

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3005

DEBORAH KATZ-PUESCHEL,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent,

and

DEPARTMENT OF TRANSPORTATION,

Intervenor.

Petition for review of the Merit Systems Protection Board in DC0752811049-C-1.

ON MOTION

Before GAJARSA, FRIEDMAN, and LINN, Circuit Judges.

LINN, Circuit Judge.

ORDER

Deborah Katz-Pueschel moves without opposition to vacate the final decision of the Merit Systems Protection Board in Katz-Pueschel v. Department of Transportation, No. DC0752811049-C-1 and to remand for further proceedings.

In 2008, Katz-Pueschel petitioned for enforcement of a 1983 Board decision, which had reversed her removal. The administrative judge issued an order to show cause why her petition for enforcement should not be dismissed as untimely, citing 5 C.F.C. § 1201.182(a), which now sets a 30-day time limit for filing a petition for

enforcement of a final Board order when the agency has provided notice of its compliance. Katz-Pueschel responded to the order. The agency also responded, asserting that the petition for enforcement should be dismissed due to laches because the delay in filing prejudiced the agency. The administrative judge dismissed the petition as untimely and as barred by laches. The Board denied Katz-Pueschel's petition for review and she petitioned this court for review of the Board's final decision.

In its brief filed with this court, the Board confesses error in its dismissal of Katz-Pueschel's petition for enforcement and requests that the court vacate the Board's final decision and remand for further adjudication. Specifically, the Board concedes that the Board's regulation concerning the time to petition for enforcement did not contain a time limit when it issued its previous decision in Katz-Pueschel's case. The Board also concedes that because the agency did not submit a declaration or any other evidence to support its assertion that it was prejudiced by any delay in the filing of the petition for enforcement, and because the burden to establish prejudice rests with the agency, it was error to find that laches barred the petition for enforcement. The agency has also indicated that it also does not oppose the motion to vacate and remand.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The Board's decision is vacated and the case is remanded for further proceedings.

FOR THE COURT

MAY - 5 2009

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY - 5 2009

Jan HORBALY
CLERK

cc: George M. Chuzi, Esq.
Stephanie Conley, Esq.
Elizabeth A. Holt, Esq.

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MAY - 5 2009

ISSUED AS A MANDATE: _____