

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WESTERN REGIONAL OFFICE

JEFFREY N. LEWIS,
Appellant,

DOCKET NUMBER
SF-0752-09-0139-I-1

v.

DEPARTMENT OF
TRANSPORTATION,
Agency.

DATE: January 9, 2009

ORDER AND NOTICE OF HEARING AND PREHEARING CONFERENCE

The hearing in this appeal will be held:

Date: March 4, 2009

Time: 9:00 a.m., PST.

Location: U.S. Merit Systems Protection Board
201 Mission Street, Suite 2310
San Francisco, CA 94105-1831

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.

PREHEARING SUBMISSIONS

I **ORDER** the agency and the appellant to file the following to be received in this office on or before **February 17, 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 **February 17, 2009**. The requesting party is responsible for serving the subpoena and for paying appropriate witness fees.

PREHEARING CONFERENCE

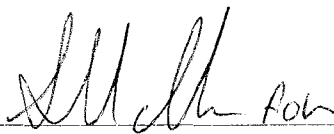
I will conduct a telephonic prehearing conference on **February 20, 2009**, at **12:00 p.m., PST**. Witness requests and hearing exhibits will be reviewed in detail and the facts and issues of the appeal that will be addressed at the hearing will be discussed. Unless otherwise specified, all discovery efforts will terminate

on this date. 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 appellant or the appellant's representative must provide the agency representative 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.

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.

Note: If any party has a pre-existing conflict on any of the dates set forth herein, and intends to request an extension or continuance, such request must be communicated to me within 5 business days of the date of this order or it will be summarily denied unless good cause can be shown for the delayed request.

FOR THE BOARD:



Craig A. Berg
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

U.S. Mail Jeffrey N. Lewis
28242 S. Salo Road
Mulino, OR 97042

Appellant Representative

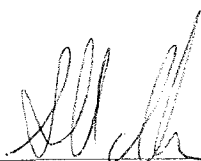
Facsimile Ariel Solomon, Esq.
Tully, Rinckey & Associates, PLLC
441 New Karner Road
Albany, NY 12205

Agency Representative

Facsimile Don Bobertz, Esq.
Naomi Tsuda, Esq.
Department of Transportation
Office of the Regional Counsel
AWP-7
P.O. Box 92007
Los Angeles, CA 90009-2007

January 9, 2009

(Date)



Shinobu Ichino
Paralegal Specialist