

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

EDMUND N. ERDOS, III,
Appellant,

DOCKET NUMBER
CH-0752-12-0234-I-1

v.

DEPARTMENT OF VETERANS
AFFAIRS,
Agency.

DATE: February 14, 2012

ORDER ON TIMELINESS AND JURISDICTION

The Board issued a January 27, 2012 Order requiring the appellant to show that his appeal was timely. I have received both the appellant's pleading and the agency's response. The agency removed the appellant on August 25, 2011. He filed a formal discrimination complaint over the removal on September 14, 2011. He did not receive the agency's Final Agency Decision by the time he filed his Board appeal on January 22, 2012. Because the Board filing is more than 120 days after the discrimination filing, I find the Board appeal is timely.

The agency filed a motion to dismiss the appellant's affirmative defense of retaliation for whistleblowing and the appellant filed a responsive pleading. The agency argued that because the appellant filed an OSC request for corrective action and OSC closed its investigation in May 2011, the appellant's whistleblower affirmative defense is untimely and should be dismissed from this

appeal. The complaint that OSC closed in May 2011 could not have named the removal as the retaliatory personnel action because the agency did not remove the appellant until the following August. The agency's motion is DENIED.

FOR THE BOARD:

_____/S/_____
Julia Packard
Administrative Judge