS entered into a settlement agreement resolving the appeal. IAF, Tab 5. The agreement provides, in relevant part:

> 3. Appellant agrees to immediately submit his written resignation for personal reasons from his position at CUGA. The Appellant's resignation will request that the resignation be effective on March 20, 2010. The written resignation will be addressed and sent to Terri Wales, Servicing Human Resources Officer . . . The Parties understand and agree that CUGA and its staff do not have access to and are not authorized to access the Appellant's OPF.
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> 4. Within no more than thirty (30) days from the receipt of the Appellant's written resignation, the Agency agrees to remove any and all documents related to Appellant's removal from Federal service from the Appellant's OPF, to state as the reason for the termination of Appellant's Federal employment was his resignation for personal reasons, and to make the following change: The SF-50 Notification of Personnel Action, Removal, dated March 20, 2010, will be cancelled and removed, and the Agency will substitute an SF-50 Notification of Personnel Action, Resignation, dated March 20, 2010, reflecting Appellant's resignation for personal reasons. No other documents presently, or in the future, maintained in the Appellant's OPF will contain information other than that the Appellant voluntarily resigned for personal reasons from Federal service and his position at CUGA.
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> 5. . . . Servicing Human Resources Officer Wales or her successor(s), if contacted for any employment inquiry or reference for the Appellant will verify Appellant's employment with the Agency and will provide only the following information: (a) the dates of Appellant's employment with the Agency; (b) the Appellant's official position title and salary; (c) if the inquiry is made after the effective date of this Agreement, the date of the resignation; and (d) that Appellant resigned for personal reasons. In the event that CUGA personnel receive inquiry(ies) from an entity(ies) or

> individual(s) as a result of Appellant's application for employment with the entity(ies) or individual(s), CUGA personnel shall not provide any information concerning Appellant's removal from Federal service and shall refer the inquiry(ies) to Human Resources Officer Wales, or her successor.
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> 6. The Parties, to the extent permitted by law, agree that the terms and conditions of this Agreement, including the identity of the Parties, and the facts surrounding the Agreement are to be deemed confidential and are not to be disclosed to anyone, with the exception of disclosure of the contents of the Agreement when required by law; disclosures made by the Appellant to his immediate family members; and disclosures made by the Parties for the limited purposes of implementing or enforcing the terms of this Agreement.

Id. at 3-4.

¶9 Notably, the agreement contains no reference to the commission file and no provision barring the appellant from future employment with the agency. *See id*. It is undisputed that the appellant's commission was never mentioned by either party in the negotiations that led to the settlement agreement. CF, Tab 6, Wales Declaration; CF, Tab 11, Pymm Affirmation. The appellant maintains that neither he nor his counsel at the time were aware that the agency maintained a commission file at FLETC, separate from the OPF. CF, Tab 11 at 6; *see id*., Pymm Affirmation.

¶10 The administrative judge found that the Board had jurisdiction over the appeal and that the agreement was lawful on its face and entered into freely by both parties. IAF, Tab 6. Accordingly, she entered the agreement into the record for enforcement purposes. *Id*. Pursuant to the settlement agreement, the agency purged the appellant's OPF of all documents referring to or relating to the removal action and replaced them with an SF-50 documenting the appellant's resignation for personal reasons. CF, Tab 6, Wales Declaration and Appendix A. However, documents pertaining to the suspension of the appellant's commission and extensions of that suspension were retained in his commission file. *See* CF, Tab 6, Martin Declaration, Martin Appendices B, D.

¶11 Approximately one year after the parties entered the settlement agreement, the appellant applied for, was offered, and accepted a seasonal Park Ranger (Protection) position at Gates of Arctic National Park and Yukon-Charley Rivers National Preserve (GAAR). CF, Tab 6, Youngblood Declaration. The effective date of his appointment was May 1, 2011. *Id.*, Youngblood Appendix C. Prior to making the offer, GAAR did not contact CUGA or the Commission Office to confirm that the appellant possessed or was able to obtain the Type II law enforcement commission required for the position. *Id.*, Youngblood Declaration. However, as part of the routine paperwork process necessary for new hires, the human resources office at GAAR obtained a copy of the appellant's SF-50 indicating that he had resigned from his Park Ranger (Protection) position at CUGA for personal reasons. *Id.* Because the appellant had previously been a permanent employee with a Type II law enforcement commission, he would have been required under NPS regulations to relinquish his commission and badge (had they still been in his possession) upon resigning. *Id.* Accordingly, in an email dated May 17, 2011, GAAR Chief Ranger Gary Youngblood contacted Commission Office Program Manager J.J. Martin to request that commissions and badges for the appellant and another new employee be sent to GAAR. *Id.*, Martin Appendix D at 1.

¶12 Upon receiving the email, Martin consulted the appellant's commission folder and determined that his commission had been suspended and was still suspended when he separated from CUGA. *Id.*, Martin Declaration. On May 18, 2011, Martin emailed Alaska Chief Ranger Chris Pergiel asking that he call her to discuss "issues with [the appellant]." *Id.*, Martin Appendix D at 1. Martin subsequently informed Pergiel by telephone that the appellant's commission had been suspended on November 12, 2009, and was still suspended at the time the appellant separated from the agency. *Id.*, Martin Declaration. In an email dated May 20, 2011, Martin further informed Pergiel that "[t]here was an MSPB hearing but I have no details or documents regarding that." *Id.*, Martin

Appendix D at 2. The record is unclear as to how Martin became aware of the existence of the appellant's Board appeal.

¶13 Subsequently, the appellant was informed by Scott Sample, a member of Youngblood's staff, that "[t]here is some issue with your commission." CF, Tab 11, Shirley Declaration. On May 24, 2011, Youngblood called the appellant into his office and informed him that he had spoken with someone from FLETC and learned that the appellant's commission was suspended. *Id*. According to the appellant, Youngblood specifically mentioned the alleged misconduct that resulted in the suspension. *Id*. The appellant at this point told Youngblood that he had an agreement with CUGA but could not talk about it. *Id*.; CF, Tab 6, Youngblood Declaration.

¶14 Around this time, Youngblood called Wiley to request additional information about the appellant. CF, Tab 6, Youngblood Declaration, Wiley Declaration. As required under the settlement agreement, Wiley provided no information and instead referred Youngblood to Wales, who, under the terms of the agreement, was the only CUGA employee authorized to respond to his request. *Id*., Youngblood Declaration, Wales Declaration; *see* IAF, Tab 5 at 3-4. Pursuant to the agreement, Wales provided no information other than the dates of the appellant's employment; his official position, title, and salary; the date of his resignation; and that he had resigned for personal reasons. CF, Tab 6, Wales Declaration; *see* IAF, Tab 5 at 3-4.

¶15 In a subsequent conference call between Martin, Pergiel, Sample, the NPS law enforcement internal affairs officer, and the Southeast Regional law enforcement specialist, the following matters were discussed: that the appellant's commission remained suspended at the time he left CUGA; that his file did not include a reinstatement;[2] that Wiley had told Youngblood that inquiries

[2] It is undisputed that as of the date of the appellant's final submission to the Board, his commission had still not been reinstated. However, the record contains no

concerning the appellant were to be directed to Wales; that the appellant had informed Youngblood that he had a confidential settlement agreement with CUGA; that Wales had supplied the dates of the appellant's employment and that he had resigned for personal reasons; and that the terms of the settlement agreement were not known to any of the call's participants. CF, Tab 6, Martin Declaration. As a result of this conversation, Pergiel determined that the appellant could not be hired as a law enforcement officer. *Id.* Effective July 3, 2011, the appellant was assigned to a lower-paying Park Ranger (Interpretation) position, which did not require a law enforcement commission. *Id.*; CF, Tab 6, Youngblood Appendix C.

¶16 The appellant filed a petition for enforcement on August 8, 2011. CF, Tab 1. He contended that the commission file is part of his OPF, and that the agency had materially breached the clean record provision of the settlement agreement by maintaining documents showing that his commission was suspended for the very same alleged misconduct on which his removal was based. CF, Tab 11 at 4-7. He further asserted that he and his counsel were unaware of the existence of a separate commission file and that he had accepted a voluntary resignation in return for, among other things, a clean record that would not prejudice his ability to apply for another position as a law enforcement officer. *Id.* at 6. In addition, the appellant argued that the agency disclosed facts surrounding the agreement by releasing information about his commission in violation of the nondisclosure provision of the settlement agreement. *Id.* at 7-8.

¶17 Based on the parties' written submissions, the administrative judge issued an initial decision denying the appellant's petition for enforcement. CF, Tab 15, Compliance Initial Decision. With regard to the alleged breach of the clean record provision, the administrative judge found that the agency had purged all

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documentation reflecting that the suspension, which was extended for a 30-day period shortly before the appellant's separation, was formally renewed after his rehiring.

removal-related information from the OPF, and that the commission file was not part of the OPF. *Id*. at 6. With regard to the alleged breach of the nondisclosure provision, the administrative judge found that the agreement only barred the agency from disclosing removal-related information to third parties and did not bar the agency from sharing such information between its own offices. *Id*. She further found that the agreement did not cover commission-related documents to begin with because the suspension of the commission was not a basis for the appellant's removal. *Id*. at 6-7.[3]

¶18 The appellant filed a timely petition for review. Petition for Review (PFR) File, Tab 1. He argued that the administrative judge erred in finding (1) that the nondisclosure clause of the agreement applied only to communications to third parties, and (2) that the documents recording the suspension of his commission were not removal-related. *Id*. He indicated that his desired remedy was enforcement of the agreement, which he contended would entail reinstatement of his commission. *Id*. at 3. The agency filed a response in opposition. PFR File, Tab 3. Because it appeared that the appellant may have raised an alternative challenge to the validity of the agreement, the Board issued an order directing the appellant to clarify whether his petition for enforcement was also intended as a petition for review of the initial decision that dismissed his original appeal as settled. PFR File, Tab 4. The appellant responded through counsel that he wished to pursue only a petition for enforcement. PFR File, Tab 7.

[3] Neither the parties, nor the administrative judge, addressed Woods's reference to the proposed removal in his February 2, 2010 extension request, which was maintained in the commission file, or Martin's May 20, 2011 disclosure to Pergiel that the appellant had been involved in a Board appeal.

ANALYSIS

The agency did not breach the clean record provision of the agreement.

¶19 "The interpretation of a settlement agreement is an issue of law." *King v. Department of the Navy*, 130 F.3d 1031, 1033 (Fed. Cir. 1997). In interpreting a written agreement, the Board must first ascertain whether the written understanding is clearly stated and was clearly understood by the parties. *Id.* If ambiguity is found, or if ambiguity has arisen during performance of the agreement, the Board's role is to implement the intent of the parties at the time the agreement was made. *See id.* "In so doing the words used by the parties to express their agreement are given their ordinary meaning, unless it is established that the parties mutually intended and agreed to some alternative meaning." *Id.* "The paramount focus is the intention of the parties at the time of contracting; that intention controls in any subsequent dispute." *Id.*

¶20 As an initial matter, we agree with the appellant that the commission file contains documents "related to" his removal. Even if the appellant is mistaken in his general assertion that documents relating to the suspension of his commission are also related to his removal, a question which we do not decide, the commission file includes at least one document, namely Woods's February 2, 2010 extension request, which refers directly to the removal proceedings. *See* CF, Tab 6, Martin Appendix D at 10. Thus, if the clean record provision of the settlement agreement applied to the commission file, we would conclude that the agency breached that provision.

¶21 However, the clean record provision specifies only that the agency was required to "remove any and all documents related to Appellant's removal from Federal service from the Appellant's OPF." IAF, Tab 5 at 3. This provision is analogous to the clean record provision in *Musick v. Department of Energy*, 339 F.3d 1365 (Fed. Cir. 2003), which provided that the agency would remove "all documentation relating to and culminating in Mr. Musick's removal . . . from his position from his [OPF]." *Id.* at 1367. The Federal Circuit found that "the only

reasonable reading of the [provision] is that the agency only obligated itself to remove pertinent material from Mr. Musick's OPF," and not from any other files it maintained. *Id*. at 1369.[4]

¶22 Similarly, in *Allen v. Department of Veterans Affairs*, 112 M.S.P.R. 659 (2009), *aff'd*, 420 F. App'x 980 (Fed. Cir. 2011), the Board considered a settlement agreement which provided that the agency was required to "remove any and all [removal-related information] from the appellant's [OPF]." *Id*., ¶ 11. The appellant in that case argued that the provision was ambiguous and that there was no meeting of the minds regarding the agency's maintenance of "secret" files containing removal-related documents. *Id*. However, the Board followed *Musick* and found that the agency was not required to expunge documents from agency-related files other than the appellant's OPF. *Id*., ¶¶ 11-13. The Federal Circuit affirmed in a nonprecedential decision, noting that if the appellant "[h]ad . . . desired that, as part of the agreement, the agency would purge all copies of his removal documents regardless of their location, he could have bargained for such a provision." *Allen*, 420 F. App'x at 986. In light of *Musick* and *Allen*, we conclude that, even if the appellant and his counsel were unaware of the

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[4] The court had previously held in *King* that a settlement agreement in which the agency agreed to "cancel the removal action . . . and remove all reference to the removal action from [the employee's] Official Personnel File," required the agency to correct not only its own files, but also those maintained by the Defense Finance and Accounting Service and the Office of Personnel Management. *King*, 130 F.3d at 1033-34. The *King* court reasoned that, because the mutual intent of the parties was to "purge the personnel records that are officially kept and thus might be available to a future employer," the agreement "applies to official personnel files where those files exist." *Id*. at 1034. The majority of the panel in *Musick* distinguished *King* on the grounds that Musick had not alleged that records of his removal were maintained *outside* the agency in violation of the settlement agreement. *Musick*, 330 F.3d at 1369-70. The majority did not explain why this distinction would make a difference, and it would seem the rationale of *King* should apply with equal or greater force to files maintained by the employing agency itself. We therefore tend to agree with the dissent in *Musick* that the majority opinion in that case contravenes the court's earlier panel decision in *King*. *See Musick*, 339 F.3d at 1372 (Judge Newman, dissenting). Nonetheless, we are presently bound by the majority's view that the decisions are reconcilable.

commission file during the settlement negotiations, the clean record provision of paragraph 4 does not apply to agency-maintained files apart from the OPF.

¶23 The appellant has argued that because the commission file contains personnel information, the commission file should be considered part of the OPF. CF, Tab 11 at 4. However, assuming arguendo that the appellant's commission-related documents are personnel records that should have been retained in his OPF, the fact remains that they were not. *Cf. Musick*, 339 F.3d at 1370 (remanding for a determination of whether an agency-submitted document entitled "Current Employment Record," which referred to the appellant's removal and "appears to be the type of document that would be retained in an OPF" was in fact retained in Musick's OPF in violation of the settlement agreement). The presence of those documents in a separate file, maintained by a separate office in a separate location, does not constitute a breach of the clean record provision.

The agency did not breach the nondisclosure provision of the agreement.

¶24 In paragraph 6 of the settlement agreement, the "Parties" agreed that "the terms and conditions of this Agreement, including the identity of the Parties, and the facts surrounding the agreement . . . are not to be disclosed to anyone," with the exception of certain permissible disclosures. IAF, Tab 5 at 4. The permissible disclosures are limited to the following: "disclosure of the contents of the Agreement when required by law; disclosures made by the Appellant to his immediate family members; and disclosures made by the Parties for the limited purpose of implementing or enforcing the terms of this Agreement." *Id.* The appellant contends the agency revealed "facts surrounding the agreement" when the Commission Office informed GAAR that his commission had been suspended, and this communication did not fall within the listed exceptions. CF, Tab 11 at 7.[5]

[5] Regardless of whether the suspension of the appellant's commission constitutes a fact surrounding the agreement, or whether the Commission Office was required by law to

¶25 The appellant observes that paragraph 6 prohibits unauthorized disclosure of facts surrounding the agreement to "anyone," PFR File, Tab 1 at 8, a term which read in isolation could be understood to include officials at GAAR. However, a settlement agreement must be interpreted as a whole. *Coker v. Department of Commerce*, 111 M.S.P.R. 523, ¶ 8, *aff'd*, 355 F. App'x 421 (Fed. Cir. 2009). The agreement states that it was entered into by the appellant and the "National Park Service." IAF, Tab 5. Thus, "[t]he Parties" to which the nondisclosure clause refers are the appellant and NPS, not CUGA or any other component of the agency. As the term "disclosure" is ordinarily understood, a party cannot disclose information to itself, because any information the party could disclose is already in its possession. *See* Black's Law Dictionary 477 (7th ed. 1999) (defining "disclosure" as "[t]he act or process of making known something that was previously unknown; a revelation of facts"). Absent clear indications to the contrary, we must infer that when "[t]he Parties" agreed that information about the agreement would not be disclosed to anyone, they committed themselves not to reveal such information to third parties.

¶26 It is true that the agreement does not preclude the appellant from seeking future employment with NPS. However, it does not follow that the CUGA officials involved in the settlement negotiations, who were aware of the suspension of the appellant's law enforcement commission and the reasons for the suspension, would have no concern about the appellant's potential employment as an NPS law enforcement officer in another part of the country. Indeed, it would have been extraordinary for these officials to commit NPS to hiding the

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report the matter to GAAR, the record reflects that Martin informed Pergiel of the existence of the appellant's underlying Board appeal. CF, Tab 6, Martin Appendix D at 2. The existence of the Board appeal is a fact surrounding the agreement that resolved that same appeal, and it does not appear that Martin's communication was required by law or was necessary for purposes of implementing or enforcing the agreement. For the reasons discussed below, however, we find that Martin's communication is not within the scope of the nondisclosure clause.

appellant's impairment from managers of other parks within the same agency. Such a peculiar obligation would require clear language imposing it, which is not present here.

¶27 If the appellant wished for the agreement to prohibit individuals or offices within NPS from sharing information concerning the agreement, he could have bargained for a provision specifically prohibiting such communications. For example, in *Sena v. Department of Defense*, 66 M.S.P.R. 458 (1995), the parties entered a settlement agreement which provided that "any dissemination or review of this Agreement within Agency shall be limited to the undersigned Agency legal representatives, civilian personnel, and [an agency official identified by name]." *Id*. at 462. The Board held that the agency breached this provision when it disseminated the agreement to the agency's own Office of Complaint Investigations and Equal Employment Opportunity Counseling Office, which it found to be outside the scope of "civilian personnel." *Id*. at 464-65. In the present case, by contrast, the nondisclosure provision does not specify that information about the settlement agreement be confined to any particular part of the agency.

¶28 The nondisclosure clause also stands in contrast to paragraph 3 of agreement, which identifies the specific agency official to whom the appellant was to submit his resignation, and provides that "CUGA and its staff" will not have access to the appellant's OPF. IAF, Tab 5 at 3. Similarly, paragraph 5 spells out the obligations of "CUGA personnel" should they receive an inquiry about the appellant from a prospective employer, and names the specific official to whom such inquiries are to be referred. *Id*. at 3-4. These provisions demonstrate that when the parties intended for a clause to apply to a specific agency official or component, they knew how to make the agreement reflect their intentions. The nondisclosure provision does not differentiate between NPS and any component or individual within the agency, and thus cannot be read to apply

to intra-agency communications such as the ones at issue here. We therefore conclude the agency did not breach the nondisclosure provision.[6]

¶29 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 review of this final decision by the United States Court of Appeals for the Federal Circuit. 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 the date of this order. *See* 5 U.S.C. § 7703(b)(1)(A) (as rev. eff. Dec. 27, 2012). 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

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[6] In *Markey v. Department of Transportation*, 110 M.S.P.R. 196 (2008), the Board considered a similar non-disclosure provision, in which "[t]he parties agree[d] that this settlement shall be kept confidential, and that this agreement's terms will not be disclosed by either party, except to the MSPB or to other government officials responsible for implementing the agreement." *Id.*, ¶ 8. The Board found that the agency breached this provision by revealing the existence and terms of the agreement to an agency equal employment opportunity (EEO) investigator. *Id.*, ¶¶ 9-10. Notably, however, the settlement agreement also provided that "nothing herein shall prevent Appellant from pursuing [his pending] EEO complaint," *id.*, ¶ 8, so the agency's disclosure of the agreement to the EEO investigator could have been viewed as interference with the EEO process in derogation of the bargain it made with the appellant. In any case, to the extent that *Markey* is inconsistent with the principle that a non-disclosure clause ordinarily does not prohibit communications within the agency that was a party to the agreement, *Markey* is hereby overruled.

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) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the United States Code, at our website, http://www.mspb.gov/appeals/uscode/htm. 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.