

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WESTERN REGIONAL OFFICE**

ROBERT J. MACLEAN,  
Appellant,

DOCKET NUMBER  
SF-0752-06-0611-I-2

v.

DEPARTMENT OF HOMELAND  
SECURITY,  
Agency.

DATE: July 29, 2009

**ORDER DENYING APPELLANT’S MOTION OF JULY 10, 2009**

On June 22, 2009, the Board issued a final order addressing an interlocutory appeal. Refiled Appeal (RF), Tab 27. By a motion dated July 10, 2008, filed on July 10, 2009, the appellant moved for reconsideration of that final order, and “an additional 30-day period in which to file a brief in support of reconsideration with the Board.” RF, Tab 28. The appellant explained that this extension was being requested in addition to the 30 day deadline for filing a “motion for reconsideration[.]” *Id.*

The appellant declines to cite any procedural authority in support of his motion. *Id.* Although the agency did not oppose or otherwise respond to this motion, I note that the request for an extension fails to comply with the Board’s requirements. *See* 5 C.F.R. § 1201.55(a). Following a careful review of the motion, I find that the appellant has failed to make a showing of good cause to

grant his motion. Accordingly, the appellant's motion of July 10, 2009 is DENIED without exception. All prior Orders remain unchanged.

FOR THE BOARD:

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Franklin M. Kang  
Administrative Judge

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Mail      Robert J. MacLean  
20 Waltham Road  
Ladera Ranch, CA 92694

Appellant Representative

Electronic Mail      Peter H. Noone, Esq.  
Avery, Dooley, Post & Avery, LLP  
Attorneys at Law  
90 Concord Avenue  
Belmont, MA 02478

Agency Representative

Electronic Mail      Eileen Dizon Calaguas, Esq.  
Department of Homeland Security  
Attorney-Advisor  
TSA Office of Chief Counsel  
450 Golden Gate Avenue  
P.O. Box 36018  
San Francisco, CA 94102

July 29, 2009

(Date)

Shinobu Ichino  
Paralegal Specialist

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**RESCHEDULING ORDER**

The Board initially issued an Order and Notice of Hearing and Prehearing conference on June 13, 2006, followed by a second Order rescheduling these matters on August 28, 2006. The hearing and prehearing in this matter are rescheduled as follows. The hearing in this appeal will be held:

Date: **September 22, 2009**

Time: **9:30 a.m., PDT.**

Location: Video-Conference.

**AGENCY PROVIDES VIDEO-CONFERENCE FACILITIES FOR  
HEARING**

It is proposed that the scheduled hearing in this case be conducted by video conference if appropriate arrangements can be made. The hearing will be recorded by a court reporter, and the administrative judge and the court reporter will be located at MSPB video-conference facilities in **San Francisco, CA.** I **ORDER** the agency's representative to locate a facility for the agency and the

appellant within the Board's fixed hearing site location, which has compatible video conferencing equipment that can be used for the scheduled hearing. The parties shall notify anticipated witnesses of this hearing date and advise of any scheduling conflicts within five calendar days of the date of this Order which is sent via facsimile to the representatives to ensure immediate receipt. Any request to reschedule must comply with 5 C.F.R. §§ 1201.51(c) and 1201.55(a).

The agency's representative is required to inform the administrative judge and the appellant, in writing, that such facility has been located, no later than 15 calendar days from the date of this order. The agency shall initiate a test call inclusive of any anticipated bridges or other network connections no later than 20 calendar days of the scheduled hearing date above by coordinating with paralegal Shinobu Ichino. Ms. Ichino may be reached at 415-904-6772. The agency representative is advised to keep the administrative judge apprised of any difficulties in fulfilling this requirement. The appellant's representative may also locate such a facility which will be considered, if he or she informs the administrative judge and the agency's representative, in writing, within the same time period.

If the appellant fails to appear without good cause, the appeal will be decided without a hearing. If the agency representative fails to appear, the hearing will, absent extraordinary circumstances, proceed as scheduled. The parties and participants shall make arrangements to stay beyond normal business hours as necessary to ensure that all witnesses are heard on each of the hearing dates above.

### **PREHEARING SUBMISSIONS**

I **ORDER** the agency and the appellant to file the following to be **received in this office** on or before **August 12, 2009**:

- (1) A statement of facts and issues (the appellant must include any and all defenses);

- (2) A list of all agreed upon material facts;
- (3) A list of witnesses with a brief summary of the expected testimony of each witness; and
- (4) A copy of exhibits accompanied by an index identifying the documents. You must separately mark for identification each and every document in the lower right hand corner. The appellant must mark exhibits by letter, the agency by number. Each exhibit exceeding 10 pages in length must be paginated. Documents previously submitted to the Board by either party are already a part of the record and are not to be offered as exhibits. **No binders or notebooks will be accepted.**

NOTE: In presenting evidence at the hearing, you will be limited by your prehearing submissions, except for good cause shown. For example, an unlisted witness will usually not be permitted to testify, and hearing exhibits that were not reviewed during the prehearing conference will usually not be accepted into the record.

### **WITNESSES**

The agency must provide for the appearance of its employees who are approved as witnesses; thus no subpoenas for them are necessary. If necessary, I will assist you in arranging for the appearance of employees of any other Federal agency. This assistance may include ordering that agency to make the witness available or issuing a subpoena. To be timely, a motion for subpoena must be received in this office on or before **August 12, 2009**. The requesting party is responsible for serving the subpoena and for paying appropriate witness fees.

### **PREHEARING CONFERENCE**

I will conduct a telephonic prehearing conference on **August 18, 2009**, at **10:00 a.m., PDT**. Witness requests and hearing exhibits will be reviewed in detail and the facts and issues of the appeal that will be addressed at the hearing

will be discussed. Unless otherwise specified, all discovery efforts will terminate on the date prehearing submissions are due. The parties must be prepared, as appropriate, to discuss settlement, to define the issues, and to reach stipulations of uncontested facts. I **ORDER** the agency representative to contact appellant's representative or appellant, if unrepresented, and make appropriate arrangements to initiate this call. The agency representative must contact me to confirm these arrangements. The appellant or the appellant's representative must provide the agency representative and me with a telephone number for the conference call within five calendar days of receipt of this order, if a suitable number is not already included in the appeal record.

NOTE: Since I will discuss settlement options during this conference, representatives must have the authority to settle this appeal or be able to reach the person with that authority on short notice. We may include that person in the conference discussions if I deem it necessary.

FOR THE BOARD:

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Franklin M. Kang  
Administrative Judge

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

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Electronic Mail      Eileen Dizon Calaguas, Esq.  
Department of Homeland Security  
Attorney-Advisor  
TSA Office of Chief Counsel  
450 Golden Gate Avenue  
P.O. Box 36018  
San Francisco, CA 94102

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July 29, 2009

(Date)

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Shinobu Ichino  
Paralegal Specialist

**MERIT SYSTEMS PROTECTION BOARD**  
**HEARING TAPE STATUS REPORT**

**Appellant:** Robert J. Maclean  
**Agency:** Department Of Homeland Security  
**Docket Number:** SF-0752-06-0611-I-2  
**Judge:** Franklin M. Kang  
**Date(s):** \_\_\_\_\_  
**Location:** \_\_\_\_\_ **Video Hearing:** Yes \_\_\_ No \_\_\_  
**Phone:** \_\_\_\_\_  
**Reporter:** \_\_\_\_\_

**SUBMIT TO PARALEGAL UPON COMPLETION OF HEARING**

HEARING TIMES	1 <sup>ST</sup> Day	2 <sup>nd</sup> Day	3 <sup>rd</sup> day	4 <sup>th</sup> Day	5 <sup>th</sup> Day
Scheduled Start:	_____	_____	_____	_____	_____
Actual Start:	_____	_____	_____	_____	_____
Lunch Recess:	_____	_____	_____	_____	_____
Resume:	_____	_____	_____	_____	_____
Ending:	_____	_____	_____	_____	_____
Daily Hours:	_____	_____	_____	_____	_____

\_\_\_\_\_ **Hearing Taped By Court Reporter**  
\_\_\_\_\_ **Hearing Taped By AJ**  
\_\_\_\_\_ **Nonhearing Tape (settlement, Withdrawal, etc)**  
**NO TAPES BUT THERE WILL BE A COURT REPORT CHARGE**  
\_\_\_\_\_ **Settled at time of hearing**  
\_\_\_\_\_ **Withdrawn at time of hearing**  
\_\_\_\_\_ **Appellant No-Show**  
\_\_\_\_\_ **Other**

**Tapes are due:** \_\_\_\_\_ **Date received:** \_\_\_\_\_  
**Invoice no:** \_\_\_\_\_ **Tape quality:** \_\_\_\_\_  
**Yes**      **No**

\_\_\_\_\_ **Labeled Correctly?**  
\_\_\_\_\_ **Tapes rewound?**  
\_\_\_\_\_ **Holes Punched by court report?**  
\_\_\_\_\_ **Speaker sheet?**  
\_\_\_\_\_ **Authentication Signed?**

**COMMENTS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_