

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

JANET L. WALLACE,  
Appellant,

v.

DEPARTMENT OF THE AIR FORCE,  
Agency.

DOCKET NUMBER  
CH04328710091

DATE: SEP 4 1987

Janet L. Wallace, Dayton, Ohio, pro se.

Charles A. Buenning, Jr., Wright-Patterson Air Force  
Base, Ohio, for the agency.

BEFORE

Daniel R. Levinson, Chairman  
Maria L. Johnson, Vice Chairman  
Dennis M. Devaney, Member

OPINION AND ORDER

The appellant has petitioned for review of an initial decision sustaining her removal. For the reasons stated below, we hereby GRANT the petition, VACATE the initial decision, and REMAND the case to the Chicago Regional Office. See 5 U.S.C. § 7701(e)(1).

BACKGROUND

The agency removed the appellant for unacceptable performance in two critical elements of her job. After initially challenging her removal within her agency through the discrimination complaint procedure, the appellant filed

an appeal with the Board's Chicago Regional Office. An administrative judge of that regional office found that the action had been taken under an OPM-approved performance appraisal system, that the appellant had been given a reasonable opportunity to demonstrate acceptable performance, and that the agency had presented substantial evidence of the appellant's unacceptable performance with respect to one of the critical elements at issue, "Final Product Implementation." He declined to review the merits of the charge that the appellant had performed the other critical element at issue ("Office Administration") unacceptably, and instead he sustained the removal solely on the basis of the charge related to the "Final Product Implementation" element.

The appellant has petitioned for review of the initial decision. In her petition, she alleges that: (1) The administrative judge's consideration of errors appearing on copies of documents was improper, since the performance standard for the critical element of "Final Product Implementation," and the testimony of a witness, indicate that "the type errors that would be objectionable [were] those appearing on the original [rather] than on copies"; (2) the administrative judge improperly considered the alleged untimeliness of her work in finding that her performance was unacceptable; and (3) the original documents

in the record do not support the agency's allegation that she made an excessive number of errors.<sup>1</sup>

#### ANALYSIS

The administrative judge improperly considered errors on carbon or file copies of documents the appellant prepared.

In connection with her first contention, the appellant alleges that the agency had a practice of allowing handwritten corrections on copies of documents. We agree. As the appellant has noted, the lead secretary in the office in which the appellant was employed testified, at the hearing held before the administrative judge, that the agency allowed those "pen and ink changes." Petition for Review File, Tab 1 (Hearing Transcript at 16-17). In addition, the appellant's supervisor testified, at the appellant's discrimination complaint hearing, that there was no requirement that the carbon or file copies be corrected "unless it's word changes." Discrimination Complaint Hearing Transcript at 130 (Appeal File, Tab 2).

Despite this testimony, the administrative judge based his finding that the appellant's performance was unacceptable at least partly on evidence related to errors the appellant made on copies, rather than on originals. He re-

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<sup>1</sup> The appellant also alleges that: (1) One of the agency witnesses who criticized the appellant's work twice recommended her for other employment; (2) she received an "A" on the typing course to which the agency sent her; and (3) the record fails to support the charge of unacceptable performance with respect to matters other than "Final Product Implementation." In light of our disposition of this case, however, we find it unnecessary to reach the merits of these allegations.

ferred to the appellant's supervisor's testimony, at the discrimination complaint hearing, that the appellant made typographical errors on approximately 40% of her documents. Initial Decision at 4, citing Discrimination Complaint Hearing Transcript at 153 (Appeal File, Tab 2). The record shows, however, that the 40% figure was based on errors in carbon copies, rather than those in originals. Discrimination Complaint Hearing Transcript at 153. It shows further that the supervisor testified that the presence of errors on those copies did not indicate that those errors were uncorrected on the original documents. *Id.* at 131-34.<sup>2</sup> In addition, we note that the agency has not denied the accuracy of the allegation, in the appellant's petition for review, that the documents the agency submitted to the administrative judge in support of its contention that the appellant made too many errors consist entirely of copies of copies, rather than copies of originals on which the errors should have

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<sup>2</sup> That witness testified that "[w]hat the carbons show[ed] wa]s the frequency with which errors were made and the time to be taken to correct the errors on the carbons or the originals, which resulted in low work output, in some cases." Discrimination Complaint Hearing Transcript at 132; see also *id.* at 133, 154, 155.

been corrected.<sup>3</sup> We therefore find that the administrative judge improperly considered alleged errors that appeared in carbon or file copies of documents the appellant typed, rather than in original documents.

The administrative judge failed to state a proper basis for considering the timeliness of the appellant's work.

In his initial decision, the administrative judge considered the timeliness of the appellant's work. He found, based on testimony presented by the appellant's supervisor, that the frequency of the appellant's errors and the time spent correcting the errors "resulted in the appellant's low output," and that "[t]his accounted for the appellant's inability to meet deadlines for her work." Initial Decision at 4. In addition, he referred to the testimony of another person that the appellant's work was untimely, *id.* at 3-4, and to the testimony of a third person that "it took [the appellant] longer than average to complete her work ... ," *id.* at 3.

We note, however, that the performance standard for the "Final Product Implementation" element includes no explicit mention of the timeliness of the appellant's work. Instead,

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<sup>3</sup> Although the record is not entirely clear on this point, it appears that the documents the agency submitted to the administrative judge on this subject consist solely, or at least in large part, of documents that were presented as Agency Exhibit 1 at the discrimination complaint hearing. In testifying at that hearing regarding the agency exhibit, the appellant's supervisor stated that they consisted either entirely or nearly entirely of copies rather than originals. Discrimination Complaint Hearing Transcript at 131-34. See also (1) at 19 (complaints examiner's statement that the documents "appear[ed] to be carbons").

it provides that performance of that element is satisfactory when the following criteria are met:

(a) Grammar and format are in accordance with current policy, practice, and instructions. Executive correspondence is error free and typographical errors are rarely present in other material. (b) Products conform to instructions. (c) Finished material rarely contains transcription errors. Draft material is not rendered unintelligible as a result of transcription errors.

Parts (a) and (c) of this standard refer specifically and exclusively to grammar, format, and errors (including transcription errors). We therefore find that the timeliness of the appellant's work is irrelevant to those parts of the standard. Part (b), however, is less clear; it does not specifically provide whether timeliness could be considered a part of the "instructions" to which the appellant's products were required to conform. If timeliness is a relevant consideration under this standard, therefore, it would be relevant under part (b) of the standard. The administrative judge made no findings, however, with respect to this matter. We find that his failure to do so constitutes error.

Remand of this appeal is necessary.

Evidence described above regarding errors made in carbon or file copies that the appellant prepared, and regarding the timeliness of the appellant's work, formed a major basis for the administrative judge's decision. As we have stated above, the administrative judge made repeated references to both those matters when stating his reasons for sustaining the appellant's removal. We are unable to

determine, on the basis of the record, whether the administrative judge would have sustained the appellant's removal in the absence of his consideration of the errors the appellant made on carbon or file copies, or whether--if consideration of the timeliness of the appellant's performance was not proper--the administrative judge would have sustained the removal in the absence of his consideration of that matter. In addition, we find that a determination as to whether timeliness is relevant under part (b) of the performance standard for the "Final Product Implementation" element of the appellant's former position could depend in part on credibility determinations. Accordingly, we find it necessary to remand this case to the regional office for further consideration.

DECISION

We hereby VACATE the initial decision and REMAND the appeal to the Chicago Regional Office for further adjudication consistent with this Opinion and Order.<sup>4</sup>

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.

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<sup>4</sup> If the administrative judge finds that the agency has failed to prove that the appellant's performance with respect to the "Final Product Implementation" element was unacceptable, he shall consider whether the agency proved that her performance with respect to the element of "Office Administration" was unacceptable. If he does so, and if he previously excluded any relevant, material, and nonrepetitious evidence regarding the latter element during his earlier adjudication of the appeal, he shall allow the appellant to present evidence regarding that element.