

DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-12-0054-I-1

Agency's Response in Opposition to Appellant's Opposed Motion to Cancel Deadline
Summary Page

Case Title : DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket Number : DC-0752-12-0054-I-1

Pleading Title : Agency's Response in Opposition to Appellant's Opposed Motion to Cancel Deadline

Filer's Name : Stephen W. Furgeson

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

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DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-12-0054-I-1

Agency's Response in Opposition to Appellant's Opposed Motion to Cancel Deadline
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

December 7, 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-0752-12-0054-I-1

Dear Administrative Judge Turbitt:

:

Enclosed are the "Agency's Response In Opposition To Appellant's Opposed Motion To Cancel Deadline" 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

**MERIT SYSEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

DAVID W. NOBLE, JR., Appellant,)	
)	
)	DOCKET NO. DC-0752-12-0054-I-1
v.)	
)	
UNITED STATES POSTAL SERVICE)	ADMINISTRATIVE JUDGE:
Agency.)	Daniel Madden Turbitt
<hr style="border: 1px solid black;"/>)	

**AGENCY’S RESPONSE IN OPPOSITION TO APPELLANT’S OPPOSED
MOTION TO CANCEL DEADLINE**

Pursuant to 5 CFR §1201.55 (b) and (c), the UNITED STATES POSTAL SERVICE (the “Agency”) hereby responds in objection to Appellant’s request for an extension of the time to respond to the “Order to Show Cause” in the above captioned appeal of David W. Noble, Jr. (“Appellant”).

INTRODUCTION

On November 22, 2011, the Appellant was ordered to show cause as to why his appeal of a constructive suspension was not timely filed. This Order came after the Agency timely filed its response to the Acknowledgement Order on November 21, 2011.

ARGUMENT

I. Standard of Review

Extension for filings with the Board can only be done if supported by good cause. See 5 C.F.R. § 1201.55 (c). Whether good cause exists for continuance or

extension is determined under the unique circumstances of each case. The judge must balance the substantive rights of the parties involved against the requirements for expeditious processing. See Archuleta v. Dept. of Health & Human Services, 38 M.S.P.R. 648, 653 (1988); Keay v. U. S. Postal Service, 57 M.S.P.R. 331, 335 (1993) ("[W]hether good cause exists for postponement of a hearing is determined by the unique circumstances of each case and rests with the sound discretion of the administrative judge."); Pelletier v. OPM, 38 M.S.P.R. 179 , 182 (1988) ("Whether good cause exists for granting a request for a continuance is generally determined under the unique circumstances of each case, and the administrative judge must balance the requirements for expeditious adjudication against the substantive rights of the parties involved."); Bergstein v. U. S. Postal Service, 27 M.S.P.R. 56, 58 (1985) (whether or not good cause for a continuance exists is determined under the unique circumstances of each case, involving a balance of the requirements for expeditious processing against the substantive rights of the parties). "The party and his representative must diligently explore all alternatives when seeking a postponement...." Johnson v. Dept. of Treasury, 13 M.S.P.R. 421, 424 (1982).

II. The Appellant Has Not Established Good Cause for Extension of Deadline

The Appellant has only reiterated a familiar theme that discovery will take time to complete; however, he makes no argument as to how his discovery requests will assist in showing the basis for his untimely appeal. The Appellant makes no allegations that the Agency in any way inhibited his ability to file an

appeal. Moreover, as the Agency clearly demonstrated in the "Agency Response to the Acknowledgement Order" the Appellant has been well schooled as to how and when to file appeals.

Therefore, based on lack of demonstrated good cause for an extension the Appellant must be timely in filing his response to the "Order To Show Cause" for his delayed filing an appeal of his alleged constructive suspensions by approximately seven months.

CONCLUSION

For the foregoing reasons, the Postal Service respectfully submits that the Appellant has not provided good cause for not filing a timely response to the Order to Show Cause and requests that the "Appellant's Opposed Motion To Cancel Deadline" be denied.

Respectfully submitted,



DATE: December 7, 2011

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CERTIFICATE OF SERVICE

I hereby certify that the "Agency's Response In Opposition To Appellant's Opposed Motion To Cancel Deadline" was served on this 7th day of December 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 Response in Opposition to Appellant's Opposed Motion to Cancel Deadline	e-Appeal / e-Mail
David Noble Appellant	Agency's Response in Opposition to Appellant's Opposed Motion to Cancel Deadline	e-Appeal / e-Mail