

DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-11-0880-I-1

Agency's Reply to Appellant's Response to September 27, 2011 Order on Collateral Estoppel/Res
Judica

Summary Page

Case Title : DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket Number : DC-0752-11-0880-I-1

Pleading Title : Agency's Reply to Appellant's Response to September 27, 2011 Order on
Collateral Estoppel/Res Judica

Filer's Name : Stephen W. Furgeson

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

Table of Contents

Pleading Interview	3
Uploaded Pleading Text Document	4
Certificate of Service	11

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Agency's Reply to Appellant's Response to September 27, 2011 Order on Collateral Estoppel/Res Judica
Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

2. Does your pleading assert facts that you know from your personal knowledge?

No



Via e-Mail and Priority Mail – Delivery Confirmation

October 12, 2011

Daniel Madden Turbitt
Administrative Judge
Merit Systems Protection Board
Washington Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Re: David Noble, Jr. v. United States Postal Service
MSPB Dkt. No. DC-0752-11-0880-I-1

Dear Administrative Judge Turbitt:

:

Enclosed are the "Agency's Reply To Appellant's Response To September 27, 2011 Order On Collateral Estoppel/Res Judicata" and a certificate of service in the above-captioned matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Stephen W. Furgeson
Attorney

cc: David Noble, Jr.
1 Fenceline Drive
Gaithersburg, MD 20878

**UNITED STATES OF AMERICA
MERIT SYSEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

DAVID W. NOBLE, JR., Appellant,)	
v.)	DOCKET NO. DC-0752-11-0880-I-1
UNITED STATES POSTAL SERVICE Agency.)	ADMINISTRATIVE JUDGE: Daniel Madden Turbitt

**AGENCY’S REPY TO APPELLANT’S RESPONSE TO SEPTEMBER 27, 2011
ORDER ON COLLATERAL ESTOPPEL/RES JUDICATA**

I. INTRODUCTION

Pursuant to “Order and Summary of Prehearing Conference” (hereinafter referred to as “Order”), dated September 27, 2011, the Agency files argument and evidence with regard to Section 5, Order On Collateral Estoppel / Res Judicata. The Agency respectfully requests that the issues raised in prior appeals by the Appellant as referenced in “Appellant’s Response to September 27, 2011 Order on Collateral Estoppel/Res Judicata” (hereinafter referred to as “Appellant’s Response”) not be re-litigated as those issues have been finally resolved by the Board or pending further appeal.

II. BACKGROUND

A. Noble v. U. S. Postal Service, MSPB Docket No. DC-0752-05-0606-I-1

In the above-referenced appeal in 2005, the Appellant concedes that he was returned to the status quo ante, albeit, several months later after he re-filed

his appeal. See Declaration, p. 1 of Appellant's Response. It is not at all clear how this appeal did not resolve all outstanding issues. Moreover, omitted from the Appellant's summary of this appeal is that he filed a petition for review with the Board, which was denied and the Initial Decision was sustained.

B. Noble v. U. S. Postal Service, MSPB Docket No. DC-0752-10-0113-I-1 and DC-0752-0113-C-1.

The Appellant claims in his Declaration at page 3 of the Appellant's Response that he does not intend to introduce nor has he introduced any evidence that would be "inconsistent or in conflict with any of the Board's holdings in MSPB Docket No. DC-752-10-0113-C-1". Notwithstanding this representation, at page 2 of his Declaration he does indicate that health benefits were not properly considered in Noble v. U. S. Postal Service, MSPB Docket No. DC-0752-10-0113-C-1.

Moreover, he has also filed a petition for review with the Board on March 11, 2011 challenging the Initial Decision for the loss of his health benefits. That appeal is still pending. Nevertheless, the matter of his loss and restoration of his health benefits was adjudicated fully and the determination was made that his health benefits were properly restored to him.

To re-litigate the health benefits issue again, which is pending an appeal, is vexatious and highly inefficient use of the administrative process. Moreover, the Appellant has made no attempt to link this allegedly wrongful loss and restoration of his health benefits with his removal for AWOL.

C. Noble v. U. S. Postal Service, MSPB Docket No. DC-3443-11-0235-I-1

The Appellant admits that this matter was denied for lack of jurisdiction; nonetheless, the Appellant intends to bring forward the same holidays that he claims he was not properly paid as part of his claim for intolerable working conditions. See Declaration, pp. 4-5 of Appellant's Response. He declares his intentions to prove under the collective bargaining agreement that he was wrongfully denied holiday pay. See *id.*

III. ARGUMENT

An appellant's dissatisfaction with a ruling or decision does not give him the right to seek re-litigation of the matter. Once a claim is litigated it is final as to the issues that were litigated or could have been litigated between the parties. See Schoening v. Office of Personnel Management, 43 M.S.P.R. 6, 10 (1989). The doctrine of *res judicata* applies to prevent parties from repetitious litigation of the same causes of action and it applies if there exist identities of causes of action and parties. See Cody v. Dept. of Transportation, 17 M.S.P.R. 572, 573, n. 3 (1983). The doctrine bars both factual and legal arguments that were brought or should have been brought before the Board in an earlier appeal. See Nevada v. United States, 463 U. S. 110, 129-30 (1983) (*res judicata* includes not only matters expressly raised to sustain or defeat a cause of action, but also matters that were not, but might have been raised for that purpose).

Here, it is unclear whether the Appellant intends to raise an issue from the 2005 case of Noble v. U. S. Postal Service, MSPB Docket No. DC-0752-05-

0606-I-1 since he readily admits at page 1 of his Declaration to the Appellant's Response that he was restored status quo ante.

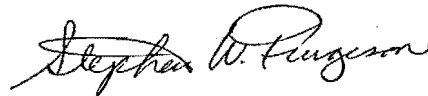
The remaining two appeals concerned whether he was properly restored his health benefits and whether he was entitled to have a hearing on the loss of his holiday pay. His health benefits were determined to have been fully restored; nonetheless, he is still appealing that matter to the Board. As for his holiday pay, the Initial Decision held that the Board did not have jurisdiction to hear such a claim and the Appellant did not appeal this ruling. See Declaration, p. 4 of Appellant's Response.

Therefore, the Appellant is now precluded from re-litigating whether his health benefits were improperly denied as part of status quo ante enforcement claim and whether there is a jurisdictional basis for the Board to hear his claim of improper denial of his holiday pay. Nevertheless, the clear inference from the Appellant's Declaration to his Response is that he intends to litigate again those very same issues. Such a re-litigation should be precluded on the basis of *res judicata*.

IV. Conclusion

The Agency respectfully submits that the Appellant be precluded from raising in his appeal matters that were previously litigated in his prior appeals.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Date: October 12, 2011

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CERTIFICATE OF SERVICE

I hereby certify that the "Agency's Reply To Appellant's Response To September 27, 2011 Order On Collateral Estoppel/Res Judicata" was served on this 12th day of October 2011, as indicated below, as follows:

Administrative Judge—via Priority Mail, Delivery Confirmation and efile

Daniel Madden Turbitt
Administrative Judge
Merit Systems Protection Board
Washington Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Appellant -- via Priority Mail, Delivery Confirmation

David Noble, Jr.
1 Fenceline Drive
Gaithersburg, MD 20878



Stephen W. Furgeson

Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	Agency's Reply to Appellant's Response to September 27, 2011 Order on Collateral Estoppel/Res Judica	e-Appeal / e-Mail
David Noble, Jr. Appellant	Agency's Reply to Appellant's Response to September 27, 2011 Order on Collateral Estoppel/Res Judica	e-Appeal / e-Mail