

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
DALLAS FIELD OFFICE

SARA E. REED,  
Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,  
Agency.

DOCKET NUMBER  
DA-0752-03-0137-I-1

DATE: December 12, 2002

ACKNOWLEDGMENT ORDER

This office has received appellant's appeal. A copy of the appeal is being sent to the agency with this Order. I am the administrative judge assigned to this appeal.

I ORDER the parties to follow the procedures set out in the separate notices below. If any party fails to follow my orders or the Board's regulations, I may impose sanctions pursuant to 5 C.F.R. § 1201.43. If either party has a question regarding any aspect of the case processing instructions set forth in this order, he or she may seek clarification from me at the phone number listed at the end of this order.

NOTICE TO APPELLANT

INTRODUCTION

If your appeal is timely filed, and within the Board's jurisdiction, you have the right to a hearing on the merits of your case. If you requested a hearing, I will schedule a hearing for you. If you did not request a hearing, you have 10 days from the date of this Order to file a written request for one. If you

If you agree to settle your appeal, and you enter the agreement into the record, then the Board will retain the authority to enforce its terms. However, if you do not enter the agreement into the record, the Board will have no authority to enforce the agreement.

#### DISCOVERY

Discovery is the procedure you may use to learn of any facts, documents, or other evidence the agency has that may be helpful to your case. If you wish to engage in discovery, initial requests or motions must be filed within 25 days of the date of this Order. Unless you are filing a motion to compel, you must not submit your discovery requests and responses to the Board. If you do, they will be rejected and returned to you. The procedures used for discovery are at 5 C.F.R. §§ 1201.71-.85.

It is the policy of the Board to decide an appeal within 120 days of receipt. The Board expects all parties to assist in the expeditious processing of this case by honoring requests for relevant documents and producing material witnesses without additional Board intervention.

#### RESPONSE TO MOTIONS

You may file a response or objection to any motion filed by the agency. Unless otherwise specified by me or the Board's regulations, your response or objection must be filed with this office and served upon the agency within 10 days of the date that appears on the agency's certificate of service. I will reject any untimely response or objection unless you show good cause for the delay in filing.

#### GENERAL INSTRUCTIONS

Pursuant to 5 C.F.R. § 1201.26, all submissions filed with the Board must be:

- (1) Legible and on 8 1/2- by 11-inch paper;
- (2) Served upon (personally delivered, mailed, or faxed) opposing parties and their representatives;
- (3) Filed by the date set by me or the Board's regulations. The date of filing is the date your submission is postmarked, faxed, or the date of receipt if you personally deliver it to the Board's regional office. See 5 C.F.R. § 1201.26; and
- (4) Accompanied by a certificate of service stating (a) the names and addresses of the parties served; (b) whether service was by mail, fax, or by personal delivery; and (c) the date of service.

A certificate of service is attached to this Order and lists the names and addresses of the parties who must be served in this case. The attached certificate of service constitutes a model which you may follow in fashioning your own certificate of service. The Board may reject a submission that does not have a certificate of service.

Extensions of filing dates will only be granted if requested in writing and if good cause is shown. A continuance of a hearing date will be granted only if requested in writing and if you are able to show extraordinary circumstances.

#### REGULATIONS

For more detailed information on these procedures, you should refer to the Board's regulations in 5 C.F.R. Parts 1201 and 1209. The regulations are available for review in agency personnel offices, law libraries, and some large public libraries.

#### NOTICE TO AGENCY/INTERVENOR

##### AGENCY RESPONSE

I ORDER the agency to read, comply with, and/or respond to any and all portions of the "Notice to Appellant" which are applicable to it. I also ORDER the agency to serve me,

appellant, and appellant's representative (if applicable), with the material listed on the enclosed schedule and any other information required by 5 C.F.R. § 1201.25 within 20 days of the date of this Order.

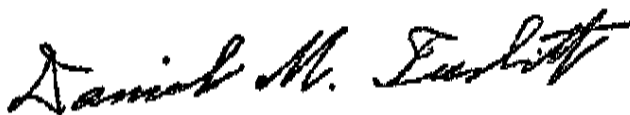
DESIGNATION OF REPRESENTATIVE

The agency must designate a representative. I ORDER the agency to file the name, address, and telephone number of the person authorized to act for the agency on the enclosed "Designation of Representative" form within 20 days of the date of this Order. The representative must have authority to settle this appeal or be able to directly reach someone with that authority on short notice.

SETTLEMENT

I DIRECT the agency to contact appellant within 35 days of the date of this Order to define the issues, agree to stipulations, and discuss the possibility of settlement. I am available to assist in the discussions. The agency must discuss concrete, specific settlement proposals with appellant unless either party concludes in good faith that no compromise of any kind is possible. The agency must also be prepared to discuss with me the status of its settlement discussions.

FOR THE BOARD:

  
 Daniel Madden Turbitt  
 Administrative Judge  
 Merit Systems Protection Board  
 Dallas Field Office  
 1100 Commerce Street, Room 6F20  
 Dallas, TX 75242  
 Telephone No. (214) 767-0555  
 FAX No. (214) 767-0102  
 V/TDD No. (800) 877-8339

Enclosures

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent by regular mail, unless otherwise indicated below, this day to each of the following:

Appellant

Sara E. Reed  
3001 Pheasant Run Rd.  
Apt. 192  
Norman, OK 73072

Appellant's Representative(s)

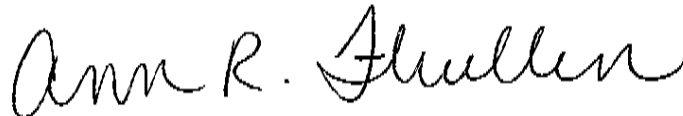
Mitchell Edmondson  
AFGE  
Social Security Administration  
2615 Villa Prom  
Oklahoma City, OK 73107

Agency Personnel Office

Earl Melebeck  
Assistant Regional Commissioner  
Management and Operations Support  
Social Security Administration  
1301 Young Street  
Dallas, TX 75202-4324

December 12, 2002

\_\_\_\_\_  
(Date)



\_\_\_\_\_  
Ann R. Fluellen  
Paralegal Specialist

MSPB SCHEDULE 752

REQUIREMENTS FOR AGENCY FILE

General Information

All evidence submitted will be disclosed to the parties. Therefore, no classified document can be received in evidence unless accompanied by a statement that it is declassified and that full disclosure is permitted.

Materials Required to Be Tabbed and Filed

1. A narrative response to the appeal and all material issues raised by appellant.

[Indicate whether appellant is an "employee" as defined by 5 U.S.C. §7511(a)(1) or 39 U.S.C §1005(a)(4)(A)(ii). If appellant was barred from active duty during the notice period, explain the reasons and authority for that action.]

2. With the exception of Postal Service cases, a statement whether appellant is covered by a collective bargaining agreement and whether that agreement covers the action being appealed.

[If so, provide a copy of the applicable provision(s) and state whether appellant has grieved the action. If appellant has, submit a copy of the grievance and indicate the date it was filed.]

3. A statement whether appellant has filed a formal complaint of discrimination on the action being appealed.

[If so, indicate its current status, provide a copy of the complaint, indicate the date the complaint was filed, and the agency's decision, if any.]

4. Copies of all other documents which are relevant and material to this appeal.

[Provide copies of the notice of proposed action; appellant's written reply and summary of the oral reply, if any; the decision letter; the SF-50 (or other notification of personnel action) documenting the action; evidence supporting the action; and documentary evidence of any past record relied upon in taking the action.]

Instructions for Assembly of the Agency File

The agency's file must be organized as described below. Failure to do so will result in rejection of the submission.

All documents submitted must be bound at the top (not the side) with a two-hole fastening device. The holes must be 2 and 3/4 inches apart. A cover is not required.

Documents in item 4 must be arranged by date with the most recent on top and the oldest on bottom. Documents must be individually tabbed using the letters of the alphabet, e.g., 4a, 4b, 4c, etc.

A Table of Contents is placed on top of the tabbed documents. Use the following headings for the Table:

<u>Location</u>	<u>Date</u>	<u>Document Description</u>	<u>Source</u>
[The "location" is the tab number; the "date" is the date of the document; the "document description" fully identifies the document; and the "source" indicates the individual or office who authored or otherwise produced the document.]			

A completed Designation of Agency Representative form must be placed on top of the Table. A transmittal letter, identifying the case by name and docket number, must be placed on top of the Designation.

A Certificate of Service must be inserted on the bottom of the tabbed file.

## PRIVACY ACT STATEMENT

During the course of processing the appeal which you or your representative has filed, it is necessary to collect personal information that is relevant and necessary to reaching a decision in your case. The Merit Systems Protection Board collects this information in order to process appeals under one or more of the following authorities: Title 5 U.S.C. §§ 1302, 1221, 3301, 3302, 4302, 5115, 5338, 5345, 5346, 7151, 7154, 7301, 7501, 7512, 7701, and 8347; as well as Executive Orders 9803, 11222, 11478, 11491, and 11787. Since your appeal is a voluntary action, you are not required to provide any personal information to the Merit Systems Protection Board in connection with your appeal. However, failure to provide all information essential to reaching a decision in your case could result in the cancellation of your appeal.

The appeal decisions of the Merit Systems Protection Board are final administrative decisions and as such are available to the public under the provisions of the Freedom of Information Act. Some information about the appeal is used in depersonalized form as a data base for program statistics. If there is a need to disclose information from your appeal file for reasons other than these and those cited in the Privacy Act (Title 5, United States Code, 552(a)(b)), your prior written consent will be solicited.

**MERIT SYSTEMS PROTECTION BOARD**  
**DESIGNATION OF APPELLANT'S REPRESENTATIVE**

Appellant: Sara E. Reed  
Agency: Social Security Administration  
Docket Number: DA-0752-03-0137-I-1  
Judge: Daniel Madden Turbitt

You are entitled to be represented in this appeal by an individual or organization of your choice, unless your choice results in a conflict of interest for the person or organization chosen. The Board does not designate a representative for you. You must make all arrangements for a representative. When you choose a representative, you should make sure that he or she is able to proceed in your behalf. Continuances or extensions of time will normally not be granted because you delayed in seeking representation, because your representative cannot proceed in a timely manner, or because you wish to change representatives.

A representative may assist and counsel you in the preparation and presentation of your appeal and appear with you or for you at hearings or other proceedings before the Board. The representative has the authority to settle the appeal. Any limitation on this settlement authority must be filed in writing with the Board. When you designate a representative you give your consent to the Board to disclose all information concerning your appeal to the person or organization whom you designate. Representatives must be designated in writing. Failure to complete and return this form, or a similar written statement, will preclude your representative from participating in your case while it is pending before the Board.

I hereby designate the individual or organization named below to represent me in connection with my appeal to the Merit Systems Protection Board and to receive all information concerning my appeal from the Board and the other parties to the appeal. I recognize that I am still personally responsible for prosecuting my case in a timely manner. I understand that this designation may be cancelled by me or the individual or organization that I have designated and I am responsible for notifying the Board and other parties in writing of any change.

Name of Appellant's

Representative: \_\_\_\_\_

Office & FAX \_\_\_\_\_

Telephone Nos. \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City

State

Zip Code

\_\_\_\_\_  
Signature of Appellant:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Representative's Signature

\_\_\_\_\_  
(Date)

**THIS FORM MUST BE PRINTED OR TYPED, SIGNED, AND RETURNED TO THIS OFFICE. A COPY MUST BE SERVED ON THE AGENCY.**

Docket No : DA-0752-03-0137-I-1  
Participant Type : UNION REPRESENTATIVE

Mitchell Edmondson  
AFGE  
Social Security Administration  
2615 Villa Prom  
Oklahoma City, OK 73107

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD**

**NOTICE  
OF  
SUSPENDED APPEAL PROCEDURE**

Both the appellant and the agency are entitled to have this appeal adjudicated as quickly as possible, usually within 120 days (see 5 U.S.C. §7702(a)(1)). In some situations, however, the parties may conclude that they need more time than is routinely provided for discovery or settlement discussions. Therefore, should the agency and the appellant jointly agree that additional time is necessary to pursue discovery or settlement, additional time will be granted for a period up to 30-days and case processing will be **SUSPENDED**. An additional 30-day suspension will be granted prior to the end of the first 30-day period if the parties mutually request additional time. A unilateral request for additional time may be granted at the discretion of the judge.

A request that the adjudication of this appeal be suspended must be filed with the presiding administrative judge within 45 days of the date of this order (or within 7 days of the appellant's receipt of the agency file, whichever date is later). A request for an additional 30-days must be made on or before the fifth day before the end of the first 30-day suspension. An untimely request may be granted at the discretion of the administrative judge.

Should the parties contact the administrative judge during the period of suspension for assistance relative to discovery or settlement, and if the administrative judge's involvement is likely to be extensive, the administrative judge will notify the parties that it will be necessary to take the case off suspension and return it to standard processing.

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

SARA E. REED,  
Appellant,

DOCKET NUMBER  
DA-0752-03-0137-I-1

v.

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SOCIAL SECURITY ADMINISTRATION,  
Agency.

DATE: December 12, 2002

**ORDER**

*This appeal may be premature.*

The Board may not have jurisdiction to decide your appeal at this time. The record reflects that you may have filed a formal discrimination complaint with your agency, prior to the time you filed a Board appeal concerning the same matter. Title 29 C.F.R. § 1614.302(b) provides that an aggrieved person is entitled to initially file either a mixed case complaint with the agency or an appeal of the same matter with the Board, but not both. *See Williams v. Dep't of the Army*, 59 M.S.P.R. 477, 479 (1993). It is not clear whether you are intending at this time to proceed with your discrimination complaint before the agency or with your Board appeal. You are hereby **ORDERED** to inform the Board, in writing, whether you want to pursue your discrimination complaint with the agency or to pursue your Board appeal at this time. If you indicate that you are proceeding with your discrimination complaint before the agency, then this appeal will be dismissed as premature.<sup>1</sup>

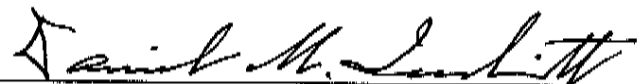
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<sup>1</sup> If the appellant chooses to proceed with his discrimination complaint before the agency, she should wait until the agency has issued a decision on her complaint,

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You, the appellant, have the burden of proving that the instant appeal is within the Board's jurisdiction and that the Board should grant you a hearing. 5 C.F.R. § 1201.56(a)(2). You, therefore, are **ORDERED** to submit factual evidence on these issues within 15 days of the date of this Order. This evidence must be received by the Board and the agency within 15 days from the date of this Order. The agency may also respond to the issues addressed in this jurisdictional order. That response must be received by the Board and the appellant within 15 days from the date of this Order. If a hearing on the jurisdictional issue is not requested or is unnecessary, the record will close on these matters 15 days from the date of this Order. No evidence on this issue which is received after that date will be accepted unless accompanied by information showing that it is new and material evidence which was not available before the record closed. If there is no jurisdiction or the appeal is premature, the appeal will be dismissed. If the Board has jurisdiction and the appeal is not premature, the appeal will be processed and a hearing will be scheduled if one has been requested.<sup>2</sup>

FOR THE BOARD:



Daniel Madden Turbitt  
Administrative Judge

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or until 120 calendar days have passed after she filed her discrimination complaint, to file her appeal with the Board.

<sup>2</sup> There is no statute that requires the Board to hold a hearing on the threshold issue of jurisdiction. See *Manning v. Merit Systems Protection Board*, 742 F.2d 1424, 1427-28 (Fed. Cir. 1984). However, if the appellant makes a nonfrivolous allegation that the Board has jurisdiction over this appeal, she is entitled to a hearing on the jurisdictional question. *Burgess v. Merit Systems Protection Board*, 758 F.2d 641, 643 (Fed. Cir. 1985). Nonfrivolous allegations of Board jurisdiction are allegations of facts which, if proven, could establish a *prima facie* case that the Board has jurisdiction over the matter at issue. *Ferdon v. United States Postal Service*, 60 M.S.P.R. 325, 329 (1994).



**NATIONAL COUNCIL OF SSA FIELD OPERATIONS LOCALS  
AFGE LOCAL 2505  
Representing ALL of Oklahoma**

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PO Box 700061  
Oklahoma City, OK 73107  
DATE: December 26, 2002

Attn: Daniel Madden Turbitt  
Administrative Judge  
Merit Systems Protection Board  
Dallas Field Office  
1100 Commerce Street Room 6F20  
Dallas, TX 75242

I recently received the Notice of Suspended Appeal Procedure concerning Sara E. Reed (Docket Number DA-0752-03-0137-I-1) I am writing to inform you the the Union is not representing Ms. Reed in this manner.

If I can be of further assistance, you may call me at (405) 605-3001 X3058.

Sincerely,



**Mitchell Edmondson  
DVP Local 2505  
PO Box 700061  
Oklahoma City, OK 73107**

Batch No. : DA-02346-2  
Docket No. : DA-0752-03-0137-I-1  
Participant Type : UNION REPRESENTATIVE

Mitchell Edmondson  
AFGE  
Social Security Administration  
2615 Villa Prom  
Oklahoma City, OK 73107

do not request a hearing, you waive your right to one. In that event, you and the agency will be given an opportunity to make written submissions before the record on your appeal closes.

#### DESIGNATION OF REPRESENTATIVE

You may name a representative. If you already have a representative, you must fill out the enclosed "Designation of Representative" form and file it with the Board and with the agency within 10 days of the date of this Order unless you have included your representative's name, address, telephone number, and signature in your appeal. If your representative has filed the appeal for you and you have not personally signed the appeal or submitted a signed "Designation of Representative" form, you also must file "Designation of Representative" form with the Board and with the agency within 10 days of the date of this Order. If you name a representative after receiving this Order, fill out the enclosed "Designation of Representative" form and file it with the Board and the agency **immediately** after obtaining your representative.

You must **immediately** notify the Board and the agency in writing of any changes in the name, address, or telephone number of your designated representative.

#### SETTLEMENT

I have directed the agency to contact you within 35 days of the date of this Order to define the issues, agree to stipulations, and discuss the possibility of settlement. I am available to assist in the discussions. You must discuss concrete, specific settlement proposals with the agency unless either party concludes in good faith that no compromise of any kind is possible. You must also be prepared to discuss with me the status of your settlement discussions.