



U.S. MERIT SYSTEMS PROTECTION BOARD

Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review

The Board's Manual on Organization Functions & Delegations of Authority (Delegations Manual) states that the Merit Systems Protection Board (the Board) has delegated adjudicatory authority to the Clerk of the Board "to grant a withdrawal of a petition for review when requested by a petitioner." See Delegations Manual, § 2.3.5.1 (Delegations of Adjudicatory Authorities to the Clerk of the Board).

Consistent with the ministerial role of the Clerk of the Board, to promote efficiency in adjudication, the Clerk may exercise the delegated authority to grant a withdrawal of a petition for review when requested by a petitioner if there is no apparent untimeliness of the petition, *see Walls v. Merit Systems Protection Board*, 29 F.3d 1578, 1582 (Fed. Cir. 1994) (setting forth the factors that the Board considers when deciding whether good cause exists to waive filing deadlines), and if no other party objects to the withdrawal, *see Kravitz v. Office of Personnel Management*, 75 M.S.P.R. 44, 47 (1997) (holding that "the Board may dismiss an appeal based solely on an appellant's request, provided that the opposing party would not be prejudiced"). If the petition for review appears to be untimely, if another party objects to the withdrawal request, or if the requester is unable to clearly state his or her intent or otherwise satisfy the criteria stated herein, the Clerk is unable to grant the request because the issues raised must be adjudicated by the full Board. In that event, the request will be forwarded to the full Board for adjudication.

Additionally, if a request to withdraw is made as part of a settlement agreement that the parties wish to enter into the record for enforcement purposes, the Clerk cannot grant that request because it requires findings that must be made by the Board. Specifically, before accepting a settlement agreement into the record for enforcement purposes, the Board must determine whether the agreement is lawful on its face, whether the parties freely entered into the agreement, and whether the parties understand the agreement's terms. *See, e.g., Massey v. Office of Personnel Management*, 91 M.S.P.R. 289, ¶¶ 3-4 (2002), *overruled on other grounds by Delorme v. Department of the Interior*, 124 M.S.P.R. 123, ¶¶ 11-21 (2017) (holding that the Board may enforce settlement agreements that have been entered into the record,



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independent of any prior finding of Board jurisdiction over the underlying matter being settled).

The Clerk, however, may exercise delegated authority to grant a withdrawal made in fulfillment of a settlement agreement that has not been entered into the record for enforcement by the Board and that the parties do not intend for the Board to enforce.

Finally, the Clerk cannot grant a request to withdraw an appeal in its entirety. Only the Board in a voted decision can grant a request to withdraw an appeal in which an administrative judge has issued an initial decision. *Compare* 5 C.F.R. § 1201.4(f) (defining appeal as "a request for review of an agency action") *with* 5 C.F.R. § 1201.4(g) (defining petition for review as "a request for review of an initial decision of a judge"). Thus, an appellant seeking to withdraw the appeal (rather than the petition for review, only) should not file a request under this policy. Such a request should still be filed with the Clerk's office but should clearly note that the party is seeking to withdraw the appeal (potentially vacating the initial decision of the administrative judge) rather than the petition for review (leaving in place the initial decision of the administrative judge). The Board will consider a request to withdraw an appeal and issue a voted decision.

When the Clerk of the Board grants a request to withdraw a petition for review, the order granting the request will be the final order of the Board for purposes of exercising further review rights, including filing in court.

This policy is hereby adopted and effective immediately, June 28, 2022.

Cathy A. Harris, Vice Chairman
Merit Systems Protection Board

Raymond A. Limon, Member
Merit Systems Protection Board

Tristan L. Leavitt, Member
Merit Systems Protection Board