

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

MICHAEL J. SCHRODT,
Appellant,

DOCKET NUMBER
CH-0752-96-0703-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: September 30, 1998

Anton Hajar, Esquire, O'Donnell, Schwartz & Anderson, Washington,
D.C., for the appellant.

Marcia Grant, Des Moines, Iowa, for the agency.

BEFORE

Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Susanne T. Marshall, Member

OPINION AND ORDER

This case is before the Board upon the appellant's petition for review of the initial decision issued on June 11, 1997, that sustained the agency's removal action. For the reasons set forth below, we GRANT the appellant's petition for review, REVERSE the initial decision, and find the agency's removal action NOT SUSTAINED.

BACKGROUND

The appellant was employed in the position of Part-Time Flexible (PTF) Distribution Clerk, PS-05, at the Des Moines, Iowa, Processing Plant. *See* Initial

Appeal File (IAF), Tab 1. The duties and responsibilities of that position as set forth in the position description (*Id.*, Tab 3, Subtab 4m) include distribution of incoming and outgoing mail and may include any of the following duties: maintain record of mails; examine balances in advance deposit accounts; face and cancel mail; tie mail and insert facing slips; open and dump pouches and sacks; operate canceling machines; record and bill mail (for example, c.o.d., registered, etc.) requiring special service; and provide service at public windows. His actual duties involved manual sorting of mail into a distribution case containing numerous slots. The appellant manually separated individual pieces of mail by delivery point, and placed each piece of mail in the appropriate slot in the distribution case. Hearing Transcript (H.Tr.) at 20, 52-53. His duties also included carrying trays of mail to his case and handling sacks of mail. *Id.* In addition, distribution clerks perform "tie-outs," i.e., they walk from case to case "sweeping" (gathering) the cased mail from the distribution cases, sleeve the cased mail, place it on a hand truck, and move it to the dispatch area. *Id.*

The appellant was discharged from the military in 1985, after his knees were diagnosed with stress fractures. *See* IAF, Tab 15, Exhibit (Exh.) 14. It is undisputed that he began his employment with the agency in February 1995. It is further undisputed that he was subsequently diagnosed as suffering from patellar

chondromalacia¹ and patellofemoral syndrome² in both knees. *Id.*, Tab 16. In a medical report dated February 6, 1995, reflecting his employment examination, Dr. Berg stated that the appellant had "patellofemoral crepitation, extremely weak quadriceps musculature, and biomechanical features in both his feet that predispose [the appellant] to the knee condition that he is experiencing." Based on the above, and on a review of his job description, Dr. Berg concluded that the appellant was not fit for his current job, that of a PTF distribution clerk. *See* IAF, Tab 15, Exh. 9. Nevertheless, the agency continued to employ the appellant as a PTF distribution clerk, with the duties described above. The agency subsequently placed the appellant on "light duty," modifying his position by exempting him from performing tie-outs, and providing him with a chair to use in distributing mail. H.Tr. at 20. ³ Although Dr. Berg did not recall examining the appellant on November 2, 1995, he admitted that a medical report in his writing based on an examination for the same condition found the appellant fit for duty as of November 1995. *See* H.Tr. at 47; IAF, Tab 15, Exh. 10.

The agency removed the appellant, effective May 13, 1996, for physical inability to perform the duties of his position based on a medical report dated March 7, 1996 from Dr. Berg stating that the appellant was not fit for duty. Dr. Berg stated that his "examination and opinion has not really changed from

¹ Chondromalacia is defined as a softening of the cartilage in the joint. *See Blakiston's Gould Medical Dictionary* 269 (4th ed. 1979).

² Dr. David T. Berg, D.O., the agency's contract physician, defined patellofemoral syndrome as a condition in which the kneecap moves off center, and does not glide evenly up and down in the joint. H.Tr. at 47.

³ The appellant was not transferred to a so-called "light duty" position. In fact, in the Des Moines Post Office, there are no duty assignments which are reserved for light duty employees. H.Tr. at 36. Instead, accommodations were made to assist the appellant in performing his duties as a manual distribution clerk. H.Tr. 7, 8, 29.

February 6, 1995.” *See* IAF, Tab 3, Subtabs 4b, 4f, 4i. The appellant appealed from the agency's action, alleging that he could perform the duties of his position with reasonable accommodation, and that the agency's action was the result of disability discrimination. *Id.*, Tabs 1, 16. The administrative judge sustained the agency's action, finding that: (1) The agency proved its charge; (2) the appellant failed to establish his affirmative defense of disability discrimination; and (3) the penalty of removal was reasonable, and promoted the efficiency of the service. The administrative judge found that the appellant’s physical limitations prevented him from being reasonably productive in his assigned position and that the appellant did not articulate a reasonable accommodation under which he could perform the essential duties of his position. *See* Initial Decision at 2-14, *id.*, Tab 21. The appellant has now petitioned for review.⁴ *See* Petition for Review (PFR) File, Tab 3. The agency has responded in opposition to the appellant's petition. *Id.*, Tab 5.

ANALYSIS

The agency did not prove its charge that the appellant is physically unable to perform the duties of a distribution clerk.

In removing an employee for physical inability to perform the duties of his position, an agency may not rely solely upon a showing that he has a physical disability. *See Sargent v. Department of the Air Force*, 55 M.S.P.R. 387, 391 (1992). Rather, it must establish a nexus between the employee's medical condition and observed deficiencies in his performance or conduct, or a high probability of hazard that his condition may result in injury to himself or others.

⁴ The appellant contends that the agency committed harmful procedural error by considering, in making its removal decision, matters that were not included in the notice of proposed removal, i.e., his attendance record. *See* PFR File, Tab 3. He further contends that the administrative judge committed adjudicatory error in basing his decision, in part, on such matters. *Id.* In light of our disposition of this appeal, we need not reach these contentions.

See Spencer v. Department of the Navy, 73 M.S.P.R. 15, 21 (1997); *Yates v. U.S. Postal Service*, 70 M.S.P.R. 172, 176 (1996); *Sargent*, 55 M.S.P.R. at 391. Here, as discussed in the section relating to disability discrimination, the agency has not met this burden.

The deciding official, Senior Plant Manager John Dooley, testified that he based his decision to remove the appellant only on a fitness for duty examination and a letter of warning for attendance.⁵ H.Tr. at 10, 11. Thus, the determinative factor is the March 1996 fitness for duty examination prepared by Dr. Berg and relied upon by the agency.

The administrative judge determined that Dr. Berg's medical opinion evidence was entitled to considerable weight because he had examined the appellant, had toured the agency's facility and had observed the employees performing their duties, and had reviewed the appellant's position description. *See* Initial Decision at 8. This was error. Although Dr. Berg did tour the plant two to three years prior to his examination of the appellant (H.Tr. at 50), his testimony does not reflect any particularized knowledge of the appellant's duties, i.e., he stated, for example, that he had only a "vague familiarity" with what was involved in doing tie-outs. *Id.* Moreover, he did not order any independent diagnostic tests in March 1996, but relied only on what was already in the appellant's medical history. (Dr. Berg, H.Tr. at 45). Examination of the March 1996 Medical Examination and Assessment form (IAF, Tab 3, Subtab 4i) also reveals that he performed no clinical evaluation based on a physical examination. In finding that the appellant was not fit for duty as a PTF distribution clerk, Dr. Berg admitted that his examination and opinion has not really changed from February 6, 1995. Furthermore, as previously noted, although Dr. Berg did not

⁵ See footnote 4, *supra*. The purported attendance letter is not considered in our disposition of the case.

recall examining the appellant on November 2, 1995, he admitted that a medical report in his writing based on an examination for the same condition found the appellant fit for duty as of November 1995. *See* H.Tr. at 47, IAF, Tab 15, Exh. 10.

Also significant is the fact that, in each of his medical reports, Dr. Berg failed to relate the appellant's medical condition to the specific duties of the manual distribution clerk position, merely stating, in a conclusory fashion, that he believed that the appellant's condition rendered him unfit for the distribution clerk position. *See* IAF, Tab 15, Exh. 15 and Tab 3, Subtab 4i; *Lassiter v. Department of Justice*, 60 M.S.P.R. 138, 142 (1993). In addition, he only considered whether the appellant could perform the duties of the distribution clerk position as set forth in the position description, but not whether he could perform the duties of the manual distribution clerk position to which he was assigned. He also admitted that he was not asked to determine whether modifications to the appellant's job could accommodate his disability. He testified that his instructions, in essence, were to determine whether the appellant could do all the jobs in the distribution clerk position description H.Tr. at 49-50. The record reveals that the position of distribution clerk may encompass many duties, many of which were not required of the appellant in his position of manual distribution clerk. For example, a distribution clerk could work on the dock distributing parcels on a machine. H.Tr. at 11.

Because of the inadequacies of Dr. Berg's testimony and examinations of the appellant as they relate to the appellant's actual performance of his job duties, we find his medical evidence was entitled to little probative weight.

Although the removal decision was based solely on the appellant's fitness for duty examination, the agency also alleged that the appellant was unproductive in his modified assignment. Erichsen, the appellant's immediate supervisor,

testified that the appellant had to stretch to reach the top two rows of slots in his distribution case, and that other employees would therefore have to be assigned to case this mail. H.Tr. at 24. Further, she stated that it was awkward for the appellant to carry mail trays to his case because he walked with a cane, and that other employees therefore had to bring him mail. H.Tr. at 25. In addition, Erichsen testified that the appellant's use of the light-duty chair, which had arm rests, slowed his production because it caused him to turn in an awkward manner while casing mail. H.Tr. at 20-21. Moreover, she stated that tie-outs were an essential part of a distribution clerk's duties, and the appellant had to be exempted from this function due to his medical condition. H.Tr. at 22-23. John Dooley, Senior Plant Manager, corroborated Erichsen's testimony, stating that it was not reasonable to continue accommodating the appellant because he was not as productive as other employees in the area. H.Tr. at 4. However, while the agency witnesses testified regarding the appellant's alleged difficulties and awkwardness in performing certain functions, they never documented insufficient performance or deficiencies by the appellant in performing his job.

The agency's evidence is unpersuasive. Erichsen acknowledged that the appellant never requested to be relieved of carrying his own mail, casing the top two rows of his distribution case, or doing tie-outs. H.Tr. at 31. In fact, she stated that she and the appellant never discussed this arrangement, but that it was "something that just evolved." *Id.* Further, she admitted that although it was not in the appellant's physical restrictions not to stretch, "it just worked out best for us." H.Tr. at 24, 32. Moreover, although she stated that the light-duty chair, which was provided by the agency's own office of industrial compensation, allegedly slowed the appellant's production, (H.Tr. at 20-21) she did not indicate why the agency could not have modified this device to make its use less cumbersome. In addition, although Erichsen characterized tie-outs as an essential part of a distribution clerk's duties, she then indicated that they took only 30-45

minutes out of an eight-hour workday,⁶ and that the appellant did, on occasion, do tie-outs. H.Tr. at 28- 29. Dooley's testimony was similarly unpersuasive with regard to actual deficiencies in the appellant's productivity. He stated that the agency maintains records of productivity by operation. H.Tr. at 9. The agency, however, never provided such evidence with regard to the appellant's operation.

Accordingly, in light of the record evidence, we find that the agency has failed to establish a nexus between the employee's medical condition and observed deficiencies in his performance or conduct. *See Spencer*, 73 M.S.P.R. at 21; *Yates*, 70 M.S.P.R. at 176; *Sargent*, 55 M.S.P.R. at 391.

The appellant established his claim of disability discrimination.

We now turn to the appellant's allegation that the agency's action in removing him constituted disability discrimination. At the outset, we are aware that under the Rehabilitation Act, federal employers are charged with a greater duty to ensure the employment of disabled workers than are federal grantees or private employers. 29 U.S.C. §§ 701, 791, 794. *See Woodman v. Runyon*, 132 F.3d. 1330, 1337 (10th. Cir. 1997). As the record is complete and a hearing has been held, the Board can proceed directly to the ultimate issue of whether appellant has shown by a preponderance of the evidence that his termination was motivated by discrimination. *See Pierce v. Social Security Administration*, EEOC Appeal No. 01961642, slip op. at 2 (Feb. 20, 1998); *see also Jeffries v. Department of the Treasury*, EEOC Appeal No. 01962760, slip op. at 2 (Mar. 10, 1998) ("where the record is fully developed ... the factual inquiry can proceed directly to ...," *citing United States Postal Service Board of Governors v. Aikens*,

⁶ The appellant was generally scheduled to work eight hours a day, H.Tr. at 20, even though, according to Dooley, a part-time flexible clerk is guaranteed only four hours per pay period and if there is no production work, it is within management's right to send him home.

460 U.S. 711, 103 S. Ct. 1478 (1983), and *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742 (1993). See also *Kutyna v. National Aeronautics & Space Administration*, EEOC Appeal No. 01944637, slip op. at 3 (Dec. 4, 1995), and cases cited therein.

In applying the above principles to the instant case, we disagree with the administrative judge's finding that the appellant did not meet his burden of establishing disability discrimination because he failed to "articulate a reasonable accommodation under which he could perform the essential duties of his position." ID at 11. In a disability discrimination case where the appellant seeks some form of accommodation, he must demonstrate that he is a qualified handicapped person, and that the action appealed was based on his disability, and he must articulate a reasonable accommodation under which he believes he could perform the essential duties of his position or of a vacant funded position to which he could be reassigned. See *Sheehan v. Department of the Navy*, 66 M.S.P.R. 490, 493 (1995); *Savage v. Department of the Navy*, 36 M.S.P.R. 148, 151-52 (1988). To meet his burden where, as here, it is undisputed that some form of accommodation is necessary, the appellant need merely articulate a reasonable accommodation under which he believes he could perform the necessary duties of his position, or of a vacant position to which he could be reassigned. See *Clark v. U.S. Postal Service*, 74 M.S.P.R. 552, 558-62 (1997). The appellant here was not required to prove conclusively that specific job modifications would be reasonable. *Id.* at 562. Rather, he needed only to make a facial showing that his disability could be reasonably accommodated. *Id.* In order to show that it could not accommodate the qualified handicapped employee, the agency was obligated to fully assess the appellant's medical condition, his job skills, the work environment, and the agency's resources. *Id.* at 562, citing *McKinney v. U.S. Postal Service*, EEOC Appeal No. 01940021 (Mar. 16, 1995); *Hall v. U.S. Postal Service*, 857 F.2d 1073, 1080 (6th Cir. 1988) (the burden is on the employer to

present credible evidence that a reasonable accommodation is not possible in a particular situation; determining whether the employer has demonstrated that the proffered accommodation imposes an undue hardship on its operations requires an individualized inquiry to ensure that the employer's justifications reflect a well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives). *See Robinson v. Department of the Air Force*, (to be reported at) 77 M.S.P.R. 486 (1998); *Woodman*, 132 F.3d. at 1343.

Here, the appellant met his burden of establishing disability discrimination. It is undisputed that he suffers from physical impairments, i.e., patellar chondromalacia and patellofemoral pain syndrome in both knees. *See* IAF, Tab 3, Subtab 4i, Tab 15, Exh. 9, Tab 16. It is further undisputed that, as a consequence of these impairments, the appellant is substantially limited in the major life activities of prolonged standing, kneeling, and climbing. *See* 29 C.F.R. § 1614.203(a)(1)-(3). Moreover, the agency regarded him as having such impairments. *Id.* There is also no question but that the appellant's disability caused his removal. *See* IAF, Tab 3, Subtabs 4b, 4f. In addition, he articulated a reasonable accommodation under which he believed he could perform the essential duties of his position, i.e., that the agency allow him to continue performing the duties of a manual distribution clerk as modified by allowing him to use a chair so that he would be in a sitting position during his shift. H.Tr. 57-58. Further, on cross examination, Dooley admitted that, under certain circumstances, it would be possible to accommodate a distribution clerk who was confined to a wheelchair, but failed to explain why it would be possible to accommodate such an employee, but not the appellant. *See* H.Tr. at 17-18.

The agency contended that the appellant was unable to perform the essential duties of his position, even with the proposed accommodation. *See* IAF, Tabs 3, 16. For the reasons stated above as well as those set forth at pp. 4-7 regarding our finding that the agency did not prove its charge that the appellant

was physically unable to perform the duties of a distribution clerk, we find that the agency also failed to prove its inability to accommodate the appellant or any undue hardship in attempting such accommodation. Thus, the medical report upon which the agency's decision allegedly was based did not refer to the appellant's specific duties and the inability to accommodate the appellant's condition in carrying out such duties, but rather to a general position description which "could" have involved duties not germane to the appellant's position. IAF, Tab 3, Subtab 4i. The report did not consider the possibility of any accommodations. H.Tr. at 49. Further, the agency does not indicate that it provided the appellant with an opportunity to suggest another accommodation. With respect to the appellant's performance in his position as accommodated, we note that the appellant did not request to be relieved of any duties and the agency did not explain why the accommodation proposed by the appellant was not reasonable.

The agency next contended that the appellant's medical condition posed a safety risk. In this regard, Cindy Erichsen, Supervisor of Distribution Operations, and the appellant's first-line supervisor, testified that the work space could become congested. H.Tr. at 23. Further, she stated that the floor tended to become messy because the previous tour would leave bits of plastic string and rubber bands on the floor after sorting third-class mail, and that, although she would "police the area for good housekeeping," there was a possibility of having a string or rubber band on the floor that might cause the appellant to trip and fall. H.Tr. at 23, 31. Moreover, she expressed concern that the appellant might have difficulty evacuating the building in case of emergency, because it would be difficult for him to descend four flights of stairs from his duty station to the exit. H.Tr. at 23-24.

These contentions lack merit. To exclude an employee from employment based on the risk of a possible future injury, there must be a showing of a

reasonable possibility of substantial harm, which is determined in light of the individual's work history and medical history. *See Yates*, 70 M.S.P.R. at 176-77; *Mantolete v. Bolger*, 767 F.2d 1416, 1422-24 (9th Cir. 1985) (before excluding an individual from the workplace on the basis of his disabling condition, the employer must independently assess both the probability and severity of potential injury to the individual which might be expected to result from his employment in a particular position; absent such an independent assessment, a good faith or rational belief on the part of the employer that the disabled individual cannot safely perform in a particular position will not be a sufficient defense to an allegation of discrimination). Such a determination cannot be based merely on an employer's subjective evaluation, or, except in cases of a most apparent nature, merely on medical reports. Here, there is no evidence, apart from Erichsen's subjective assessment, that the alleged congestion in the work area, or the supposed strings and rubber bands on the floor, constituted a serious threat to the appellant's safety, or demonstrated a reasonable possibility of substantial harm. *See Mantolete*, 767 F.2d at 1422. Further, the possibility that the appellant might find it difficult to climb down the stairs to evacuate the building appears to be speculative, inasmuch as his physical restrictions, which preclude climbing, do not include descending stairs. *See IAF*, Tab 15, Exh 15; H.Tr. at 60-61. Therefore, we find that the agency has failed to establish a high probability of hazard that the appellant's condition could result in injury to himself or others. *See Spencer*, 73 M.S.P.R. at 21; *Yates*, 70 M.S.P.R. at 176.

Finally, we reject the agency's argument that it could not permanently employ the appellant in a modified light-duty assignment because that would violate Article 13, Section 2, Subsection B of the collective bargaining agreement, which provides, in relevant part, that

[a]ny ill or injured full-time or regular ... employee having a minimum of five years of postal service, or any full-time regular ... employee who sustained on-the-job injuries, regardless of years of

service, while performing the assigned duties, can submit a voluntary request for permanent assignment to light duty or other assignment ... if the employee is permanently unable to perform all or part of the assigned duties.

See IAF, Tab 3, Subtab 4l. The agency argued that, because the appellant did not have five years in service, he was ineligible to be assigned to a permanent light-duty assignment. *Id.*, Tab 16. However, in her closing argument, the agency's counsel admitted that it would not be a contractual violation to place the appellant in a "light duty" position, but that the agency was not obligated to do so. H.Tr. at 72.

The Board has held that a proposed reasonable accommodation constitutes an undue hardship where it would require the agency to violate a nondiscriminatory collective bargaining agreement. *See, e.g., Podrazik v. U.S. Postal Service*, 54 M.S.P.R. 380, 384 (1992). Nevertheless, in the instant case, the agency's contention lacks merit. As Section 1, Subsection B of Article 13 makes clear, Article 13 applies to reassignment. The Union President testified that the appellant's accommodation is not a reassignment and would not be regarded as a violation of Article 13. H.Tr. at 70. Dooley admitted that he never consulted the Union to find out if accommodating the appellant would be a violation of the contract. H.Tr. at 8. Moreover, we note that while the agency relied on the above-cited section of the collective bargaining agreement, it never presented any evidence regarding the applicability of this provision. The Board has held that, generally, reassignment should be considered only when accommodation within the individual's current position is unavailable or would pose an undue hardship. *See Clark*, 74 M.S.P.R. at 565. That is not the case here. As previously discussed (see n. 3 *supra*), the appellant was not reassigned to another "light duty" position, but was accommodated in his current position and the agency has failed to show that the accommodation posed an undue hardship.

Therefore, Article 13 is inapplicable to the current situation. Accordingly, we find that the appellant has established his claim of disability discrimination.

ORDER

We ORDER the agency to cancel the appellant's removal and to restore the appellant effective May 13, 1996. *See Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 1984). The agency must accomplish this action within 20 days of the date of this decision.

We also ORDER the agency to issue a check to the appellant for the appropriate amount of back pay, interest on back pay, and other benefits under the Back Pay Act and/or Postal Service regulations, as appropriate, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to compute the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it comply. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to issue a check to the appellant for the undisputed amount no later than 60 calendar days after the date of this decision.

We further ORDER the agency to inform the appellant in writing of all actions taken to comply with the Board's Order and of the date on which the agency believes it has fully complied. If not notified, the appellant should ask the agency about its efforts to comply.

Within 30 days of the agency's notification of compliance, the appellant may file a petition for enforcement with the regional office to resolve any disputed compliance issue or issues. The petition should contain specific reasons why the appellant believes that there is insufficient compliance, and should include the dates and results of any communications with the agency about compliance.

This is the final order of the Merit Systems Protection Board in this appeal.
5 C.F.R. § 1201.113(c).

NOTICE TO THE APPELLANT REGARDING COMPENSATORY DAMAGES

As an individual prevailing on a discrimination claim, you have the right to seek compensatory damages under 42 U.S.C. § 1981a. If you wish to seek compensatory damages, you may file a request with the administrative judge within 30 days of the date of this decision. *See Yates*, 70 M.S.P.R. at 180-81.

NOTICE TO THE APPELLANT REGARDING FEES

You may be entitled to be reimbursed by the agency for your reasonable attorney fees and costs. To be reimbursed, you must meet the criteria set out at 5 U.S.C. §§ 7701(g) or 1221(g), and 5 C.F.R. § 1201.202. If you believe you meet these criteria, you must file a motion for attorney fees **WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION**. Your attorney fee motion must be filed with the regional office or field office that issued the initial decision on your appeal.

NOTICE TO THE APPELLANT REGARDING
FURTHER REVIEW RIGHTS

You have the right to request further review of the Board's final decision in your appeal.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review the Board's final decision on your discrimination claims. *See* 5 U.S.C. § 7702(b)(1). You must submit your request to the EEOC at the following address:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, DC 20036

You should submit your request to the EEOC no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. 5 U.S.C. § 7702(b)(1).

Discrimination and Other Claims: Judicial Action

If you do not request review of this order on your discrimination claims by the EEOC, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States district court. *See* 5 U.S.C. § 7703(b)(2). You should file your civil action with the district court no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. § 7703(b)(2). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e5(f); 29 U.S.C. § 794a.

Other Claims: Judicial Review

If you choose not to seek review of the Board's decision on your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review the Board's final decision on other issues in your appeal if the court has jurisdiction. *See* 5 U.S.C. § 7703(b)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:
Washington, D.C.

Robert E. Taylor
Clerk of the Board