

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

DAVID NOBLE, JR.,  
Appellant,

DOCKET NUMBER  
DC-0752-11-0880-I-1

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DATE: August 18, 2011

**ORDER AND NOTICE OF HEARING, STATUS CONFERENCE, AND  
PREHEARING CONFERENCE**

The hearing in this appeal will be held:

Date: **September 28, 2011**

Time: **9:30 a.m.**

Location: U.S. Merit Systems Protection Board  
Washington Regional Office  
1800 Diagonal Road, Suite 205  
Alexandria, VA 22314-2840

If the appellant fails to appear without good cause, the appeal will be decided without a hearing. If the agency representative fails to appear, the hearing will, absent extraordinary circumstances, proceed as scheduled.

**STATUS CONFERENCE**

I will conduct a telephonic status conference on **September 8, 2011**, at **11:00 a.m.** The parties must be familiar with the facts and issues of the appeal and be prepared to discuss them. I **ORDER** the agency representative to contact the appellant's representative or the appellant, if unrepresented, and make

appropriate arrangements to initiate this call. The agency representative must contact me to confirm these arrangements. The appellant or the appellant's representative must provide the agency representative and me with a telephone number for the conference call within five calendar days of receipt of this order, if a suitable number is not already included in the appeal record. During the conference, I will address any problems dealing with discovery, consider any motions either party has made, and review settlement efforts.

NOTE: Since I will discuss settlement options during this conference, representatives must have the authority to settle this appeal or be able to reach the person with that authority on short notice. We may include that person in the conference discussions if I deem it necessary.

### **PREHEARING SUBMISSIONS**

I **ORDER** the agency and the appellant to file the following to be received in this office on or before **September 23, 2011**:

- (1) A statement of facts and issues (the appellant must include any and all defenses);
- (2) A list of all agreed upon material facts;
- (3) A list of witnesses with a brief summary of the expected testimony of each witness; and
- (4) A copy of exhibits accompanied by an index identifying the documents. You must separately mark for identification each and every document in the lower right hand corner. The appellant must mark exhibits by letter, the agency by number. Each exhibit exceeding 10 pages in length must be paginated. Documents previously submitted to the Board by either party are already a part of the record and are not to be offered as exhibits. **No binders or notebooks will be accepted.**

NOTE: In presenting evidence at the hearing, you will be limited by your prehearing submissions, except for good cause shown. For example, an unlisted witness will usually not be permitted to testify, and hearing exhibits that were not reviewed during the prehearing conference will usually not be accepted into the record.

### **WITNESSES**

The agency must provide for the appearance of its employees who are approved as witnesses; thus no subpoenas for them are necessary. If necessary, I will assist you in arranging for the appearance of employees of any other Federal agency. This assistance may include ordering that agency to make the witness available or issuing a subpoena. To be timely, a motion for subpoena must be received in this office on or before **September 23, 2011**. The requesting party is responsible for serving the subpoena and for paying appropriate witness fees.

### **COMMUNICATIONS DURING HEARING**

Absent express approval from the administrative judge, no two-way communications devices may be operated and/or powered on in the hearing room; all cell phones, text devices, and all other two-way communications devices shall be powered off in the hearing room. Further, no cameras, recording devices, and/or transmitting devices may be operated, operational, and/or powered on in the hearing room.

### **BENCH DECISION**

At the close of the hearing, if the AJ is confident in deciding the issues of the case without further review of the record, the AJ may announce findings and conclusions in a "Bench Decision." The AJ will explain the mechanics of such a decision. Either party can request such a decision.

### PREHEARING CONFERENCE

I will conduct a telephonic prehearing conference on **September 26, 2011**, at **11:00 a.m.** Witness requests and hearing exhibits will be reviewed in detail and the facts and issues of the appeal that will be addressed at the hearing will be discussed. Unless otherwise specified, all discovery efforts will terminate on this date. The parties must be prepared, as appropriate, to discuss settlement, to define the issues, and to reach stipulations of uncontested facts. I **ORDER** the agency representative to contact appellant's representative or appellant, if unrepresented, and make appropriate arrangements to initiate this call. The agency representative must contact me to confirm these arrangements. The appellant or the appellant's representative must provide the agency representative and me with a telephone number for the conference call within five calendar days of receipt of this order, if a suitable number is not already included in the appeal record.

NOTE: Since I will discuss settlement options during this conference, representatives must have the authority to settle this appeal or be able to reach the person with that authority on short notice. We may include that person in the conference discussions if I deem it necessary.

FOR THE BOARD:

\_\_\_\_\_/S/\_\_\_\_\_  
Daniel Madden Turbitt  
Administrative Judge

CERTIFICATE OF SERVICE

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

Appellant

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

Agency Representative

Electronic Mail      Managing Counsel  
United States Postal Service  
Law Department - Capital Metro Office  
8200 Corporate Drive  
Landover, MD 20785

August 18, 2011  
\_\_\_\_\_  
(Date)

/S/  
\_\_\_\_\_  
Kiecia Payne  
Legal Assistant