

Dated: June 5, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-15641 Filed 6-13-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances Application for Radian International LLC; Notice of Correction

In the **Federal Register** (FR Doc. 97-13088) appearing on page 27281 in the issue of Monday, May 19, 1997, the third paragraph should read: "The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards."

Dated: June 3, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-15642 Filed 6-13-97; 8:45 am]

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MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in *Fitzgerald et al. versus Department of Defense*, MSPB Docket No. PH-0842-94-0200-B-1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on the following issues: (1) Whether the Board has jurisdiction over an appeal from a final agency decision denying an employee law enforcement officer (LEO) retirement coverage where the employee made no request for such coverage in accordance with 5 CFR 842.807(a); and (2) whether 5 CFR 842.804(c), which creates a rebuttable presumption that an agency head's denial of LEO retirement coverage is correct where a formal, written request is not filed within six months after entering a position or after any significant change in the position, is invalid, unreasonable, or violates due process.

SUMMARY:

Issue 1

In these consolidated appeals, the appellants, who are covered by the Federal Employees' Retirement System

(FERS), 5 U.S.C. chapter 84, did not request a determination of their LEO status. Rather, the agency issued a final decision on its own initiative finding that the appellants' positions were not covered by the special retirement provisions of FERS, and providing the appellants with notice of a right to appeal to the Board.

Under 5 CFR 842.807(a), "[t]he final decision of an agency denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under 5 CFR 842.804(c) may be appealed to the * * * Board under procedures prescribed by the Board." In adopting this regulation, the Office of Personnel Management (OPM) indicated that it was amending the section "to clarify that * * * only agency denial decisions made in response to individual requests under § 842.804(c) are subject to appeal * * *." 57 FR 32,685, 32,689 (July 23, 1992).

The Board has generally interpreted section 842.807(a) as requiring that an employee who is covered by FERS first formally request a determination on LEO coverage from his or her agency before appealing the agency's LEO determination to the Board. *See, e.g., Fitzgerald versus Department of Defense*, 70 M.S.P.R. 152, 155 (1996). The Board, however, is reconsidering this interpretation where, as in these cases, the agency has already issued a final decision on its own initiative. In this regard, the Board notes that under 5 U.S.C. 8461(e)(1), an administrative action or order affecting the rights or interests of an individual under the provisions of chapter 84 administered by OPM may be appealed to the Board.

The Board is inviting interested parties to submit amicus briefs addressing whether an employee request is a jurisdictional requirement where the agency has issued a final decision on its own initiative.

Issue 2

The Board has interpreted 5 CFR 842.804(c) as an additional restriction on its jurisdiction over FERS LEO matters. *See, e.g., DeVitto versus Department of Transportation*, 64 M.S.P.R. 354, 357-58 (1994). Section 842.804(c) provides that if an employee is in a position not subject to the higher LEO withholding rate, and the employee does not, within six months after entering the position or after any significant change in the position, formally and in writing seek a determination from the employing agency that his or her position is properly covered by the higher withholding rate, the agency head's

determination that the service was not so covered at the time of the service is presumed to be correct. The presumption may be rebutted by a preponderance of the evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed when the service was performed. Thus, under *DeVitto*, if a request for LEO coverage is not made within the time limit set forth in the regulation and neither of the circumstances specified in the regulation is present, an appeal of the agency's denial of LEO coverage must be dismissed for lack of jurisdiction.

The appellants and amicus curiae National Treasury Employees Union argue that section 842.804(c) is invalid because it is contrary to statute and congressional intent. The appellants and amicus curiae assert that the statutory scheme grants special retirement coverage for LEOs, contains no deadlines for challenging adverse agency determinations as to employee status, and provides that an administrative action or order affecting the rights or interests of an individual under the provisions of chapter 84 maybe appealed to the Board under procedures prescribed by the Board." 5 U.S.C. § 8461(e)(1). Thus, they contend that the Board's jurisdiction to review the merits of agency head determinations is not qualified by any statutory obligation to presume the correctness of those determinations. Alternatively, they assert that section 842.804(c) is entitled to no deference because it is an arbitrary and unreasonable exercise of OPM's regulatory authority and violates the constitutional guarantees of due process.

The agency, by contrast, argues that the statute is silent on the matters covered in section 842.804(c), and that the section, promulgated pursuant to OPM's authority to prescribe regulations to carry out 5 U.S.C. chapter 84, is a time limit that is not arbitrary, capricious, or contrary to statute because it furthers the intent of the statute to provide LEO retirement coverage when a determination can be made that entitlement to coverage exists. The agency contends that it would be difficult to make these determinations based on the evidence required if employees could wait twenty years, until they believed they were eligible to retire, to request LEO retirement coverage.

The Board is inviting interested parties to submit amicus briefs addressing whether 5 CFR 842.804(c) is

invalid, unreasonable, or violates due process. Resolution of this issue may depend, in part, on how section 842.804(c) should be interpreted, i.e., as jurisdictional, see DeVitto, 64 M.S.P.R. at 357, as a rule affecting the Board's analysis of the appellants' burden of proof on the merits, or as a timeliness requirement couched in jurisdictional and/or merits language.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before July 11, 1997.

ADDRESSES: All briefs shall include the case name and docket number noted above (*Fitzgerald et al. versus Department of Defense*, MSPB Docket No. PH-0842-94-0200-B-1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, 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: June 10, 1997.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 97-15652 Filed 6-13-97; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94-409).

DATES: August 4-6, 1997, 8:30 a.m. to 5:00 p.m.

LOCATION: The Ritz Carlton Atlanta, 181 Peachtree Street, NE, Atlanta, GA 30303; 404-659-0400.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004-1107; 202-272-2004 (Voice), 202-272-2074 (TTY), 202-272-2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal

opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director

Committee Meetings and Committee Reports

Strategic Planning—Closed Work Session for Members and Staff

Youth Leadership Development Conference

Seventh Anniversary of the Americans with Disabilities Act (ADA)

History of ADA

Return-to-work Initiative

Disability Data Collection

Round-table Discussion on Outreach to Minorities with Disabilities

Unfinished Business

New Business

Announcements

Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, D.C., on June 12, 1997.

Ethel D. Briggs,

Executive Director.

[FR Doc. 97-15823 Filed 6-12-97; 11:45 am]

BILLING CODE 6820-MA-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-344]

Portland General Electric Company; Eugene Water and Electric Board; Pacific Power and Light Company; Notice of Issuance of Amendment to Possession-Only License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 198 to Possession-Only License No. NPF-1 issued to Portland General Electric Company (the licensee), which revised the Possession-Only License for the Trojan Nuclear Plant located in Columbia County, Oregon, along the west bank of the Columbia River, near the town of Rainier, Oregon. The amendment is effective as of the date of issuance.

The amendment modified the Trojan Nuclear Plant Possession-Only License to allow the processing of spent fuel debris in the Trojan Fuel Building.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on February 7, 1997 (62 FR 5860). Licensee subsequent submittals dated March 31, 1997 and April 9, 1997 provided background information for clarification of several technical issues and were not outside the scope of the February 7, 1997 notice. No request for a hearing or petition for leave to intervene was filed following this notice. The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 23, 1996, and supplemented by submittals dated December 12, 1996, March 31, 1997, and April 9, 1997, (2) Amendment No. 198 to License No. NPF-1, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these