

ANALYSIS AND FINDINGS

Background

The undisputed evidence of record shows that the appellant, 43 years of age, became employed with the Federal Aviation Administration (FAA) on May 28, 1985, in the position of Air Traffic Control Specialist (ATCS), GS-2152-07. She was routinely promoted. On July 2, 1989, she reached the GS-2152-14 level in the Air Traffic Controller series. IAF, Tab 5, Subtab E (Individual Retirement Record).

The relevant position description (PD) of record, ATCS, AT-2152, provides that the appellant is entitled to enhanced annuity benefits because of the rigorous nature of her position, and she is also subject to drug and alcohol testing. IAF, Tab 5, Subtab B, p. 38. The PD describes the functions of her position, in pertinent part, as follows:

- (1) Provides radar control to aircraft arriving or departing the primary airport and adjacent airports, and to aircraft transiting the facility's airspace.
- (2) Operates radar and communication equipment to apply radar separation standards and vectoring procedures. Detects and adjusts malfunctions and interferences in the equipment.
- (3) Issues speed, altitude, and directional instructions to pilots to keep aircraft properly separated.
- (4) Provides air traffic advisory services to pilots including clearances to operate aircraft, weather and field conditions, and safety and traffic alerts.
- (5) Provides training to developmental air traffic controllers and other employees in the facility.

IAF, Tab 5, Subtab D, p. 19.

FAA Order 3930.3A and the Office of Personnel Management's (OPM) Manual X-118 (Qualification Standard for GS-2152 Series) require that ATCS

incumbents be examined and medically qualified on an annual basis because of the potential safety hazards involved in controlling air traffic. To be medically qualified for retention in the FAA, an ATCS must meet specific physical and mental requirements. IAF, Tab 14, Exhibit B, p. 5. With regard to any psychiatric illness, FAA Order 3930.3A, Appendix 1, paragraph G, states:

The applicant must have no established medical history or clinical diagnosis of any of the following: (a) a psychosis, (b) a neurosis, (c) any personality disorder or mental disorder that the Federal Air Surgeon determines clearly indicates a potential hazard to safety in the Air Traffic Control System. The determinations will be based on the medical case history (including past social, and occupational adjustment) supported by clinical psychologists and board certified psychiatrists, including psychological tests as may be required as part of a medical evaluation as the Federal Air Surgeon may prescribe.

IAF, Tab 14, Exhibit B, pp. 4-5.

Further, the FAA's Federal Air Surgeon has found that the above provisions prohibit an incumbent's use of, among other things, the prescription headache medications Fiorinal and Codeine, as well as the anti-depressant and anxiety medications Xanax (also known as Alprazolam), Prozac, Trazadone, and Risperdal, because those medications might limit the ATCS's judgment and ability to safely control air traffic. IAF, Tab 5, Subtab B, p. 10. FAA Order 3930.3A provides that those employees found to be not physically or emotionally qualified for air traffic control duties at any time will be subject to reassignment, disability retirement, or separation from the service.

Prior to mid-2004, the appellant's work performance was acceptable. IAF, Tab 5, Subtab D, p. 4. The record evidence shows that the appellant started treatment with Barbara Myrick, a licensed professional counselor, on May 6, 2004, and regularly after that date. *See* Hearing CD, Testimony of Barbara Myrick; IAF, Tab 14, Exhibit E. In May 2004, Myrick diagnosed the appellant

with Depressive Disorder. *Id.*, p. 6. In October 2004, Myrick referred the appellant to a physician for psychiatric medications. At that time, Myrick noted the appellant was experiencing passive thoughts of suicide, anxiety, depression, and feelings of helplessness and anger. IAF, Tab 14, Exhibit E, p. 20.

In December 2004 the appellant began experiencing daily headaches, anxiety, and inability to focus and concentrate. *See* Hearing CD, Testimony of L O . . . At that time Myrick diagnosed the appellant with Major Depression, recurring. Myrick described the appellant's symptoms as agitation, anxiety, inability to focus, difficulty sleeping, and inability to cope. Myrick opined that starting in December 2004, the appellant was unable to perform any job requiring long periods of concentration. *See* Hearing CD, Testimony of Myrick. Myrick testified the appellant's anxiety was so extreme she was having difficulty performing even everyday tasks. *Id.*

The appellant also sought treatment with Dr. George Landrum, her primary care physician, for her headaches and anxiety. Dr. Landrum prescribed the appellant Xanax for her symptoms of anxiety. IAF, Tab 5, Subtab B, pp. 29-30. She started taking Xanax in December 2004, and continues to take Xanax daily. *See* Hearing CD, Testimony of L O . . . IAF, Tab 5, Subtab B, pp. 31-32.

On February 28, 2005, Dr. David Dougherty, a board-certified neurologist, treated the appellant for her headaches. Dr. Dougherty's report listed the medications the appellant was taking as Fiorinal with Codeine, Trazadone 50 mg at nighttime, Xanax 0.5 mg at nighttime, Cymbalta 60 mg, and Excedrin Extra Strength. IAF, Tab 5, Subtab B, pp. 5-6. He found she suffered from muscular contraction tension headaches, and he described her symptoms as "headache, neck and back pain, insomnia, anxiety, loss of balance, and loss of memory." Dr. Dougherty recommended an increase in her dosage of Xanax to twice daily. *Id.* Since August 2005, the appellant also has been prescribed Prozac, Ascomp with Codeine, and Trazadone. IAF, Tab 5, Subtab B, pp. 31-32. By August 2006, the

appellant was taking Xanax, Prozac, and Risperdal on a daily basis. IAF, Tab 5, Subtab B, p. 27.

On January 28, 2005, the FAA proposed the appellant's removal for negligence, failure to report an operational deviation and an operational error, failure to follow instructions given by a supervisor, and inappropriate behavior in the workplace. IAF, Tab 5, Subtab D, pp. 6-12. The removal noted that the agency had issued the appellant a letter of reprimand on August 25, 2003, for unauthorized absence from the workplace and falsification of government records; a letter of warning on December 16, 2003, for inappropriate and unprofessional conduct; and a three-day suspension on July 20, 2004, for inappropriate behavior. IAF, Tab 5, Subtab D, p. 11. On March 17, 2005, the FAA removed the appellant. IAF, Tabs 1 and 5, Subtab E, p. 1.

On March 10, 2006, the appellant filed an application for FERS disability retirement with OPM.¹ She claimed she was disabled due to chronic headaches, depression, and anxiety; she was unable to concentrate on the separation of air traffic; and she was taking prescribed medications that were prohibited in her position. IAF, Tab 14, Exhibit F. On December 11, 2006, OPM issued its final reconsideration decision, denying the appellant's application for FERS disability retirement on the basis that the appellant did not show her medical condition caused her performance deficiencies or her removal. IAF, Tab 1.

¹ The appellant's initial application for FERS disability retirement was incomplete. IAF, Tab 5, Subtab D, pp. 1-2. On May 22, 2006, OPM requested additional information to support the appellant's application. IAF, Tab 5, Subtab D, p. 13. On July 7, 2006, OPM notified the appellant that it would dismiss her application because it did not have the medical information required to make a determination concerning her disability retirement application. IAF, Tab 5, Subtab C. OPM did not dismiss her application, however, and on July 17, 2006, the appellant resubmitted her application, claiming chronic headaches, depression, and anxiety, and supplying additional medical information. IAF, Tab 14, Exhibit F.

Burden of Proof

The appellant bears the burden of establishing entitlement to a disability annuity by preponderant evidence. See 5 C.F.R. § 1201.56(a)(2); *Chavez v. Office of Personnel Management*, 6 M.S.P.R. 404, 417 (1981). To qualify for disability retirement under FERS, an employee must establish that: (1) she has completed 18 months of creditable civilian service under FERS; (2) while employed in a position subject to FERS, she became disabled because of a medical condition, resulting in a deficiency in performance, conduct, or attendance, or if there is no such deficiency, the disabling medical condition is incompatible with either useful and efficient service or retention in the position; (3) the disabling medical condition is expected to continue for at least one year from the date the application for disability retirement is filed; (4) accommodation of the disabling medical condition in the position held is unreasonable; and (5) she did not decline a reasonable offer of reassignment to a vacant position. See 5 U.S.C. § 8451; 5 C.F.R. § 844.103(a); *Gornto v. Office of Personnel Management*, 102 M.S.P.R. 153, 155, ¶5 (2006).

A determination regarding entitlement to disability retirement benefits must consider the following evidence: (1) objective clinical findings; (2) diagnoses and medical opinions; (3) subjective evidence of pain and disability; (4) evidence relating to the effect of the applicant's condition on her ability to perform in the grade or class of position last occupied; and (5) evidence that the applicant was not qualified for reassignment to a vacant position at the same grade or level as the position she last occupied. *Gornto*, 102 M.S.P.R. at 156; *Dunn v. Office of Personnel Management*, 60 M.S.P.R. 426, 432 (1994), *dismissed*, 91 F.3d 169 (Fed. Cir. 1996) (Table); *Hite v. Office of Personnel Management*, 48 M.S.P.R. 27, 32 (1991); *Chavez*, 6 M.S.P.R. at 421. Objective medical evidence is only one of several factors to be considered, and it includes the results of observations during physical examination, as well as the results of

laboratory and clinical tests. *Carter v. Office of Personnel Management*, 64 M.S.P.R. 619, 625 (1994); *Hite*, 48 M.S.P.R. at 32; *Chavez*, 6 M.S.P.R. at 419-22. The appellant is not entitled to a *Bruner* presumption of disability.

Under the so-called *Bruner* presumption, the Board has held that where the employing agency removed the appellant for inability to perform the duties of her position for medical reasons, the removal itself constitutes prima facie evidence that the appellant is entitled to disability retirement benefits. See *Kibble v. Office of Personnel Management*, 80 M.S.P.R. 62, 66 (1998) (citing *Bruner v. Office of Personnel Management*, 996 F.2d 290 (Fed. Cir. 1993)). Based upon the *Bruner* presumption, the burden then shifts to OPM to produce evidence from which a reasonable fact finder could conclude that the appellant did not qualify for disability retirement. *Id.*, citing *Trevan v. Office of Personnel Management*, 69 F.3d 520, 526 (Fed. Cir. 1995). If OPM meets its burden of production, the Board must then consider the totality of the evidence in deciding the disability issue; the appellant retains the burden of persuasion at all times to establish her entitlement to disability retirement. *Id.*

Here, I find the appellant is not entitled to the *Bruner* presumption, as she was not removed for inability to perform the duties of her position for medical reasons. As noted above, the appellant was removed from the FAA based on negligence and misconduct, not because the FAA medically disqualified her. IAF, Tab 5, Subtab D, pp. 6-12. As such, I find that the appellant's removal does not entitle her to the presumption of disability under *Bruner*. *Id.*

The preponderant evidence establishes that the appellant is disabled under the statute from performing useful and efficient service and she cannot be accommodated or reassigned at the same grade and pay.

The agency is required to grant a FERS application for disability retirement to an employee only if the employee is unable, because of disease or injury, to render useful and efficient service in her position and is not qualified for reassignment to a vacant position at the same grade and pay. *Fisher v. Office of*

Personnel Management, 85 M.S.P.R. 30, 33 (1999). In *Fisher*, the Board noted, and it is well settled, that absences alone are insufficient to show that an employee suffers from a disabling condition. See also *Barbagallo v. Office of Personnel Management*, 83 M.S.P.R. 557, 561-62 (1999), citing *Wilkey-Marzin v. Office of Personnel Management*, 82 M.S.P.R. 200 (1999). Compare *Bell v. Office of Personnel Management*, 87 M.S.P.R. 1 (2000) (where the Board found that job-related stress resulting in physical and mental impairments that have been shown to prevent performance of specific duties can warrant disability retirement benefits). In *Marshall v. Office of Personnel Management*, 90 M.S.P.R. 561, ¶¶ 28-30 (2002), the Board noted that personality disorders and depressive disorders which are symptoms of job-related stress can be disabling under the statute when they are so severe as to prevent the employee from performing his or her essential duties.

An employee's entitlement to disability retirement, however, does not always turn on finely tuned correlations between particular medical impairments and specific job requirements. *Treziok v. Office of Personnel Management*, 89 M.S.P.R. 361, ¶ 12 (2001); *Mullins-Howard v. Office of Personnel Management*, 71 M.S.P.R. 619, 627 (1996), distinguished by *Morton v. Office of Personnel Management*, 88 M.S.P.R. 691, 696 (2001). Specifically, where the Board is presented with the position description and with medical evidence that unambiguously and without contradiction indicates that the appellant cannot perform the duties or meet the requirements of the position, the Board may link the medical evidence to the job duties and requirements and find that the appellant is entitled to disability retirement. *Id.* In such circumstances, the Board may make this finding absent reference in the medical evidence to specific job duties or requirements. *Treziok*, 89 M.S.P.R. at 361, ¶ 12, citing *Bynum v. Office of Personnel Management*, 89 M.S.P.R. 1, 7 (2001).

Here, the undisputed medical evidence shows unambiguously and without contradiction that the appellant cannot perform the duties or meet the

requirements of the ATCS position she held. Based on the medical evidence presented, I find that both OPM and FAA regulations medically disqualified the appellant from performing air traffic control duties based on her medication regime, including Xanax, Fiorinal with Codeine, Prozac, and Trazadone. *See O'Brien v. Office of Personnel Management*, 20 M.S.P.R. 395, 398 (1984) (even where the FAA did not medically disqualify the appellant, an ATCS, the medical evidence showed his diagnosis of hypertension rendered him medically disqualified under OPM and FAA regulations); *Harpole v. Office of Personnel Management*, 98 M.S.P.R. 232 (2005) (the appellant's loss of a job qualification or credential for medical reasons justifies the award of disability retirement). As noted above, FAA Order 3930.3A (Appendix I, Medical Qualifications Standards) and OPM's Manual X-118 (Qualification Standard for GS-2152 Series) require that an ATCS be medically qualified on an annual basis. An ATCS cannot be medically qualified if he or she is using prescription medications such as Xanax, Fiorinal with Codeine, Prozac, and Trazadone, because those medications might limit the ATCS's judgment and ability to safely control air traffic. IAF, Tab 5, Subtab B, p. 10.

The appellant's testimony, supported by the testimony of her licensed professional counselor, the medical report issued by Dr. Dougherty, and her prescription records, show that by December 2004 the appellant was taking the medication Xanax, and by February 2005, she was also taking Fiorinal with Codeine and other FAA-proscribed anti-depression medications. She therefore was not medically qualified to perform the duties of her ATCS position. *See O'Brien*, 20 M.S.P.R. at 398. That the FAA had not examined her, and medically disqualified her, is not dispositive. *See Id.*, p. 398, n.2 (FAA's medical certificate finding the appellant medically qualified was entitled to limited weight in light of evidence that his blood pressure exceeded the limit permitted by FAA regulations and he was taking an FAA-proscribed medication).

I have considered the fact that the appellant did not apply for disability retirement until after being removed for negligence, failure to follow instructions, and inappropriate behavior. *See Stevenson v. Office of Personnel Management*, 103 M.S.P.R. 481, 487 (2006) (removal for misconduct is a relevant factor and detracts from the force of an application for disability retirement). However, under the unique circumstances presented in this appeal, where it is undisputed that prior to the appellant's removal, she was taking medically disqualifying prescription medications Xanax and Fiorinal with Codeine, I find that her removal for misconduct does not detract from her application for disability retirement. Further, it is likely that the appellant's mental illness, which was marked by difficulty in her relationships with others and inability to concentrate, was a factor in her operational errors and inappropriate behavior in the workplace, resulting in her removal. *See* IAF, Tab 5, Subtab D, pp. 6-12, and Tab 14, Exhibit E.

Moreover, the Board has recognized the need for mental stability in certain positions. *See Thieman v. Office of Personnel Management*, 78 M.S.P.R. 113, 120-21 (1998), *citing Bridges v. Office of Personnel Management*, 21 M.S.P.R. 716, 719 n.4 (1984) (the need for a criminal investigator to be mentally stable is a factor which may be considered in evaluating qualifications for disability retirement). Here, I find that the FAA is a unique employer in the Federal service. Of paramount importance in performing as an ATCS for the FAA is public safety, *i.e.*, competency in controlling air traffic in the air and on the ground. The position of ATCS is undisputedly one involving high levels of stress and anxiety. Further, performance and behavioral deficiencies could well cause a disaster involving loss of life and property. Therefore, to the extent OPM argues that the appellant, who has a diagnosis showing a bona fide mental condition, *i.e.*, Depressive Disorder, and who has been prescribed Xanax, Prozac, and Fiorinal with Codeine to treat that condition, must show an actual deficiency in her performance as an ATCS, I find its argument specious. Her diagnosis in May

2004, and her use of disqualifying prescription medications starting in December 2004, occurred prior to her March 17, 2005, removal.

Further, the appellant's medical providers described her ongoing symptoms of agitation, anxiety, inability to focus, difficulty sleeping, inability to cope, inability to concentrate for long periods of time, and difficulty performing even simple tasks. Those symptoms are inconsistent with the duties and responsibilities of an ATCS. IAF, Tab 14, Exhibit A. Additionally, Xanax is used to treat anxiety disorders and panic attacks by decreasing abnormal excitement in the brain, causing potential side effects including drowsiness, light headedness, tiredness, and dizziness. IAF, Tab 14, Exhibit C. I find that the FAA was precluded from returning the appellant to work in her position of record with diagnoses, symptoms, and prescription medications, which in and of themselves, prevented her from performing as an ATCS pursuant to FAA Order 3930.3A and OPM's own Manual X-118.

OPM's regulations require that the disabling medical condition be expected to continue for at least one year from the date the application is filed and that accommodation of the condition in the appellant's position be unreasonable. *Sedor v. Office of Personnel Management*, 48 M.S.P.R. 42, 47 (1991), *aff'd*, 950 F.2d 730 (Fed. Cir. 1991). I find that the appellant has shown, by preponderant evidence, that her condition has lasted for a period of more than one year, beginning in at least December 2004, and continuing to the present. The appellant has also shown that accommodation in her position of record is unreasonable and an undue burden on the FAA given its mission. In a report dated August 22, 2006, Dr. David Jarmon confirmed the diagnosis of Depressive Disorder, and listed the appellant's medications as Prozac for the depression, Xanax for her anxiety and sleep disturbance, and Risperdal to control her anger and mood. IAF, Tab 5, Subtab B, p. 27. Dr. Jarmon noted the appellant was able to work in non-stressful jobs, such as her current part-time job as a banquet server. *Id.* Moreover, all three of the named medications are disqualifying under

FAA and OPM regulations, as noted above. IAF, Tab 5, Subtab B, p. 10. Under these circumstances, I find that the appellant's medical condition renders her unsuitable for retention in the position of ATCS with the FAA. Accordingly, the totality of the evidence, cited above, supports a finding that the appellant is disabled under FERS from performing useful and efficient service as an ATCS. *Yencho v. Office of Personnel Management*, 20 M.S.P.R. 483, 485 (1984); *O'Brien*, 20 M.S.P.R. at 398.

Finally, an employee shall not be eligible for disability retirement under FERS if the employee has declined a reasonable offer of reassignment to a vacant position in the employee's agency for which the employee is qualified. The position must be at the same grade (or pay level) as the employee's most recent grade (or pay level) or higher, within the employee's commuting area, and one in which the employee would be able to render useful and efficient service. *See* 5 U.S.C. § 8451(a)(2)(A); 5 C.F.R. § 844.103; *see also* *Bracey v. Office of Personnel Management*, 236 F.3d 1356, 1361 (Fed. Cir. 2001) (holding under the Civil Service Retirement System (CSRS), that a light duty assignment did not constitute a "vacant position" within the meaning of 5 U.S.C. § 8337(a) where the position was not formally classified or graded). *Bracey* applies equally to disability retirement applications under FERS. *See* *Brickers v. Office of Personnel Management*, 88 M.S.P.R. 669, 672 (2001); *Marino v. Office of Personnel Management*, 243 F.3d 1375, 1377 (Fed. Cir. 2001).

In her application for disability retirement, the appellant averred that she had requested the FAA transfer her to another position at her facility or to another local facility, but the FAA refused to grant her request. IAF, Tab 14, Exhibit F. In a Form 3112B, Supervisor's Statement, dated May 15, 2006, the appellant's former supervisor reported that the appellant's performance and conduct were unsatisfactory and that she had been removed. Without further explanation, the supervisor noted that the FAA had made no efforts to accommodate the appellant. IAF, Tab 5, Subtab D, pp. 4-5.

I find there was no accommodation that would have allowed the appellant to continue in her highly specialized and highly graded position, or any other position at her same grade at the agency, given her diagnosis and medication regime. While the FAA might have offered the appellant details or a temporary light duty position, I find that such positions are not acceptable vacant assignments under *Bracey*. See *Hussey v. Office of Personnel Management*, 102 M.S.P.R. 324, 329, ¶ 13 (2006); *Bell v. Office of Personnel Management*, 99 M.S.P.R. 133, ¶ 15 (2005). Because the agency never offered the appellant another position or any accommodation, I find that the appellant has not declined a reasonable offer of reassignment to a vacant position in her agency for which she is qualified, which is at the same grade or higher, within her commuting area, and in which she would be able to render useful and efficient service.

The appellant has demonstrated by preponderant evidence that she: (1) completed 18 months of service under FERS; (2) is unable, because of disease or injury, to render useful and efficient service in her ATCS position; and (3) has not declined an offer of reassignment. Accordingly, I find that she has met the criteria set forth in 5 U.S.C. § 8451, and she is entitled to a disability retirement annuity.

DECISION

The agency's reconsideration decision is REVERSED.

ORDER

The agency is ORDERED to approve the appellant's application for disability retirement retroactive to her last day in pay. This action must be accomplished no later than 20 calendar days after the date this initial decision becomes final.

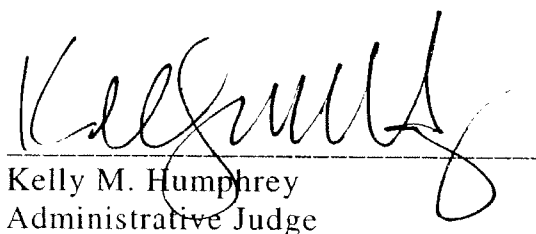
The agency is further ORDERED to inform appellant in writing of all actions taken to comply with the Board's Order and the date on which it believes

it has fully complied. If not notified, appellant should ask the agency about its efforts to comply.

INTERIM RELIEF

Although appellant is the prevailing party, I have determined not to order interim relief pursuant to 5 U.S.C. § 7701(b)(2)(A).

FOR THE BOARD:


Kelly M. Humphrey
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **May 21, 2007**, 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.

ENFORCEMENT

If, after the agency has informed you that it has fully complied with this decision, you believe that there has not been full compliance, you may ask the Board to enforce its decision by filing a petition for enforcement with this office, describing specifically the reasons why you believe there is noncompliance. Your petition must include the date and results of any communications regarding compliance, and a statement showing that a copy of the petition was either mailed or hand-delivered to the agency.

Any petition for enforcement must be filed no more than 30 days after the date of service of the agency's notice that it has complied with the decision. If you believe that your petition is filed late, you should include a statement and

evidence showing good cause for the delay and a request for an extension of time for filing.

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.