

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

LISA E. BENNETT,  
Appellant,

DOCKET NUMBER  
DC-844E-06-0520-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: July 5, 2006

(CSA 8 277 120)

Daniel M. Goodkin, Esquire, Law Office of Steven E. Brown, Westlake  
Village, California, for the appellant.

Charlretta T. McNeill, Washington, D.C., for the agency.

**BEFORE**

Raphael Ben-Ami  
Administrative Judge

**INITIAL DECISION**

The appellant timely appealed the agency's reconsideration decision denying her application for disability retirement. The Board generally would have jurisdiction over such an appeal. *See* 5 C.F.R. § 841.308. However, for the following reasons, the appeal is DISMISSED.

By motion dated June 29, 2006, the Office of Personnel Management (OPM) advised that it had rescinded its April 5, 2006 reconsideration decision and was granting the appellant's application for disability retirement. *See* Appeal File, Tab 9. OPM consequently asked that this appeal be dismissed. I spoke by phone with the appellant's representative on June 30, 2006, and he voiced no objection to my dismissal of this appeal on that basis.

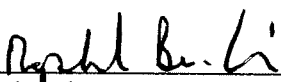
When OPM makes a determination affecting an individual's retirement rights or interests, the Board has jurisdiction only after OPM has issued a final, or reconsideration, decision. *See Parker v. Office of Personnel Management*, 74 M.S.P.R. 131, 133 (1997). If OPM completely rescinds a final decision, the Board no longer has jurisdiction over the appeal in which that decision is at issue. *See id.* By its June 29, 2006 motion, OPM completely rescinded its April 5, 2006 reconsideration decision and granted the appellant's application for disability retirement. That rescission divested the Board of jurisdiction over this appeal. *See id.* The appeal therefore must be dismissed.

The appellant should note, however, that even though the Board lacks jurisdiction over this appeal due to OPM's rescission of its reconsideration decision, she retains the right to file a new appeal to the Board from any future OPM final decision concerning her retirement benefits.

#### DECISION

The appeal is DISMISSED.

FOR THE BOARD:

  
\_\_\_\_\_  
Raphael Ben-Ami  
Administrative Judge

#### NOTICE TO APPELLANT

This initial decision will become final on AUG 9 2006, 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 you prove that you received this initial decision 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. You must establish the date on which you received it. 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. If you claim that you received this decision more than 5 days after its issuance, you have the burden to prove to the Board the date of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (*see* 5 C.F.R. Part 1201, Appendix 4) to support your claim. 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.