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Description of document: Letters or other communications from the Office of Personnel Management (OPM) Director to Merit Systems Protection Board (MSPB) requesting reconsideration of an MSPB decision, 2010 - 2013

Requested date: 26-August-2013

Released date: 23-September-2013

Posted date: 28-September-2013

Source of document: Freedom of Information Act Request
Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419
[FOIA Web Portal](#)

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U.S. Merit Systems Protection Board

Office of the Clerk of the Board
1615 M Street, NW, 5th Floor
Washington, DC 20419

Phone: 202 653 7200, Fax: 202 653 7130, E-Mail: MSPB@MSPB.gov

Clerk of the Board

September 23, 2013

FOIA Tracking No: MSPB-OCB-2013-000246

This is in response to your Freedom of Information Act (FOIA) request dated August 26, 2013. You are requesting the following:

“ is requesting “letters or other communications from the OPM Director to MSPB requesting reconsideration of an MSPB decision, during the years, 2010, 2011, 2012, and 2013.”


Your request has been processed in accordance with the Merit Systems Protection Board (MSPB) regulation at 5 CFR Part 1204 that implements the FOIA.

We have conducted a thorough search of our records and found documents responsive to your request. Some information is withheld in accordance with exemption (b)(6) of FOIA, information that, if released, would constitute an unwarranted invasion of personal privacy.

Page 2

You have the right to appeal this determination. If you decide to do so, address your appeal to the Chairman, Merit Systems Protection Board, 1615 M Street, NW, Suite 500, Washington, DC 20419. Your appeal should be identified as a "FOIA Appeal" on both the letter and the envelope. It should include a copy of your original request, a copy of this letter, and your reasons for appealing this decision. The MSPB also accepts email and fax submissions at foia@mspb.gov and 202-653-7130, respectively. The MSPB must receive your appeal within 10 working days from the date of this letter.

Sincerely

A handwritten signature in black ink, appearing to read "D. R. Aaron", written over a horizontal line.

Darryl R. Aaron

Director, Information Services Team

Enclosures: Documents (16 Pages)

U.S. OFFICE OF PERSONNEL MANAGEMENT
PARTNERSHIP AND LABOR RELATIONS
1900 E STREET NW, #7H28,
WASHINGTON, DC 20415

FACSIMILE TRANSMITTAL SHEET

TO: MR. WILLIAM SPENCER FROM: PARTNERSHIP AND LABOR RELATIONS

COMPANY: DATE: 6/17/13

FAX NUMBER: (202) 653-7130 TOTAL NO. OF PAGES INCLUDING COVER: 3

PHONE NUMBER: (202) 653-7200 SENDER'S PHONE NUMBER: (202) 606-2930

RE: SENDER'S FAX NUMBER: (202) 606-2613

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

IN THE MATTER OF:

MILLER v. U.S. DEPARTMENT OF THE INTERIOR, DOCKET No. SF-0752-11-0766-R-1, May 13, 2013.

DIRECTOR'S REQUEST TO THE CLERK OF THE BOARD (1 page)

CERTIFICATE OF SERVICE (1 page)

RECEIVED ASFP
2013 JUN 17 PM 3:56
CLERK OF THE BOARD



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

JUN 17 2013

Mr. William Spencer
Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

Dear Mr. Spencer:

This is notice that the U.S. Office of Personnel Management is exercising its statutory right under 5 U.S.C. 7703(d) to request reconsideration of the Board's decisions in the case cited below. I am of the opinion that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on civil service law, rule, regulation, or policy directive.

Miller v. Department of the Interior, Docket No. SF-752-11-0766-R-1, May 13, 2013

I also request the administrative record in this case so that OPM's Office of the General Counsel can later address all pertinent legal issues. The record should be sent to the following address:

Mrs. Debra Buford
Manager, Employee Accountability
Partnership and Labor Relations
Employee Services
U.S. Office of Personnel Management
1900 E Street, N.W., Room 7H22
Washington, DC 20415

Copies of this letter have been served to the parties to this case as evidenced by the enclosed Certificate of Service.

Sincerely,

Elaine Kaplan
Acting Director

Enclosure

CERTIFICATE OF SERVICE

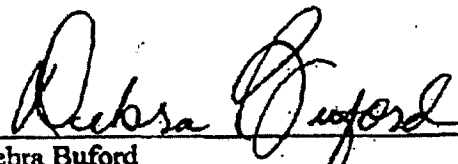
I certify that copies of a June 17, 2013, letter from Elaine Kaplan, Acting Director, Office of Personnel Management, to William Spencer, Clerk of the Board, Merit Systems Protection Agency, concerning the case of *Miller v. Department of Interior*, dated May 13, 2013, was sent today by facsimile and regular mail to:

Mr. William Spencer
Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street, N.W.
Washington, D.C. 20419

and by regular mail to:

Edward H. Passman, Esquire
Passman & Kaplan, P.C., Attorneys at Law
1828 L Street, N.W., Suite 600
Washington, D.C. 20036
Fax: 202-789-0101

Deborah S. Charette, Esquire
Assistant Solicitor
Branch of Personnel Litigation and Civil Rights
Division of General Law
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, N.W. 20240
Fax: 202-208-3230



Debra Buford
Manager, Employee Accountability
Partnership and Labor Relations
Employee Services
U.S. Office of Personnel Management
Room 7H22-8
1900 E Street, NW
Washington, DC 20415

4/17/13
Date

1900 E Street Northwest
Washington, DC 20415
202-606-1700
202-606-0082
www.opm.gov



Fax

To: William Spencer, Clerk of the Board **From:** Jessica Johnson, Agency Representative

Fax: 202-653-7130 **Pages:** 6 including cover sheet

Phone: 202-653-7200 **Date:** May 18, 2012

Re: Whittacre v. OPM **cc:**

- Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Attached is a letter and a motion for filing with the Clerk of the Board on behalf of the Director of OPM regarding the case of Daniel Lynn Whittacre v. Office of Personnel Management, DC-0845-11-0740-I-1.

RECEIVED MSPB
2012 MAY 18 PM 5:05
CLERK OF THE BOARD



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

MAY 18 2012

William D. Spencer
Clerk of the Board
Merit Systems Protection Board
1615 M Street, N.W.
Washington, DC 20419

Dear Mr. Spencer:

Attached please find OPM's pleadings in the case of Daniel-Lynn Whittacre v. Office of Personnel Management, DC-0845-11-0740-I-1.

Due to technical difficulties with the E-filing system, the Board's Information Technology Office instructed us to file the following documents via facsimile.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristine Prentice".

Kristine Prentice

for

Jessica S. Johnson

Agency Representative



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of the
General Counsel

May 18, 2012

Mr. William D. Spencer
Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

Dear Mr. Spencer:

This is to inform you that the Director of the Office of Personnel Management has determined that the Board's final decision of April 13, 2012, in the case of Daniel-Lynn Whittacre v. Office of Personnel Management, DC-0845-11-0740-I-1, is based on an erroneous interpretation of law and will have a substantial impact on civil service law and regulations. Accordingly, I am hereby seeking reconsideration of that decision in accordance with the Board's regulations at 5 C.F.R. §1201.119.

Please forward a copy of the administrative record in this case to Elaine Kaplan, General Counsel, Office of Personnel Management, Washington, D.C., 20415. We request a period of 40 days after receipt of the administrative record in which to file a brief in support of our petition for reconsideration. Twenty days is the standard deadline in which to file a brief after receipt of the administrative record, under 5 C.F.R. §1201.119(c). Therefore, a motion for extension of time to file the reconsideration brief is enclosed, in accordance with 5 C.F.R. §1201.55.

Sincerely,

Elaine Kaplan
General Counsel

Enclosures

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DANIEL-LYNN WHITTACRE)	DOCKET NUMBER
Appellant,)	DC-0845-11-0740-1-1
v.)	
OFFICE OF PERSONNEL MANAGEMENT,)	
Agency.)	

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE A BRIEF IN SUPPORT OF THE REQUEST OF THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT FOR RECONSIDERATION OF DECISION

Pursuant to 5 C.F.R. § 1201.55, the Office of Personnel Management (OPM) requests an extension of time of 20 days, in addition to the 20 days after service of a copy of the administrative record allowed pursuant to 5 C.F.R. § 1201.119(b), in which to file its brief in support of the request of the Director of OPM for reconsideration by the Merit Systems Protection Board (Board) of its April 13, 2012, decision in this appeal, 2012 MSPB 52, 118 M.S.P.R. 33, 2012 WL 1254789.

After a copy of the administrative record in this appeal is served upon OPM, OPM is required to file its brief within 20 days. 5 C.F.R. § 1201.119(b). OPM is required to file any "petition for reconsideration within 35 days after the date of service of the Board's final order." 5 C.F.R. § 1201.119(b). In this case, the final decision was issued on April 13, 2012 and OPM has until May 18, 2012 to file our petition for reconsideration with the Board. In the present case, if OPM files a petition for reconsideration on or before May 18, 2012, it is likely the Board would serve OPM with

a copy of the administrative record sometime during the week of May 21, 2012. OPM's brief would therefore be due in early June of 2012.

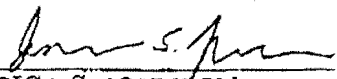
The undersigned representative for OPM will be on previously-scheduled travel and training, out of the office, from May 21 to May 29, 2012. May 28, 2012, is also a Federal holiday. In addition, OPM is considering soliciting comments or amicus briefs from other agencies. For these reasons, OPM requests a total period of 40 days after receipt of the administrative record in which to file a brief in support of our petition for reconsideration.

As required by the Board's regulations, at 5 C.F.R. § 1201.55(a), I have contacted the Appellant, Mr. Whittacre, to determine whether he objects to this motion. Mr. Whittacre is unrepresented by counsel and he advised me that he does object to any extensions of time.

Pursuant to 28 U.S.C § 1746 and 5 C.F.R. § 1201.114(e), I, Jessica S. Johnson, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 17, 2012.

Respectfully submitted,



JESSICA S. JOHNSON
AGENCY REPRESENTATIVE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing notice and enclosures, if any, were sent by regular mail this date to the following address:

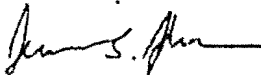
APPELLANT

Daniel-Lynn Whitacre

B6

May 18, 2012

Date



Jessica S. Johnson
Office of the General Counsel
Office of Personnel Management
1900 E Street, N.W., Room 7353
Washington, DC 20415



OFFICE OF THE GENERAL COUNSEL

**UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT**

1900 E Street, NW, Suite 7353
Washington, D.C. 20415-1300
Phone (202) 606-1700 Fax (202) 606-0082

FAX TRANSMITTAL

TO: Honorable William D. Spencer, Clerk of the Board
Office: U.S. Merit Systems Protection Board
Phone: (202) 653-7200
Fax: (202) 653-7130

FROM: Robert J. Girouard
Office: Office of the General Counsel
U.S. Office of Personnel Management
Phone: (202) 606-2389
Fax: (202) 606-0082

DATE: June 9, 2011

PAGES: 3 (including cover)

RECEIVED MSPB
2011 JUN -9 PM 3:20
CLERK OF THE BOARD

The U.S. Office of Personnel Management hereby encloses its request for reconsideration of the U.S. Merit Systems Protection Board's May 9, 2011 Opinion and Order in *James A. Scott v. Office of Personnel Management*, Docket No. CH-0731-09-0578-1-1.



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Honorable William D. Spencer
Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

JUN 09 2011

Dear Mr. Spencer:

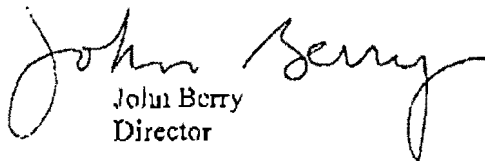
This is notice that the U.S. Office of Personnel Management (OPM) is exercising its statutory right under 5 U.S.C. § 7703(d) to request reconsideration of the Board's decision in the case cited below. I am of the opinion that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

James A. Scott v. Office of Personnel Management, Docket No. CH-0731-09-0578-I-1, dated May 9, 2011.

I am requesting the administrative records in this case and that you grant OPM twenty (20) days from receipt of the records to prepare and submit a brief stating OPM's views of this case. When the administrative records are ready, please call Robert Girouard at (202) 606-1700 to arrange for pickup. Copies of this letter have been served on the parties to this case as evidenced by the enclosed Certificate of Service.

I am aware that in its May 9 Opinion and Order, the Board remanded Mr. Scott's appeal for additional processing. OPM believes, however, that the May 9 Opinion and Order in this case is a "final order or decision" within the meaning of 5 U.S.C. § 7703(d), because it reversed OPM's suitability action and awarded relief to Mr. Scott, remanding only his discrimination claims. See *Shingles v. Postal Serv.*, 98 M.S.P.R. 245, 248 (2001) (the reversal of a personnel action may be a "final decision" entitling an appellant to relief even if the appellant's discrimination claim is remanded for additional processing). In addition, the proceedings on remand have ended with Mr. Scott's withdrawal of his discrimination claims, and with the May 24, 2011 Initial Decision dismissing his claims as withdrawn.

Sincerely,


John Berry
Director

Enclosure

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

U.S. Merit Systems Protection Board

By Facsimile

Honorable William D. Spencer
Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419
Fax # (202) 653-7130

Appellant

U.S. Mail

James A. Scott


Appellant's Representative

Jeff Letts, Esq.
P.O. Box 77062
Trenton, NJ 08628

JUN 09 2011

(Date)



Robert J. Girouard
Senior Counsel



Office of Personnel Management
Office of General Counsel
1900 E St. N.W.
Washington, D.C. 20415
Voice: (202) 606-1700
Facsimile: (Check one)

- (202) 606-2609
- (202) 606-0082
- (202) 606-1906

RECEIVED NSPP
2010 DEC -7 PM 12:14
CLERK OF THE BOARD

Fax

To: William Spencer From: John Berry
 Fax: 653-7130 Pages: Four
 Phone: _____ Date: 12/7/10
 Rec: _____ CC: _____

Urgent For Review Please Comment Please Reply Please Recycle

* Comments:

Re: David Dean v. OPM
Larry Evans v. VA



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

DEC 7 2010

Mr. William Spencer
Clerk of the Board
Merit Systems Protection Board
1615 M Street, N.W.
Washington, DC 20419

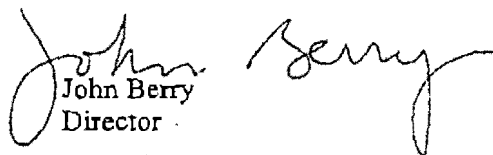
Dear Mr. Roberts:

This is notice that the U.S. Office of Personnel Management (OPM) is exercising its statutory right under 5 U.S.C. § 7703(d) to request reconsideration of the Board's decision in the case cited below. I am of the opinion that the board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on civil service law, rule, regulations, or policy directive.

*David Dean v. U.S. Office of Personnel Management,
Larry Evans v. Department of Veterans Affairs,
Docket Nos. AT-3330-10-0534-I-1 and AT-3330-09-0953-I-1 dated November 2, 2010*

I am requesting the administrative records in this case and that you grant OPM twenty (20) days from receipt of the records to prepare and submit a brief stating OPM's views of this case. When the administrative records are ready, please call Robin Richardson or Antonio San Martin at (202) 606-1700 to arrange for pickup. Copies of this letter have been served on the parties to this case as evidenced by the enclosed Certificate of Service.

Sincerely,


John Berry
Director

Enclosure


CERTIFICATE OF SERVICE

I certify that copies of a December 7, 2010, letter from John Berry, Director, U.S. Office of Personnel Management, to the Merit Systems Protection Board, Office of the Clerk, concerning the case of *David Dean v. U.S. Office of Personnel Management*, and *Larry Evans v. Department of Veterans Affairs*, Docket Nos. AT-3330-10-0534-I-1 and AT-3330-09-0953-I-1, dated November 2, 2010, was sent today by facsimile and certified mail to:

Facsimile:

Merit Systems Protection Board
Office of the Clerk of the Board
1615 M Street, N.W.
Washington, DC 20419

Ronald Robinson
152 Haigs Creek North
Elgin, SC 29045

David Dean


Larry L. Evans


Andres M. Grajales
AFGE, Office of the General Counsel
80 F Street, N.W.
Washington, DC 20001

Barbara A. Atkins, Esq.
National Treasury Employees Union
1750 H Street, N.W.
Washington, DC 20006

Gregory O'Duden
National Treasury Employees Union
1750 H Street, N.W.
Washington, DC 20006

Charles T. Bell, Jr.
Department of Veterans Affairs
Office of Regional Counsel
1700 Clairmont Road
Decatur, GA 30033-4032

December 7, 2010
(Date)

Althea D. Elam
Althea D. Elam
Executive Assistant