

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
DENVER FIELD OFFICE**

GABRIEL GONZALES,
Appellant,

DOCKET NUMBER
DE-844E-05-0140-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: March 23, 2005

(CSA8237556)

Dan Goodkin, Esquire, Law Firm of Steven E. Brown, Westlake Village,
California, for the appellant.

Evelyn K. Payne, Washington, D.C., for the agency.

BEFORE

Laura M. Albornoz
Administrative Judge

INITIAL DECISION

The appellant filed a timely appeal of the agency's December 13, 2004 final reconsideration decision that denied his application for disability retirement benefits under the Federal Employees' Retirement System (FERS). The Board generally has jurisdiction over these types of appeals pursuant to 5 C.F.R. § 841.308. For the reasons discussed below, the appeal is DISMISSED.

DISMISSAL

On March 22, 2005, the agency advised that it rescinded its December 13, 2004 reconsideration decision. *See* Initial Appeal, Tab 13. The agency's

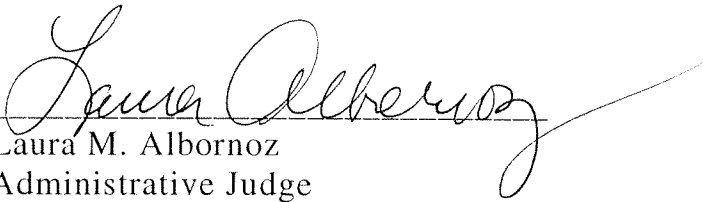
representative stated that the Office of Personnel Management (OPM) rescinded its reconsideration decision and granted the appellant the relief that he requested in his appeal, *i.e.*, FERS disability retirement benefits. The agency filed a motion to dismiss for lack of jurisdiction. The appellant had no objection to the agency's motion.

I find that there is no matter which remains within the Board's jurisdiction. Accordingly, I hereby grant the agency's motion and dismiss this appeal as moot. *See Tamayo v. Office of Personnel Management*, 56 M.S.P.R. 620, 622 (1993).

DECISION

The appeal is DISMISSED.

FOR THE BOARD:



Laura M. Albornoz
Administrative Judge

NOTICE TO APPELLANT *we*

This initial decision will become final on April 27, 2005, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if this initial decision is received by you more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.,
Washington, DC 20419

A petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition for review submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov>).

If you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 30 days after the date you actually receive the initial decision. The date of filing by mail is determined by the postmark date. The date of filing by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. *See* 5 C.F.R. § 1201.4(j).

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 60 calendar days after the date this initial decision becomes final.

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, <http://fedcir.gov/contents.html>. 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.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.