

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

RILEY JACKSON,)	
)	
Appellant,)	Docket No. DE07528210197
)	
V.)	DATE: <u> JUN 27 1986 </u>
)	
VETERANS ADMINISTRATION,)	
)	
Agency.)	
)	

BEFORE

Maria L. Johnson, Acting Chairman
Dennis M. Devaney, Member

OPINION AND ORDER

By letter received March 31, 1986, the agency requested clarification of the Board's Order dated March 10, 1986, insofar as the Order required the agency in part "to cancel appellant's removal [and] to substitute in its place a demotion to a non-supervisory position at the next lowest [sic] grade . . . " The agency asserts that a non-supervisory position for which appellant is qualified cannot be at the next lower grade level because such grade would yet be supervisory and, therefore, in conflict with the Order's requirement that the appellant be demoted to a non-supervisory position. The agency questions whether it is required to create a position to comply with the referenced Order.

In response to the agency request for clarification, appellant seeks an amended Order to reinstate him in a non-supervisory position at the Grade Level of WS-1 or its equivalent, or, in the alternative, to reinstate him to a Grade Level of not less than WL-5 or its equivalent in a non-supervisory position in the field of Animal Care.

Having considered the request for clarification, together with the appellant's response, the Board GRANTS the request for clarification and MODIFIES the Opinion and Order of March 10, 1986, as follows.

The Board finds that the agency should not be burdened by having to create a job for which no need exists for the purpose of accommodating a disciplinary demotion. The appellant's abuse of his supervisory position requires first and foremost that he be reassigned from supervisory duties until such time as he may be considered fully rehabilitated. An absence of vacancies at the equivalent of the grade next lower to appellant's WS-2 should not inure to the agency's detriment such that the agency is required to create a position for which no need exists. To hold otherwise would be inconsistent with the intent of Congress that "[t]he Federal work force should be used efficiently and effectively." 5 U.S.C. § 2301(b)(5). Appellant's rights are adequately protected by affording him an opportunity for placement in the first non-supervisory vacancy, at the

equivalent of WS-1,^{1/} which the agency elects to fill and for which appellant is qualified or could become qualified through education or training without undue interruption.

The agency is therefore ORDERED to cancel appellant's removal, to substitute in its place a demotion to a non-supervisory position at the equivalent of WS-1, for which appellant is qualified or could become qualified without undue interruption of the agency's mission,^{2/} and to award appellant back pay and other benefits for the appropriate time period under 5 C.F.R. § 550.805. In the event an equivalent position does not presently exist for which appellant is qualified or could become qualified through education and training without undue interruption of the agency's mission, the agency is ORDERED to place appellant in the highest^{3/} available non-supervisory position for which he is presently qualified until such time as an equivalent position becomes vacant and which the agency elects to fill. The agency is further ORDERED to provide appellant timely notice of any such equivalent-position vacancy

^{1/} The grade shall not exceed WG-10 or WL-7, which are the functional equivalents to WS-1, as indicated by a comparison of the current hourly wage rates for WS-1 (\$10.80 to \$12.59) with the hourly wage rates for WG-10 (\$10.78 to \$12.56) and WL-7 (\$10.66 to \$12.54). Regular and Special Production Facilitating Wage Rates Schedule, Federal Wage System, Wage Area - Denver Colorado, issued by the Veterans Administration May 31, 1985, effective June 23, 1985. (Exhibit B to Appellant's Response to Agency's Request for Clarification).

^{2/} A training period of up to ninety days would not be considered an undue interruption of the agency's mission in this case.

^{3/} The grade for this temporary placement shall not exceed the equivalent of a WS-1. See note 1, *supra*.

which the agency elects to fill. The particular position to which appellant is to be assigned shall be at the considered discretion of the agency^{4/} to the extent consistent with this Order.

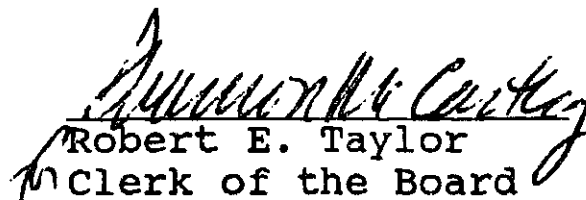
Proof of compliance with this Order shall be submitted by the agency to the Office of the Clerk of the Board within twenty days of the date of issuance of this Order. Any petition for enforcement of this Order shall be made to the Denver Regional Office of the Board in accordance with 5 C.F.R. § 1201.181(a). This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R § 1201.113(c).

The appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review, if the court has jurisdiction, of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C., 20439.

^{4/} In its request for clarification, the agency states that appellant is qualified for work in the agency's animal care facility. If placed in that unit, the agency notes he would be supervised by the employee whose charges led to his demotion. This Order shall not be considered as prohibiting such an assignment.

The petition for judicial review must be received by the court no later than thirty days after the appellant's receipt of this Order.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board