

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WESTERN REGIONAL OFFICE**

JUDY C. CALEGARI,  
Appellant,

DOCKET NUMBER  
SF-844E-05-0211-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: March 9, 2005

(CSA 8 231 646)

Steven E. Brown, Esquire, Westlake Village, California, for the appellant.

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

**BEFORE**

LuNell C. Anderson  
Administrative Judge

**INITIAL DECISION**

The appellant filed an appeal of the November 22, 2004, reconsideration decision of the Office of Personnel Management (OPM) disallowing her application for disability retirement benefits under the Federal Employees Retirement System. The Board has jurisdiction over the appeal pursuant to 5 U.S.C. §§ 8451(a)(2)(c) and 7701(a).

Following receipt of the appellant's appeal and upon receiving further evidence, the OPM advised the Board that it had rescinded its reconsideration decision and awarded the appellant the disability retirement benefits she was seeking. See Initial Appeal File, Tab 10.

With the rescission of the agency action, there is no longer a contestable matter providing a basis for Board appellate jurisdiction. *See Himmel v. Department of Justice*, 6 M.S.P.R. 484, 486 (1981). This matter is moot, however, only if the agency complies with its representation to the Board. *See Hatler v. Department of the Air Force*, 3 M.S.P.R. 322, 325 (1980).

### DECISION

The appeal is DISMISSED.

FOR THE BOARD:

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LuNell C. Anderson  
Administrative Judge

### NOTICE TO APPELLANT

This initial decision will become final on **April 13, 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.