

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00-19567 Filed 8-1-00; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-663 (Review)]

Paper Clips From China

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 1, 1999 (64 FR 67320, December 1, 1999) and determined on March 3, 2000 that it would conduct an expedited review (65 FR 15010, March 20, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on July 28, 2000. The views of the Commission are contained in USITC Publication 3330 (July 2000), entitled *Paper Clips From China: Investigation No. 731-TA-663 (Review)*.

Issued: July 28, 2000.

By order of the Commission.

Donna R. Koehnke,
Secretary.

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MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in Jerry Gribcheck v. U.S. Postal Service, MSPB Docket Nos. CH-0752-99-0002-I-1, CH-0752-99-0014-I-1, CH-0752-99-0337-I-1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office

of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM as set forth in the summary below.

SUMMARY: The appellant, a Postal Service preference eligible, filed three appeals challenging a series of actions that the agency took in 1998-99 when it ordered him to undergo psychiatric fitness-for-duty examinations, allegedly refused to allow him to return to work, and ultimately placed him on enforced leave when he refused to submit to the third examination. The docket numbers are listed above. The administrative judge issued a single initial decision in the first two appeals, dismissing them as moot and finding that the appellant failed to establish his affirmative defenses of disability discrimination and retaliation for filing equal employment opportunity complaints. In the third appeal, which concerned the enforced leave, the administrative judge sustained the agency's action and found that the appellant failed to establish the same defenses.

In his petition for review in all three cases, the appellant reasserts that the agency's placement of him on enforced leave for refusing to submit to a fitness-for-duty examination was not sustainable because the agency did not fulfill the requirements of 5 CFR § 339.301.

Under 5 CFR § 339.301, an agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A psychiatric examination is specifically called for in a position having medical standards or subject to a medical examination program established under this part. 5 CFR § 339.301(e)(1)(i).

The agency placed the appellant on enforced leave because of his failure to submit to the third psychiatric fitness-for-duty examination. The appellant argues that OPM's regulations precluded the agency from ordering the final psychiatric fitness-for-duty examination, and the record contains no evidence that the agency ordered the appellant to undergo a physical examination prior to doing so, as

required by 5 CFR § 339.301(e)(i). The agency has not argued, and the record does not show, that subsection (e) (ii) is applicable.

The Postal Service's Employee and Labor Relations Manual (ELM) permits management to order psychiatric examinations. In at least two cases, the Board has relied on the ELM as authority for the Postal Service to order psychiatric examinations, without mentioning Part 339 of Title 5. See *Sellman v. U.S. Postal Service*, 63 M.S.P.R. 145, 152 (1994), and *Gannon v. U.S. Postal Service*, 61 M.S.P.R. 41, 44 (1994). However, it appears that the ELM is inconsistent with several portions of Part 339, and the Board has held that an agency may not discipline an employee for disobeying an order to submit to a psychiatric examination that was invalid under 5 CFR § 339.301. See *Harris v. Department of the Air Force*, 62 M.S.P.R. 524, 528-29, review dismissed, 39 F.3d 1195 (Fed. Cir. 1994) (Table). The Board has not specifically determined whether 5 CFR part 339 applies to the Postal Service. Under 39 U.S.C. § 410(a), Federal laws regarding employees do not apply to the Postal Service, unless they are made specifically applicable.

The members of the Board therefore have requested that the Director provide an advisory opinion on whether OPM intended 5 CFR part 339 to apply to the Postal Service and, if so, whether OPM has the authority to regulate the Postal Service in this area, considering that the Postal Service is generally exempt from Title 5 of the United States Code.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before September 1, 2000.

ADDRESSES: All briefs should include the case name and docket numbers noted above (*Jerry Gribcheck v. U.S. Postal Service*, MSPB Docket Nos. CH-0752-99-0002-I-1, CH-0752-99-0014-I-1, CH-0752-99-0337-I-1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. **FOR FURTHER INFORMATION CONTACT:** Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653-7200.

Dated: July 27, 2000.

Robert E. Taylor,
Clerk of the Board.

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¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).