



Public Employees for Environmental Responsibility

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September 6, 2013

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Sent by email

Re: Proposed removal of Dr. Cate Jenkins

Dear Ms. Devlin, Ms. Connors, Mr. Guerrero and Ms. DeLucia,

On August 28, 2013, Dr. Cate Jenkins received a notice of her proposed removal from her position as an Environmental Scientist, GS-130 1-13, in the Waste Characterization Branch, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (EPA). The proposing official is Betsy Devlin and the deciding official is Sandra Connors.

We, Dr. Jenkins' counsel, are writing to request that you withdraw the current proposed removal because it is in violation of the Merit Systems Protection Board's (MSPB) May 4, 2012 Order, which directs that Dr. Jenkins be given an opportunity to



establish her affirmative defenses, and that her success in doing so would preclude the re-initiation of the prior removal action.¹

Specifically, as you are likely aware, this is the second time that Dr. Jenkins' removal from the EPA has been proposed. She was removed in December 2010 on the basis of the same alleged conduct relied upon to support the current proposal. She challenged her first removal before the MSPB and the Department of Labor Office of Administrative Law Judges (DOL) on whistleblower retaliation and other grounds. On May 4, 2012, the MSPB vacated the December 2010 removal for violation of constitutional due process and reinstated Dr. Jenkins to her position. The Board also remanded the case for further proceedings on her affirmative defenses, including whistleblowing. *Jenkins v. EPA*, 2012 MSPB 70 (May 4, 2012). Dr. Jenkins was then placed on paid administrative leave, where she has remained since May 2012.

Dr. Jenkins' suit before DOL is ongoing and has been in discovery since the hearing in that matter was suspended in May 2012 when it became apparent that EPA had failed to fully comply with discovery requests and orders. At the parties' request, the remand of Dr. Jenkins' MSPB proceeding has been dismissed without prejudice to re-filing by December 31, 2013 or ten days after the conclusion of the DOL proceeding, whichever is earlier.

The current proposed removal is in violation of the MSPB's May 4, 2012 Order. The MSPB decision specifically directed that although "our reversal of the appellant's removal on due process grounds does not preclude the agency from reinitiating the action on the same charges appellant should be afforded the opportunity to prove her assertions that the agency retaliated against her in violation of § 2302(b)(9) and (12), because proof of such retaliation (or proof of retaliation for whistleblowing) would require a reversal on the merits of the removal that would preclude the agency from reinstating the action." Order of May 4, 2012 at P14 (emphasis added). Because Dr. Jenkins has not yet been afforded the opportunity to prove her retaliation claims, as her proceedings asserting those claims both at MSPB and DOL are still pending, EPA may not reinstate the proposed removal at this time. Pursuant to the MSPB Order, a proposed removal of Dr. Jenkins may not be reinstated until both her DOL and MSPB proceedings are concluded, and then only if Dr. Jenkins does not prevail in either of those proceedings.

If the proposed removal is not voluntarily withdrawn, or at the least stayed pending conclusion of the DOL and MSPB proceedings, Dr. Jenkins will be forced to take legal action to achieve that result. However, we are hopeful that this matter can be resolved without legal proceedings.

Sincerely,



¹ This letter does not constitute Dr. Jenkins' response to the proposed removal, which she has been given until October 9, 2013 to submit.

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