

§ 1210.30

subject to paragraph (b)(2) of this section, determines, in its sole, exclusive, and unreviewable discretion, that the return or presence of the employee would be unduly disruptive to the work environment.

(2) If the Department makes a determination under paragraph (b)(1)(ii) of this section that prevents the return or presence of an employee at the place of employment, such employee must receive pay, compensation, and all other benefits as terms and conditions of employment pending the outcome of any petition for review.

(3) Nothing in the provisions of this section may be construed to require that any award of back pay or attorney fees be paid before the decision is final.

Subpart C—Petitions for Review of Initial Decisions and Petitions for Reconsideration

§ 1210.30 Filing petition and cross petition for review.

(a) *Who may file.* Any party to the proceeding or the Director may file a petition for review of the decision by the adjudicating official. The Director may request review when he or she believes that the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation or policy directive. All submissions to the Board must contain the signature of the party or of the party's designated representative. The requirements for an electronic signature are set forth in 5 CFR 1201.14(i).

(b) *Time for filing.* Any petition for review must be filed within 30 days after receipt of the initial decision. Absent evidence to the contrary, the Board presumes that a decision delivered by regular mail is received by the addressee 5 days after its issuance. If regular mail is not delivered on the fifth day following the issuance of the decision, the presumed date of receipt is the next date on which mail is delivered. A cross petition for review must be filed within 25 days of the date of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the date of service of the petition or cross peti-

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tion. The Board may extend the filing period for good cause shown.

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by commercial or personal delivery, by facsimile, by mail, or by electronic filing in accordance with 5 CFR 1201.14.

(d) *Time for decision by the Board.* MSPB must render its decision no later than 90 days after the close of the record before MSPB on petition for review as defined in 5 CFR 1201.114(i).

(e) *Effect of late decision.* The Board's failure to meet the requirement that decisions be rendered no later than 90 days after the close of the record will not prejudice any party to the case and will not form the basis for any legal action by any party. See 5 CFR 9701.706(1).

§ 1210.31 OPM petition for reconsideration.

(a) If the Director seeks reconsideration of a final Board order, the Board must render its decision no later than 60 days after receipt of the opposition to the Director's petition in support of such reconsideration. The Board's failure to meet this requirement will not prejudice any party to the case and will not form the basis for any legal action by any party. See 5 CFR 9701.706(1).

(b) The Board shall state the reasons for any decision rendered in response to a petition for reconsideration filed by the Director.

Subpart D—Review of Mandatory Removal Action Appeals

§ 1210.40 Filing a request for Board review.

(a) *Who may file.* Any party to the proceeding or OPM may file a request for review. All submissions to the Board must contain the signature of the party or of the party's designated representative. The requirements for an electronic signature are set forth in 5 CFR 1201.14(i).

(b) *Time for filing.* Any request for review must be filed within 15 days after issuance of the MRP's decision. Any