

# 2021-1116

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**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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**DOREEN CROSS,**

**Petitioner,**

**v.**

**OFFICE OF PERSONNEL MANAGEMENT,**

**Respondent.**

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**PETITION FOR REVIEW FROM THE MERIT SYSTEMS PROTECTION  
BOARD IN NO. AT-0843-19-0760-I-1**

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**CORRECTED BRIEF OF PETITIONER AND APPENDIX**

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April 9, 2021

**CERTIFICATE OF INTEREST**

As required by Federal Circuit Rule 47.4, I certify the following:

1. The full name of every party represented by me is: Doreen Cross.
2. The party I represent, Petitioner, Doreen Cross, is the only real party in interest.
3. There are no parent corporations or publicly held companies that own 10% or more of the stock of any party represented by me.
4. The names of all law firms and the partners and associates that have appeared for the party in the lower court or are expected to appear for the party in this Court are:  
  
Melville Johnson, P.C.  
George Melville Johnson  
Jennifer D. Isaacs  
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5. Other than the originating case number(s), there are no cases known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal.
6. Information required by Federal Rule of Appellate Procedure 26.1(b) and (c): None.

Dated: April 9, 2021

**/s/ Jennifer D. Isaacs**  
Jennifer Duke Isaacs, Esq.  
Georgia Bar Number: 902511

**TABLE OF CONTENTS**

CERTIFICATE OF INTEREST..... i

TABLE OF AUTHORITIES..... iv

STATEMENT OF RELATED CASES..... vi

STATEMENT OF JURISDICTION..... 1

STATEMENT OF THE ISSUES..... 2

STATEMENT OF THE CASE..... 3

STATEMENT OF FACTS..... 5

SUMMARY OF THE ARGUMENTS..... 8

ARGUMENTS AND CITATION TO AUTHORITY..... 10

    A. Standard of Review..... 10

    B. This Court Has Jurisdiction Over This Timely Filed Petition.....10

        1. The Board May Extend the Date on Which the Initial Decision  
           Becomes Final .....10

        2. Petitioner Reasonably Believed All of Her Deadlines Were  
           Extended.....12

        3. Denying Jurisdiction Improperly Limits the Board’s Authority...13

        4. A Finding of Jurisdiction is in the Interest of Public Policy .....14

    C. The Administrative Judge’s Determination that Petition was Not  
        Entitled to Former Spouse Survivor Benefits was Not in Accordance  
        with the Law.....14

CONCLUSION..... 22

CERTIFICATE OF COMPLIANCE ..... 23

CERTIFICATE OF SERVICE..... 25

**TABLE OF AUTHORITIES**

**CASES**

*Brush v. OPM*, 982 F.2d 1554 (Fed. Cir. 1992) .....15, 16

*Hairston v. OPM*, 318 F.3d 1127 (Fed. Cir. 2003) .....18, 19

*Simpson v. OPM*, 347 F.3d 1361 (Fed. Cir. 2003) ..... 20, 21

*Vallee v. OPM*, 58 F.3d 613 (Fed. Cir. 1995) .....16, 17

*Wood v. OPM*, 241 F.3d 1364 (Fed. Cir. 2001) .....17

**FEDERAL STATUTES**

5 U.S.C. §7701(a) .....1

5 U.S.C. §8461(e) .....1

5 U.S.C. § 7701(e)(1)(A) .....8, 11, 13

5 U.S.C. § 8419(b)(1)(B) .....14

5 U.S.C. § 7703(c) .....1, 10

5 U.S.C. § 7703(b)(1)(A).....12, 13

28 U.S.C. §1295(a)(9) ..... 1

5 U.S.C. § 8417(b)(2).....10, 14

**FEDERAL RULES**

Federal Rule of Appellate Procedure 32(a)(5).....23

Federal Rule of Appellate Procedure 32(a)(6).....23

Federal Rule of Appellate Procedure 32(a)(7)(B).....23

Federal Rule of Appellate Procedure 26.1(b).....i

Federal Circuit Rule 47.4.....i

**FEDERAL REGULATIONS**

5 C.F.R. § 831.612(d)(1).....10, 16

**STATEMENT OF RELATED CASES**

The Petitioner and her counsel are unaware of any cases related to this  
Petition for Review.

**STATEMENT OF JURISDICTION**

This Petition for Review is an appeal from the Initial Decision issued by the Merit Systems Protection Board in Atlanta, GA, entered on March 2, 2020, which became the Final Order of the Merit Systems Protection Board on September 3, 2020. The MSPB had jurisdiction of the case pursuant to 5 U.S.C. §7701(a) and 8461(e), as stated in the Initial Decision. The Petitioner filed a timely Petition for Review with this Court on October 25, 2020.

The Court of Appeals for the Federal Circuit has jurisdiction over this Petition for Review pursuant to 28 U.S.C. §1295(a)(9) (1988). The scope of review is limited by statute: The court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence. 5 U.S.C. §7703(c) (1988).



**STATEMENT OF THE ISSUES**

WHETHER THE MERIT SYSTEMS PROTECTION BOARD  
INCORRECTLY DETERMINED THAT APPELLANT WAS NOT ENTITLED  
TO A FORMER SPOUSE SURVIVOR ANNUITY BASED ON THE FEDERAL  
CIVIL SERVICE OF HER DECEASED FORMER HUSBAND.

## **STATEMENT OF THE CASE**

On June 21, 2018, the Office of Personnel Management (“OPM”) issued a Final Decision to deny Petitioner’s application for a former spouse survivor annuity. Petitioner received the Decision via Certified Mail on July 11, 2018. On August 8, 2018, Petitioner timely filed her appeal to the Merits Systems Protection Board (“MSPB”). On September 6, 2018, OPM notified the Board that it rescinded its Final Decision and would reexamine the matter. As a result, on September 7, 2018, Administrative Judge Jeffrey S. Morris issued an Initial Decision dismissing Petitioner’s appeal for lack of jurisdiction.

On August 2, 2019, OPM issued a reply to Petitioner’s Request for Reconsideration which affirmed the Decision finding that Petitioner was not entitled to former spouse annuity benefits and finding that Petitioner had been overpaid \$1,241.73. On September 8, 2019, Petitioner timely filed her Appeal to the MSPB. On September 11, 2019, Administrative Judge Morris issued an Acknowledgement Order.

On February 27, 2020, Petitioner had a telephonic hearing before Administrative Judge Morris. On March 2, 2020, Administrative Judge Morris issued his Initial Decision denying Petitioner’s claim for the former spouse survivor annuity and remanding the issue of overpayment alleged by OPM. Administrative Judge Morris did not doubt Mr. Cross’s intention for Petitioner to

receive the former spouse survivor annuity but determined he was still obligated to uphold OPM's denial based on Mr. Cross's failure to re-elect the former spouse survivor annuity for Petitioner in the approximately six (6) months between their divorce and Mr. Cross's death.

Petitioner requested and was granted several extensions to file a Petition for Review with the Board. On August, 4, 2020, Petitioner filed for a final extension which was granted on August 5, 2020. The Order stated that Petitioner may file a Petitioner for Review on or before September 3, 2020 or the March 2, 2020 Initial Decision would remain the final decision of the Board and further rights of appeal must be exercised in accordance with the provisions as stated in that initial decision. Ultimately, the Board's decision became final on September 3, 2020, and Petitioner filed her Petition for Review in this Court on October 25, 2020.

## **STATEMENT OF FACTS**

Petitioner is the surviving former spouse of Wayne Cross, who was employed by the Department of the Navy and covered by the Federal Employees Retirement System (“FERS”). Appx62. Petitioner and Mr. Cross were married on August 3, 1982, and they legally separated on or about April 21, 1998. Appx45. At the time of separation, Mr. Cross was employed by W.O. Blackstone, a private company. Appx54. At the time of separation, Petitioner and Mr. Cross reached agreements with respect to their financial obligations, the division of their property, and the responsibilities for the care and raising of their daughter. Appx45-61. At that time, Mr. Cross was not a Federal employee. Appx54.

In the early 1990s, Mr. Cross was part of one of the final Reduction in Force (RIF) layoffs from the Department of the Navy, due to the closure of the Charleston Naval Shipyard. He worked in the private sector for a number of years, both before and after separating from Petitioner, and then Mr. Cross became reemployed by the Federal Government. Mr. Cross retired from federal service on or about May 9, 2005 and indicated on his retirement application a maximum survivor annuity for Petitioner. Appx62. At the time of Mr. Cross’ retirement, he and Petitioner had been legally separated for approximately seven (7) years. Despite their separation, each year, upon receiving his notice of election from the Office of Personnel Management (“OPM”), Mr. Cross maintained his election for a

reduced annuity in order to provide a maximum survivor annuity for Petitioner, his then-spouse and the mother of his child. After legally separating in 1998, Petitioner and Mr. Cross never reunited.

In or about December, 2014, Mr. Cross again maintained the same election that he had for the previous nine years – electing a reduced annuity to provide the maximum survivor benefit for Petitioner. The couple divorced on March 27, 2015. Appx67. A few months later, Mr. Cross died on September 23, 2015. Appx70. In the time between Petitioner and Mr. Cross' divorce, and Mr. Cross' death, OPM did not send Mr. Cross the information needed for him to elect a benefit for his former spouse. The time between the couple's divorce and Mr. Cross' passing was simply too short for this Election notice to have been sent. As a result, Mr. Cross passed not only before being provided the opportunity to affirmatively elect a benefit for his then-former spouse, but also before he even learned that he needed to re-elect a benefit for his former spouse.

On November 9, 2015, Petitioner filed an Application for Death Benefits. Appx71. On September 12, 2016, OPM issued an initial decision denying Petitioner's application. Appx75. On October 12, 2016, Petitioner submitted a Request for Reconsideration to OPM. Appx77. Almost two years later, on June 21, 2018, OPM issued a Final Decision to deny Petitioner's application for a former spouse survivor annuity. Appx78. Petitioner received the Decision via

Certified Mail on July 11, 2018. On August 8, 2018, Petitioner timely filed her appeal to the Merit Systems Protection Board (“MSPB”). On September 6, 2018, OPM notified the Board that it rescinded its Final Decision and would reexamine the matter. As a result, on September 7, 2018, Administrative Judge Jeffrey S. Morris issued an Initial Decision dismissing Petitioner’s appeal for lack of jurisdiction.

On August 2, 2019, OPM issued a reply to Petitioner’s Request for Reconsideration which affirmed the Decision finding that Petitioner was not entitled to former spouse annuity benefits and finding that Petitioner had been overpaid \$1,241.73. Appx81. On September 8, 2019, Petitioner timely filed her Appeal to the MSPB. Appx18. On September 11, 2019, Administrative Judge Morris issued an Acknowledgement Order. Appx18.

On February 27, 2020, Petitioner had a telephonic hearing before Administrative Judge Morris. Appx19. On March 2, 2020, Administrative Judge Morris issued his Initial Decision denying Petitioner’s claim for the former spouse survivor annuity and remanding the issue of overpayment alleged by OPM. Appx1. Administrative Judge Morris noted that he did not doubt Mr. Cross’s intention for Petitioner to receive the former spouse survivor annuity but determined he was still obligated to uphold OPM’s denial based on Mr. Cross’s failure to re-elect the former spouse survivor annuity for Petitioner in the

approximately six (6) months between their divorce and Mr. Cross's death.

Appx5-6.

Petitioner requested and was granted several extensions to file a Petition for Review with the Board. *See* Appx21-42. On August, 4, 2020, Petitioner filed for a final extension which was granted on August 5, 2020. Appx40-44. The Order stated that Petitioner may file a Petition for Review on or before September 3, 2020, and that if Petitioner did not do so, the March 2, 2020 Initial Decision would remain the final decision of the Board and further rights of appeal would need to be exercised in accordance with the provisions as stated in that initial decision. Appx 42-43. Ultimately, Petitioner elected her second option of appeal with this Court and filed her Petition for Review on October 25, 2020.

### **SUMMARY OF THE ARGUMENTS**

As a preliminary matter, this Court has jurisdiction over the appeal in question. Throughout the majority of this process, Petitioner has acted *pro se* and did not retain counsel until March 11, 2021. Petitioner reasonably relied on the extensions granted by the Clerk of the Board which provided that she had until September 3, 2020, to file her Petition for Review with the Board.<sup>1</sup> Based on the language of the August 5, 2020, Order issued by the Clerk of the Board, Petitioner

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<sup>1</sup> In the March 3, 2021 Order, this Court presumes that the Clerk of the Board was acting under a proper delegation of authority from the Board to grant a request for an extension of time under section 7701(e)(1)(A).

reasonably believed that the Initial Decision did not become final until September 4, 2020 and pursued her further right of appeal to this Court rather than to the Board. Appx42-43. Petitioner filed her timely appeal with this Court on October 25, 2020.

The denial of Petitioner's application for former spouse survival benefits was based on the absence of Mr. Cross's re-election of benefits for Petitioner following their March, 2015, divorce and prior to his death in September, 2015. In denying Petitioner's request for benefits, OPM ignored Mr. Cross's clear intent to provide for Petitioner as evidenced by his election for the maximum surviving-spouse annuity upon his retirement in 2005, seven (7) years after the couple separated, and his continued election to receive a reduced annuity to provide for a maximum survivor annuity for the next nine (9) years following his retirement. Appx62.

Contrary to the Administrative Judge's interpretation, evidence of intent to provide a spousal annuity following divorce is a well-established basis for the entitlement of a former surviving spouse annuity in circumstances such as the instant case. The Initial Decision does not doubt that Mr. Cross intended to provide the former spouse annuity for Petitioner based on the testimony of Petitioner and her daughter. Appx5. Moreover, the Initial Decision failed to consider the fact that post-divorce, pursuant to 5 C.F.R. § 831.612(d)(1), and 5



U.S.C. § 8417(b)(2), an annuitant has two (2) years to re-elect providing a former surviving spouse annuity. This Court has held in similar cases that the intent of an annuitant to continue providing former spouse annuity following divorce serves as convincing evidence to support the entitlement when the annuitant dies prior to the expiration of the two (2) year re-election period.

### **ARGUMENT AND CITATION TO AUTHORITY**

#### **A. Standard of Review**

Under 5 U.S.C. § 7703(c), the United States Court of Appeals for the Federal Circuit “shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence.” Furthermore, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

#### **B. This Court Has Jurisdiction Over This Timely Filed Petition.**

##### **1. The Board May Extend the Date on Which the Initial Decision Becomes Final**

The Initial Decision issued by Administrative Judge Morris on March 2, 2020 advised Petitioner of her Appeal options including the ability to file a Petition for Review with the Board or to file a Petition for Review with this Court.

Petitioner acted *pro se* until March 11, 2021. Petitioner has been diligently

pursuing her entitlement to a former spouse survivor annuity since November 2015 and traversing the complicated waters of the appeals process without the benefit of counsel for over five (5) years. Courts have often recognized the difficulty of the legal process without the assistance of legal counsel and have been inclined to provide *pro se* parties with the benefit of the doubt. With that in mind, Petitioner timely requested extensions of time to file a Petition for Review to the Board and should ultimately be found to have timely filed her appeal with this Court.

Pursuant to 5 U.S.C. §7701(e)(1)(A), Petitioner had thirty (30) days following the Initial Decision becoming final to file a Petition for Review to the Board. 5 U.S.C. §7701(e)(1)(A) specifically contemplates that the Board, for good cause shown, may extend the 30-day period referred to in Subparagraph A. Furthermore, 5 U.S.C. §7701(e)(1) provides that the conditions contemplated in Subparagraphs A and B will prevent the decision from becoming final. Specifically, 5 U.S.C. §7701(e)(1) provides that the decision “shall be final unless” one of the conditions in Subparagraph A or B applies. Petitioner filed for and was granted several extensions to file her Petition for Review with the Board. When Petitioner filed for and was granted extensions by the Clerk of the Board, she reasonably believed that the Initial Decision did not become final until September 4, 2020 based on the August 5, 2020 Order. Further, Petitioner reasonably believed that as a result of the extensions that her opportunity to file an appeal with

this Court was likewise extended.

2. Petitioner Reasonably Believed All of Her Deadlines Were Extended.

Instead of filing a Petition for Review before the Board, Petitioner opted for her other avenue of appeal via 5 U.S.C. §7703(b)(1)(A) to this Court. Based on the August 5, 2020 Order, Petitioner believed that the Initial Decision became final on September 4, 2020 and that was the date she relied upon in exercising her other avenue of appeal to this Court. Moreover, nothing in the Order or previous Orders granting extensions for Petitioner to file a Petition for Review before the Board indicated to Petitioner that she had lost her right to appeal to this Court as a result of the extensions. In fact, the Order specifically stated that if a petition was not filed by September 3, 2020, the initial decision would remain the final decision of the Board and any further right of appeal must then be exercised in accordance with the provisions as stated in the initial decision. Petitioner understood this to mean that September 4, 2020 was the date the decision became final and thus started the sixty (60) day clock for her to file an appeal with this Court. Nothing in any of the Orders granting Petitioners requests for an extension of time to file a Petition for Review indicated that her time to file an appeal in this Court was not also extended. In fact, the MSPB Initial Decision clearly provided that the deadline to file in Federal Court ran from the date the Initial Decision became final, and that the Initial Decision would not be become final until the deadline to

file a Petition for Review had passed. As the Court identified in its March 2, 2021 Order, Petitioner's appeal was timely received if the Board's decision did not become final until September 4, 2020.

3. Denying Jurisdiction Improperly Limits the Board's Authority.

5 U.S.C. §7701(e)(1)(A) provides no limits on the Board's ability to extend the 30-day period for filing a Petition for Review, beyond that the extension must be "for good cause shown." If the extension of time to file a Petition for Review were determined to not also extend the deadline for filing an appeal in this Court, in situations where, like here, the Board extended the deadline for a Petition for Review more than 60 days Petitioners would be unable to timely file appeals in this Court. Pursuant to 5 U.S.C. §7703(b)(1)(A), a Petitioner can only petition for review of a "final order or decision of the Board." If Petitioner was required to file within 60 days of the original, not-extended, date upon which the Board's decision would have become final, Petitioner would not have been able to properly file an appeal as the Board's decision would not yet be final, and therefore not ripe for appeal to this Court. A determination that the Board's extension of the time for filing a Petition for Review, and thus the date that the Initial Decision would become final, does not extend the deadlines to file in this Court would improperly limit the Board's ability to extend deadlines for good cause shown.

4. A Finding of Jurisdiction is in the Interest of Public Policy.

Finally, this Court should be found to have jurisdiction over Petitioner's appeal as a matter of public policy. This Court does not deny that the Clerk of the Board was acting within delegated authority to provide the extensions of time for which Petitioner had to file a Petition for Review to the Board. Petitioner reasonably relied on these extensions to have also been applied to her ability to file an appeal to this Court based on the appeal options identified in the Initial Decision. Assuming *arguendo* that the Orders granted by the Clerk of the Board were not intended to be an extension of the normal tolling process to appeal to this Court, Petitioner did not receive proper notice of the change in her rights to appeal. If the Initial Decision became final on April 6, 2020, Petitioner's deadline to file an appeal with this Court would have been on or around June 5, 2020. It is hard to imagine that Petitioner would have had the right to file a Petition for Review with the Board until September 3, 2020 but would have lost her right to file an appeal with this Court nearly three (3) months prior.

**C. The Administrative Judge's Determination that Petitioner was Not Entitled to Former Spouse Survivor Benefits was Not in Accordance with the Law.**

5 U.S.C. § 8417(b) governs the election of reduced or partially reduced annuity to provide a former spouse annuity at the time of retirement. 5 U.S.C. § 8419(b)(1)(B) provides that a reduction in annuity to provide for a former spouse

annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order unless the retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to provide or increase a former spouse annuity.

Here, Mr. Cross clearly elected a reduced annuity to provide for Petitioner at the time of his retirement in 2005. At the time of his retirement in 2005, Mr. Cross and Petitioner had been separated for approximately seven (7) years. Following his 2005 retirement, Mr. Cross continued to receive a reduced annuity to provide for Petitioner for approximately ten (10) years until his death in September 2015. The couple legally divorced in March 2015, and Mr. Cross continued to receive a reduced annuity leading to his death in September 2015. Mr. Cross' first opportunity to elect a reduced annuity for his former spouse, as opposed to his existing spouse, would have occurred in the late fall of 2015. Unfortunately, Mr. Cross passed away before having the opportunity to make this election.

Further, the U.S. Court of Appeal Federal Circuit has consistently upheld former spouse survivor annuity benefits in circumstances such as the case at bar wherein the annuitant has clearly intended for their former spouse to receive the benefit but died prior to making the statutory re-election.

In *Brush v. OPM*, the circumstances are almost identical wherein the Court

found that Ms. Brush was entitled to a former spouse survivor annuity. 982 F.2d 1554 (Fed. Cir. 1992). The Brushes were married when Mr. Brush elected a reduced annuity for his surviving spouse upon his retirement in 1984. In 1987, the Brushes divorced, however, their divorce decree did not contemplate the surviving spouse annuity or benefits. Mr. Brush passed away in September 1989 and Ms. Brush filed for survivor benefits in October 1989. Per 5 C.F.R. 831.612(d)(1), in order to provide former spouse survivor annuity, Mr. Brush needed to submit a written election to provide former spouse survivor annuity for Ms. Brush within two years of their divorce. When Mr. Brush passed away, there was still remaining time within the two-year period that he could have restated his election for former spouse annuity. The Court found that the happenstance of Mr. Brush's death was not persuasive to find deficient his lack of former spouse annuity election because all economic requirements were met as he continued to receive a reduced annuity following his divorce and leading up to his death. *Id.* at 1563. In fact, the Court opined that the government should not be permitted to escape an obligation intended by Congress where money has been appropriated and substantive economic requirements have been met. *Id.* At 1564.

Likewise, in *Vallee v. OPM*, the Court held that in order to authorize payment of a survivor annuity where the retiree was now deceased, there must exist sufficient evidence to show that the retiree intended the survivor annuity for

their former spouse. 58 F.3d 613 (Fed. Cir. 1995). The deceased retiree's intent was determined based upon his decision to decline restoration of his full annuity following his divorce. *Id.* at 616. In *Vallee*, the federal employee retired in 1982 and elected a reduced annuity to provide for his spouse. The couple divorced in 1984, however, the retiree declined to restore his full annuity following the divorce and instead continued to receive a reduced annuity until his death in 1992. *Id.* at 615. Here, the Court also noted OPM's failure to provide statutory notice of the requirement of re-election following divorce. *Id.*

In *Wood v. OPM*, the Court addressed the statutory obligation for OPM to provide notice of election rights to the affected employee on an annual basis and noted that failure to provide the requisite notice combined with evidence of intent entitled a former spouse to the annuity. 241 F.3d 1364 (Fed. Cir. 2001). The Court provided that if the required notice is not provided, OPM cannot deny the annuity even if the election has not been made during the applicable time period, as long as there was evidence that the employee wished for his former spouse to receive the annuity. *Id.* at 1367.

Here, OPM has asserted that Mr. Cross received annual notices relating to his annuity which should have provided notice of the statutory requirement to re-elect a reduced annuity to provide for his former spouse. However, this contention fails to address the fact that Mr. Cross died within six (6) months of his legal



divorce from Petitioner and did not receive the requisite statutory notice regarding the need to re-elect the reduced annuity to provide for Petitioner following his divorce but prior to his death. At the time Mr. Cross received his 2014 Statutory Notice, assuming he did, in fact, receive it, he and Petitioner were still married. There was no former spouse to make an election for at that time. OPM failed to present any evidence that annual notices were actually sent to Mr. Cross and did not contest the fact that Mr. Cross did not receive any notice of the need for reelection in the timeframe following his divorce but prior to his death.

In *Hairston v. OPM*, the Court found that the annual notice requirement was not effectively provided when the notice failed to inform the retiree of the need to affirmatively elect a former spouse annuity. 318 F.3d 1127 (Fed. Cir. 2003). Mr. Hairston retired in 1980 and the couple divorced in 1984, although the final judgment of dissolution was not entered until 1987. The Court explained that Mr. Hairston first received notice of the need to re-elect in December 1986, approximately four (4) months prior to the finalization of the divorce decree. Mr. Hairston received annual notices until 1994 but never explicitly elected to provide Ms. Hairston with the survivor annuity following their divorce. However, OPM notified Mr. Hairston of his option to restore his full annuity payments following his divorce, but Mr. Hairston did not make such a request and did not object to continued receipt of reduced payments following his divorce. *Id.* At 1129.

Ultimately, the Court held that OPM must pay a survivor annuity if the following occurs: (1) the statutorily required notice is ineffective; and (2) the evidence shows that the employee intended to provide a former spouse annuity. *Id.* at 1130. In *Hairston*, the Court explained that the Board did not contest Mr. Hairston's intent to provide Ms. Hairston a survivor annuity and that the remaining issue was whether the first relevant notice received by Mr. Hairston was confusing and therefore ineffective. The Court further opined that it did not consider the suitability of the notice provided to Mr. Hairston prior to the finalization of his divorce and noted that it is the first notice received after the finalization of divorce which is critical because it is at that point at which the employee's election rights to provide a former spouse annuity begin. *Id.* at 1131. The Court concluded that because there was sufficient evidence to prove that Mr. Hairston intended to provide a former spouse annuity and the first notice following the finalization of the divorce was ineffective, Ms. Hairston was entitled to receive the former spouse survivor annuity. *Id.*

In Petitioner's case, Mr. Cross never received any notice of the need to re-elect a surviving spouse annuity following his divorce and prior to his death. As previously discussed, the Cross's divorce was finalized in March 2015 and Mr. Cross passed away in September 2015. Mr. Cross received nothing from OPM following his divorce which would have put him on notice that he needed to

affirmatively re-elect to provide a former spouse survivor annuity for Petitioner. Furthermore, Administrative Judge Morris explained in his Initial Decision that it was apparent based on the evidence that Mr. Cross intended for Petitioner to receive a former spouse survivor annuity.

The factual background found in *Simpson v. OPM* is incredibly similar to the instant case, and the Court in *Simpson* once again found that a former spouse was entitled to the annuity. 347 F.3d 1361 (Fed. Cir. 2003). In *Simpson*, the couple separated in 1987, and upon Mr. Simpson's retirement in 1988, he elected reduced annuity benefits for himself to provide for Ms. Simpson. *Id.* at 1361-62. The couple amicably divorced in 1993 and Mr. Simpson continued to receive a reduced annuity until his death in June 1994. *Id.* When Ms. Simpson applied for a former spouse survivor annuity in August 1994, she was denied on the basis that the election of survivor benefits automatically terminated upon her divorce and that Mr. Simpson had not affirmatively re-elected benefits for her. The Administrative Judge in *Simpson* similarly found persuasive testimony from friends and relatives that Mr. Simpson would have wanted to elect a survivor benefit for Ms. Simpson, irrespective of the couple's divorce. *Id.* at 1362. The Court determined that OPM's notice was legally deficient because it failed to adequately inform Mr. Simpson that if he intended that his former spouse continue to receive an annuity, he must make a new election within two years of their divorce. *Id.* at 1364. Moreover, the

Court found that OPM's notices of record failed to comply with the statutory requirement of notice because an annuitant who elects an annuity for his spouse while married reasonably expects that he has complied with the statute sufficiently to cause the annuity to be paid on his death. *Id.* At the time of divorce, Mr. Simpson had already made an election but he did not make the election after his divorce and the OPM notice did not indicate that he needed to make a reelection. *Id.* The Court noted that while the undated notices contained a section regarding survivor annuity benefits, each of the notices was legally deficient because they did not contain a statement that pre-divorce election would automatically terminate upon divorce and inform a retiree of the need to make a new election for a former spouse. *Id.* at 1365. Finally, the Court noted that Mr. Simpson, being deceased, was no longer able to make the reelection himself and therefore the Board was instructed to order OPM to grant Ms. Simpson the former spouse survivor annuity as if Mr. Simpson had made a timely reelection. *Id.* at 1367.

There is substantial case law to support Petitioner's entitlement to a former spouse survivor annuity based on the clear intent of Mr. Cross during his lifetime, and the failure of OPM to provide adequate notice of the need to make a reelection following his divorce. OPM failed to proffer any evidence that it complied with the statutory notice requirement following the Cross's divorce. Furthermore, in the Initial Decision, the Administrative Judge does not question Mr. Cross's intent to

provide for Petitioner following their separation and subsequent divorce.

Petitioner should not be denied a former spouse survivor annuity on the basis of Mr. Cross's untimely death shortly after the finalization of their divorce.

**CONCLUSION**

**WHEREFORE**, for the aforementioned reasons, Petitioner respectfully requests that the Initial Decision of the MSPB be **reversed**, and that this Court **grants** Petitioner's request for former spouse survivor annuity, provide the back-dated annuity she has been entitled to since Mr. Cross's death, and order the Agency to provide attorneys' fees and any other relief the Court deems appropriate.

Respectfully submitted this 9th day of April, 2021.

**MELVILLE JOHNSON, P.C.**

*/s/ Jennifer D. Isaacs*

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

DOREEN CROSS,	)	
	)	
Petitioner,	)	Appeal Number: 2021-1116
	)	
v.	)	
	)	
OFFICE OF PERSONNEL	)	
MANAGEMENT,	)	
	)	
Appellee.	)	
_____	)	

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE  
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 5,133 words, which meets the limitation pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B)(i).
2. This brief complies with typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman font.

This 9th day of April, 2021.

**MELVILLE JOHNSON, P.C.**

**/s/ Jennifer Duke Isaacs**

Jennifer Duke Isaacs, Esq.

Georgia Bar Number: 902511

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

DOREEN CROSS,	)	
	)	
Petitioner,	)	Appeal Number: 2021-1116
	)	
v.	)	
	)	
OFFICE OF PERSONNEL	)	
MANAGEMENT,	)	
	)	
Appellee.	)	
_____	)	

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that undersigned counsel served the foregoing Brief of Petitioner, by causing a copy to be sent to the following via CM/ECF:

Ms. Ioana Cristei  
U.S. Department of Justice  
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U.S. Court of Appeals  
For the Federal Circuit  
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Respectfully submitted.

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**MELVILLE JOHNSON, P.C.**

**/s/ Jennifer Duke Isaacs**  
Jennifer Duke Isaacs, Esq.  
Georgia Bar Number: 902511



# **APPENDIX**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

DOREEN CROSS,	)	
	)	
Petitioner,	)	No.: 2021-1116
	)	
v.	)	
	)	
OFFICE OF PERSONNEL	)	
MANAGEMENT,	)	
	)	
Respondent.	)	
_____	)	

**TABLE OF CONTENTS**

<u>Document</u>	<u>Page</u>
MSPB Decision, dated March 2, 2020.....	1
Certified List.....	16
Appellant’s Motion for Extension, dated April 6, 2020.....	21
Board Order Granting Extension, dated April 7, 2020 .....	23
Appellant’s Motion for Extension, dated May 6, 2020.....	25
Board Order Granting Extension, dated May 7, 2020.....	27
Appellant’s Motion for Extension, dated June 5, 2020.....	30
Board Order Granting Extension, dated June 8, 2020.....	32
Appellant’s Motion for Extension, dated July 5, 2020.....	35
Board Order Granting Extension, dated July 6, 2020.....	37
Appellant’s Motion for Extension, dated August 4, 2020.....	40

Board Order Granting Extension, dated August 5, 2020.....	42
Legal Separation Agreement, dated March 25, 1998.....	45
Application for Retirement, dated April 22, 2005.....	62
Estimate of Retirement Benefits, dated April 12, 2006.....	65
Divorce Decree, dated March 27, 2015.....	67
Mr. Cross' Death Certificate, dated October 1, 2015 .....	70
Application for Death Benefits, dated November 9, 2015.....	71
OPM Notice of Overpayment, dated September 12, 2016.....	75
Petitioner's Request for Reconsideration, dated October 12, 2016.....	77
OPM's Final Decision, dated June 21, 2018.....	78
OPM's Final Decision, dated August 2, 2019.....	81

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
ATLANTA REGIONAL OFFICE

DOREEN CROSS,  
Appellant,

DOCKET NUMBER  
AT-0843-19-0760-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: March 2, 2020

Doreen Cross, Summerville, South Carolina, pro se.

Sherri McCall, Washington, D.C., for the agency.

**BEFORE**

Jeffrey S. Morris  
Administrative Judge

**INITIAL DECISION**

On September 8, 2019, Doreen Cross appealed to the Board from the August 2, 2019, Office of Personnel Management (OPM) amended reconsideration decision denying her application for a former spouse survivor annuity based on the federal civil service of her deceased former husband, Wayne Cross. The Board has jurisdiction over this appeal. *See* 5 U.S.C. §§ 7701(a), 8461(e); 5 C.F.R. § 841.308. I held a hearing by telephone on February 27, 2020. For the reasons set forth below, OPM's reconsideration decision is AFFIRMED in part and REMANDED in part.

Appx 1

## ANALYSIS AND FINDINGS

### Background

The following facts are undisputed. The appellant is the surviving former spouse of Wayne Cross, who was employed in the federal civilian service by the Department of the Navy and covered by the Federal Employees Retirement System (FERS). The appellant and Mr. Cross were married on August 3, 1982. They permanently separated on or about April 21, 1998. Mr. Cross retired from federal employment on or about May 9, 2005, indicating on his retirement application a maximum survivor annuity for the appellant. The couple divorced on March 27, 2015. Mr. Cross died on October 1, 2015. Following his death, the appellant applied for a former spouse survivor annuity under FERS based on Mr. Cross's federal service. OPM denied the application because (1) the couple's divorce ended her entitlement to the survivor annuity benefit; (2) the divorce decree did not expressly award a former spouse survivor annuity or direct Mr. Cross to elect to provide such an annuity; and (3) Mr. Cross did not elect to continue a former spouse survivor annuity for the appellant after their divorce. AF, Tab 9, p. 10.

### Applicable law

The appellant bears the burden of proving, by preponderant evidence, that she is entitled to the survivor annuity benefits she seeks. *See* 5 C.F.R. § 1201.56(b)(2). A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. *See* 5 C.F.R. § 1201.4(q).

The appellant's entitlement to a survivor annuity as the deceased annuitant's former spouse is governed by the portion of the FERS statute codified at 5 U.S.C. § 8445. That provision essentially states that a former spouse of an annuitant is entitled to a survivor annuity if: (1) a divorce decree or court order

expressly provides for one;<sup>1</sup> or (2) the annuitant made an election to grant a survivor annuity within two years after the date on which the marriage dissolves.<sup>2</sup>

In addition, the Board's reviewing court has held that a former spouse may receive survivor annuity benefits absent a court order or timely election if: (1) the annuitant did not receive the required annual notice of his or her election rights, and (2) if there is evidence sufficient to show that the retiree indeed intended to provide a survivor annuity for the former spouse. *See Downing v. Office of Personnel Management*, 619 F.3d 1374, 1377 (Fed. Cir. 2010).<sup>3</sup> The same court has also held that "an employee's continued acceptance of a reduced annuity following divorce, standing alone, adequately demonstrate[s] that employee's intent to provide a survivor annuity for the former spouse." *See Hernandez v. Office of Personnel Management*, 450 F.3d 1332, 1335 (Fed. Cir. 2006), citing *Wood v. Office of Personnel Management*, 241 F.3d 1364, 1368 (Fed. Cir. 2001). The appellant failed to prove her entitlement to a former spouse survivor annuity.

The first means for receiving a former spouse survivor annuity described above is not available to the appellant because the divorce decree did not state she is supposed to receive one. AF, Tab 9, p. 64. The second means is also

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<sup>1</sup> Although this provision does not require "magic words," the intent to provide a survivor annuity must be "clear, definite, explicit, plain, direct, and unmistakable, not dubious or ambiguous." *See, e.g., Dodd v. Office of Personnel Management*, 108 M.S.P.R. 96, 100, ¶ 8 (2008).

<sup>2</sup> The agency maintained at the hearing that 5 U.S.C. § 8445 is inapplicable because it addresses deferred annuities. I disagree. The only reference to a deferred annuity in section 8445 is found in a parenthetical clause inapplicable to this case.

<sup>3</sup> The requirement to provide such notice is set forth in 5 U.S.C. § 8339. I am aware that this statute pertains to retirees covered by the Civil Service Retirement System (CSRS), and no similar statute or regulation requires such notice be given to retirees under FERS. Nonetheless, the Board has indicated, albeit without directly finding, that the notice requirement applies to individuals covered under FERS when they retired. *See Larson v. Office of Personnel Management*, 93 M.S.P.R. 433, ¶ 7 (2003); *Balkovec v. Office of Personnel Management*, 83 M.S.P.R. 621, 623-24 (1999). Accordingly, I find that the notice requirement is applicable here.

unavailable because there is no evidence to suggest that Mr. Cross ever affirmatively elected to provide the appellant with a survivor annuity after the couple divorced.

As for the alternative means for proving entitlement to a former spouse survivor annuity, the applicable statute provides that Mr. Cross had two years following the divorce to make an election providing such an annuity to the appellant. 5 U.S.C. § 8445. OPM argues the absence of such an election was not due to a lack of knowledge on the part of Mr. Cross, because it maintains he was notified of the legal provision concerning post-retirement survivor elections for a former spouse in OPM's annual notices regarding survivor elections from late 2005 to late 2014 (*i.e.*, between his retirement and his death). Hearing Compact Disc (HCD), agency's final argument. The agency provided no documentary evidence in support of this argument.<sup>4</sup> However, the appellant herself submitted one annual survivor election notice addressed to her former spouse, from December 2012, which she said located in a "burn pile" after his death. AF, Tab 19, pp. 15-16 of 76; HCD, testimony of appellant. The appellant further testified she found the notice confusing, and she acknowledged Mr. Cross might have read it but failed to understand it. HCD, testimony of appellant.

In my view, the presence of the 2012 annual survivor election notice among the decedent's papers makes it more likely than not that he did receive similar notices from OPM on an annual basis in the years between his retirement in 2005 and his death in 2015. Further, the fact that the 2012 notice was found in a "burn pile" strongly suggests to me that Mr. Cross was inclined to dispose of such documents, perhaps explaining the appellant's failure to find ones issued in other years. Finally, while I agree with the appellant that OPM's annual survivor

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<sup>4</sup> Typically, OPM will submit a sworn affidavit from the agency's Retirement Services Branch attesting that general notices regarding survivor elections were mailed to all annuitants every December during the pertinent time period. However, no such evidence was provided by the agency in this case.

election notices can be difficult to understand, I find that the one found in the current record correctly reflects applicable law by stating, in pertinent part:

### 3. Survivor Annuity Election for a Former Spouse

*Eligibility and Time Limits* – With some exceptions, retirees are eligible to elect or reelect a reduced annuity to provide a survivor annuity for a former spouse if they timely submit an election to OPM 1) within 2 years after the date the marriage ended in divorce or annulment or 2) within 2 years after the date another former spouse loses entitlement to a potential survivor annuity. *Please note that a new survivor annuity election is required within 2 years after the divorce if you wish to provide a former spouse annuity, even if at retirement you elected to provide a survivor annuity for that spouse.* The law provides for the continuation of a survivor reduction made at retirement after divorce if the annuitant reelects a survivor annuity for the former spouse within 2 years after the divorce. *Continuing the survivor reduction, by itself, does not demonstrate an unmistakable intent to make a former spouse survivor reelection.*

AF, Tab 19, p. 16 (emphasis added). Based on my finding that Mr. Cross likely did receive required annual notices of his election rights, the alternative method described above is inapplicable in the present case. In sum, the appellant failed to prove her entitlement to a former spouse survivor annuity.

### Conclusion

It is apparent through testimony that the appellant and Mr. Cross remained devoted to each other (and their daughter Christin Cayce Cross, who testified credibly<sup>5</sup>) after their divorce. I have no doubt that Mr. Cross did intend until his death that the appellant would receive a former spouse survivor annuity based on his federal service, and I have great sympathy for the appellant under these circumstances. Unfortunately, I am not permitted under the law to rely upon such equitable considerations to justify the payment of annuity benefits if the statutory

---

<sup>5</sup> Among other things, Christin Cayce Cross testified that she had no claim to or interest in any survivor annuity as a result of her father's federal service. HCD, testimony of Christin Cayce Cross.



eligibility requirements for receiving such benefits are not met. *See Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), 110 S.Ct. 2465 (1990). Therefore, because the appellant has not established her entitlement to receive a former spouse survivor annuity, I am obligated to uphold OPM's final decision denying her claim for such an annuity.

However, as to the overpayment of benefits asserted by OPM, I find no evidence in the record that the appellant was afforded an opportunity to request waiver of the asserted debt as provided for in 5 C.F.R. Part 845, Subpart C. Accordingly, I find that this issue must be returned to OPM in order to provide the appellant with her waiver rights (including reconsideration and Board appeal rights, if necessary and appropriate) before any collection of the asserted overpayment is made.

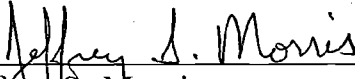
#### DECISION

The agency's reconsideration decision is **AFFIRMED** in part and **REMANDED** in part.

#### ORDER

I ORDER the agency to inform the appellant, within sixty (60) calendar days of the date of this Initial Decision, of her right to request waiver of the asserted overpayment, and to subsequently advise the appellant of her reconsideration and Board appeal rights, if necessary and appropriate, before any collection of the asserted overpayment is made.

FOR THE BOARD:

  
\_\_\_\_\_  
Jeffrey S. Morris  
Administrative Judge

#### NOTICE TO APPELLANT

This initial decision will become final on April 6, 2020, unless a petition for review is filed by that date. This is an important date because it is usually the

Appx6

last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. If you are represented, the 30-day period begins to run upon either your receipt of the initial decision or its receipt by your representative, whichever comes first. You must establish the date on which you or your representative received it. The date on which the initial decision becomes final also controls when you can file a petition for review with one of the authorities discussed in the “Notice of Appeal Rights” section, below. The paragraphs that follow tell you how and when to file with the Board or one of those authorities. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

### **BOARD REVIEW**

You may request Board review of this initial decision by filing a petition for review.

If the other party has already filed a timely petition for review, you may file a cross petition for review. Your petition or cross petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file it with:

The Clerk of the Board  
Merit Systems Protection Board  
1615 M Street, NW.  
Washington, DC 20419

A petition or cross petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov>).

### NOTICE OF LACK OF QUORUM

The Merit Systems Protection Board ordinarily is composed of three members, 5 U.S.C. § 1201, but currently there are no members in place. Because a majority vote of the Board is required to decide a case, *see* 5 C.F.R. § 1200.3(a), (e), the Board is unable to issue decisions on petitions for review filed with it at this time. *See* 5 U.S.C. § 1203. Thus, while parties may continue to file petitions for review during this period, no decisions will be issued until at least two members are appointed by the President and confirmed by the Senate. The lack of a quorum does not serve to extend the time limit for filing a petition or cross petition. Any party who files such a petition must comply with the time limits specified herein.

For alternative review options, please consult the section below titled “Notice of Appeal Rights,” which sets forth other review options.

#### **Criteria for Granting a Petition or Cross Petition for Review**

Pursuant to 5 C.F.R. § 1201.115, the Board normally will consider only issues raised in a timely filed petition or cross petition for review. Situations in which the Board may grant a petition or cross petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact. (1) Any alleged factual error must be material, meaning of sufficient weight to warrant an outcome different from that of the initial decision. (2) A petitioner who alleges that the judge made erroneous findings of material fact must explain why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will give deference to an administrative judge’s credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing.

(b) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The petitioner must explain how the error affected the outcome of the case.

(c) The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed.

As stated in 5 C.F.R. § 1201.114(h), a petition for review, a cross petition for review, or a response to a petition for review, whether computer generated, typed, or handwritten, is limited to 30 pages or 7500 words, whichever is less. A reply to a response to a petition for review is limited to 15 pages or 3750 words, whichever is less. Computer generated and typed pleadings must use no less than 12 point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to submit pleadings of the maximum length. Typically, a well-written petition for review is between 5 and 10 pages long.

If you file a petition or cross petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. A petition for review

must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you or your representative more than 5 days after the date of issuance, 30 days after the date you or your representative actually received the initial decision, whichever was first. If you claim that you and your representative both received this decision more than 5 days after its issuance, you have the burden to prove to the Board the earlier date of receipt. You must also show that any delay in receiving the initial decision was not due to the deliberate evasion of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (*see* 5 C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by fax or by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. *See* 5 C.F.R. § 1201.4(j). If the petition is filed electronically, the online process itself will serve the petition on other e-filers. *See* 5 C.F.R. § 1201.14(j)(1).

A cross petition for review must be filed within 25 days after the date of service of the petition for review.

#### **NOTICE TO AGENCY/INTERVENOR**

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

#### **NOTICE OF APPEAL RIGHTS**

You may obtain review of this initial decision only after it becomes final, as explained in the "Notice to Appellant" section above. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b).

Although we offer the following summary of available appeal rights, the Merit Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this decision when it becomes final, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

**(1) Judicial review in general.** As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date this decision becomes final. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov). Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

**(2) Judicial or EEOC review of cases involving a claim of discrimination.** This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (*not* the U.S. Court of Appeals for the Federal Circuit), within **30 calendar days after this decision becomes final** under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. \_\_\_\_ , 137 S. Ct. 1975 (2017). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

[http://www.uscourts.gov/Court\\_Locator/CourtWebsites.aspx](http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx).

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within **30 calendar days after this decision becomes final** as explained above. 5 U.S.C. § 7702(b)(1).

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations  
Equal Employment Opportunity Commission  
P.O. Box 77960  
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations  
Equal Employment Opportunity Commission  
131 M Street, N.E.  
Suite 5SW12G  
Washington, D.C. 20507

**(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012.** This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and your judicial petition for review “raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D),” then you may file a petition for judicial review with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. The court of appeals must receive your petition for review within **60 days of the date this decision becomes final** under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, D.C. 20439



Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov). Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

[http://www.uscourts.gov/Court\\_Locator/CourtWebsites.aspx](http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx)

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            Doreen Cross  
                                      236 Cady Drive  
                                      Summerville, SC 29483

Agency Representative

Electronic Mail            Sherri McCall  
                                      Office of Personnel Management  
                                      1900 E Street, NW  
                                      Washington, DC 20415

\_\_\_\_\_  
March 2, 2020  
(Date)

\_\_\_\_\_  
/S/  
Veronica Woodiest  
Paralegal Specialist



# U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk of the Board

1615 M Street, N.W.

Washington, D.C. 20419-0002

Phone: 202-653-7200; Fax: 202-653-7130; E-Mail: mspb@mspb.gov

2021-1116

## ATTESTATION

I HEREBY ATTEST that the attached index represents a list of the documents comprising the administrative record of the Merit Systems Protection Board in the appeal of Doreen Cross v. Office of Personnel Management, MSPB Docket No. AT-0843-19-0760-I-1, and that the administrative record is under my official custody and control on this date

on file in this Board

November 12, 2020

Date

*Lisa L. White for*

Jennifer Everling

Acting Clerk of the Board

CERTIFICATE OF SERVICE

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

Petitioner

Electronic Mail Doreen Cross  
(via mspb@mspb.gov) cross@sc.rr.com

Respondent

Electronic Mail Robert E. Kirschman, Director  
(via mspb@mspb.gov) Commercial Litigation Branch  
Civil Division Classification Unit  
U.S. Department of Justice  
c/o Thee Matthews  
thee.matthews@usdoj.gov

November 12, 2020

(Date)

*Lisa L. White for*

Jennifer Everling

Acting Clerk of the Board

## INDEX

Page 1 of 2

DOREEN CROSS

v.

OFFICE OF PERSONNEL MANAGEMENT

MSPB Docket No. AT-0843-19-0760-I-1

## IA-REFORM ACT MERIT

<u>TAB</u>	<u>VOLUME</u>	<u>DESCRIPTION OF DOCUMENT</u>	<u>DATE OF RECEIPT OR ISSUANCE</u>
1	1	Appellant - Initial Appeal	September 08, 2019
2	1	MSPB - Acknowledgment Order	September 11, 2019
3	1	Agency - Agency Motion for 30-Day Extension	September 27, 2019
4	1	MSPB - Time Extension Request Order	September 27, 2019
5	1	Appellant - Hearing Request	September 30, 2019
6	1	Agency - Agency request for additional time	November 08, 2019
7	1	MSPB - Time Extension Request Order	November 08, 2019
8	1	MSPB - Hearing Order	November 08, 2019
9	1	Agency - Agency File	November 22, 2019
10	1	Agency - Agency Representative Addition	November 22, 2019
11	1	Appellant - Motion for 30-day extension	November 26, 2019
12	1	MSPB - Order Suspending Case Processing	December 02, 2019
13	1	MSPB - Hearing Order	January 07, 2020
14	1	Appellant - Notice of Motion and Motion to Compel Discovery Responses	January 08, 2020
15	1	MSPB - Rescheduling Hearing Order	January 13, 2020
16	1	MSPB - Order Denying Appellant's Motion to Compel Discovery	January 22, 2020
17	1	Appellant - Appellant's Prehearing Submission	February 14, 2020
18	1	Appellant - Appellant's Prehearing Submission (cont)	February 17, 2020

Appx18

19	1	Appellant - Appellant Exhibits 1 of 3	February 18, 2020
20	1	MSPB - Summary of Telephonic Prehearing Conference	February 18, 2020
21	1	MSPB - Hearing CD	February 27, 2020
22	1	MSPB - Initial Decision	March 02, 2020
23	1	MSPB - Certificate of Service	March 02, 2020

## INDEX

Page 1 of 1

DOREEN CROSS

v.

OFFICE OF PERSONNEL MANAGEMENT

MSPB Docket No. AT-0843-19-0760-I-1

## IA-REFORM ACT MERIT - PETITION FOR REVIEW

<u>TAB</u>	<u>VOLUME</u>	<u>DESCRIPTION OF DOCUMENT</u>	<u>DATE OF RECEIPT OR ISSUANCE</u>
1	1	Appellant - Request for Extension of Time to File PFR	April 06, 2020
2	1	MSPB - Extension of Time Order	April 07, 2020
3	1	Appellant - Request for 2nd Extension of Time to File PFR	May 06, 2020
4	1	MSPB - Extension of Time Order	May 07, 2020
5	1	Appellant - Request for 3rd Extension of Time to File PFR	June 05, 2020
6	1	MSPB - Extension of Time Order	June 08, 2020
7	1	Appellant - Request for 4th Extension of Time to File PFR	July 05, 2020
8	1	MSPB - Extension of Time Order	July 06, 2020
9	1	Appellant - Request for 5th Extension of Time to File PFR	August 04, 2020
10	1	MSPB - Extension of Time Order	August 05, 2020
11	1	MSPB - Letter Returning Submission	October 26, 2020

Appx20

**UNITED STATES OF AMERICA  
THE CLERK OF THE BOARD  
MERIT SYSTEMS PROTECTION BOARD  
1615 M STREET NW.  
WASHINGTON, DC 24019**

-----  
**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

**on**

**PETITION FOR REVIEW OF MSPB INITIAL DECISION**

**Jeffrey S. Morris, Administrative Judge**

**Hearing Date: February 27, 2020**

DOREEN CROSS,

Appellant,

OFFICE OF PERSONNEL  
MANAGEMENT,  
Sherry McCall for the  
Agency.

v.

DOCKET NUMBER  
AT-0843-19-0760-I-1

DATE: April 6, 2020

-----  
**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**  
-----

Doreen C. Cross, pro se  
788 E. Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

Appx21



APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME

In response to the INITIAL DECISION dated March 2, 2020, the appellant Doreen Cross (hereinafter “appellant”), respectfully moves for a 30-day time extension to file The Petition for Review of the Merit System Protection Board’s Initial Decision. This motion is necessary due to family and work circumstances directly related to the COVID19 Corona Virus, which are completely out of my control.

ARGUMENT

Ms. Cross was unable to make any phone calls before COB today. The appellant is now unable to meet the deadline for filing her response file due to circumstances beyond her control, most notable, assisting elderly family members with day to day chores that involve leaving the home.

CONCLUSION

Considering the unusual circumstances, we all find ourselves in, the appellant respectfully requests the Clerk of the Board grant a 30-day extension of time to allow the appellant additional time to file her Review Request.

Respectfully submitted,

Doreen Cross, Pro se Appellant  
788 E Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF THE CLERK OF THE BOARD**

DOREEN CROSS,  
Appellant,

DOCKET NUMBER  
AT-0843-19-0760-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: April 7, 2020

**ORDER**

On April 6, 2020, the appellant requested an extension to file a petition for review of the administrative judge's March 2, 2020 initial decision.

The Board finds sufficient cause for an extension. The appellant may file a petition for review on or before May 6, 2020, must serve the petition for review on the parties, and must provide proof of service to the Board.

If a petition is not filed by May 6, 2020, the administrative judge's March 2, 2020 initial decision will remain the final decision of the Board and any further right of appeal must then be exercised in accordance with the provisions as stated in that initial decision.

The agency may file a response or cross-petition within 25 days after the date of service of the petition for review. Any response or cross-petition must be served on the parties and proof of service must be provided to the Board.

FOR THE BOARD:

\_\_\_\_\_  
Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.

Appx23

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      Doreen Cross  
788 E. Butternut Road  
Summerville, SC 29483-8407

Agency Representative

Electronic Mail      Sherri McCall  
Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415

\_\_\_\_\_  
April 7, 2020  
(Date)

\_\_\_\_\_  
Jennifer Everling  
Acting Clerk of the Board

**UNITED STATES OF AMERICA  
THE CLERK OF THE BOARD  
MERIT SYSTEMS PROTECTION BOARD  
1615 M STREET NW.  
WASHINGTON, DC 24019**

-----  
**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

**on**

**PETITION FOR REVIEW OF MSPB INITIAL DECISION**

**Jeffrey S. Morris, Administrative Judge**

**Hearing Date: February 27, 2020**

DOREEN CROSS,

Appellant,

OFFICE OF PERSONNEL  
MANAGEMENT,  
Sherry McCall for the  
Agency.

v.

DOCKET NUMBER  
AT-0843-19-0760-I-1

DATE: May 6, 2020

-----  
**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**  
-----

Doreen C. Cross, pro se  
788 E. Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

Appx25

APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME

In response to the INITIAL DECISION dated March 2, 2020, the appellant Doreen Cross (hereinafter “appellant”), respectfully moves for an additional 30-day extension to file The Petition for Review of the Merit System Protection Board’s Initial Decision. This motion is necessary due to stressors and health issues directly related to the COVID19 Corona Virus, which are completely out of my control.

ARGUMENT

Ms. Cross fully expected to file her Petition for Review Request today. The appellant is now unable to meet the deadline for filing her request, which is due today, due to circumstances beyond her control. Ms. Cross has, over the past 10 days, been experiencing debilitating migraine headaches believed to be related to unavoidable stress from situations directly tied to the COVID-19 Corona Virus.

CONCLUSION

Considering the unusual circumstances, we all find ourselves in, the appellant respectfully requests the Clerk of the Board grant a second and FINAL 30-day extension of time to allow the appellant additional time to file her Review Request.

Respectfully submitted,

Doreen Cross, Pro se Appellant  
788 E Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF THE CLERK OF THE BOARD**

DOREEN CROSS,  
Appellant,

DOCKET NUMBER  
AT-0843-19-0760-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: May 7, 2020

**ORDER**

On May 6, 2020, the appellant requested an additional extension to file a petition for review of the administrative judge's March 2, 2020 initial decision.

The Board finds sufficient cause for an extension. The appellant may file a petition for review on or before June 5, 2020, must serve the petition for review on the parties, and must provide proof of service to the Board.

If a petition is not filed by June 5, 2020, the administrative judge's March 2, 2020 initial decision will remain the final decision of the Board and any further right of appeal must then be exercised in accordance with the provisions as stated in that initial decision.

The agency may file a response or cross-petition within 25 days after the date of service of the petition for review. Any response or cross-petition must be served on the parties and proof of service must be provided to the Board.

FOR THE BOARD:

---

Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.

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      Doreen Cross  
788 E. Butternut Road  
Summerville, SC 29483-8407

Agency Representative

Electronic Mail      Sherri McCall  
Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415

\_\_\_\_\_  
May 7, 2020  
(Date)

\_\_\_\_\_  
Jennifer Everling  
Acting Clerk of the Board



**UNITED STATES OF AMERICA  
THE CLERK OF THE BOARD  
MERIT SYSTEMS PROTECTION BOARD  
1615 M STREET NW.  
WASHINGTON, DC 24019**

-----  
**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

**on**

**PETITION FOR REVIEW OF MSPB INITIAL DECISION**

**Jeffrey S. Morris, Administrative Judge**

**Hearing Date: February 27, 2020**

DOREEN CROSS,

Appellant,

OFFICE OF PERSONNEL  
MANAGEMENT,  
Sherry McCall for the  
Agency.

v.

DOCKET NUMBER  
AT-0843-19-0760-I-1

DATE: June 5, 2020

-----  
**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**  
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Doreen C. Cross, pro se  
788 E. Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

Appx30

APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME

In response to the INITIAL DECISION dated March 2, 2020, the appellant Doreen Cross (hereinafter “appellant”) respectfully moves for an additional 30-day extension to file The Petition for Review of the Merit System Protection Board’s Initial Decision. This motion is necessary due to stressors and MORE unexpected situations indirectly related to the COVID19 Corona Virus, which are still out of her control.

EXPLANATION

First, thank you so much for working with the appellant to competently complete this petition for the Board. Ms. Cross is in disbelief that she has not completed her Petition for Review. The appellant is still unable to meet the deadline for filing her request, which is due today, again, regrettably due to circumstances beyond her control. Ms. Cross who hasn’t missed a beat supporting her currently remote full-time day job, has been requested to help her daughter watch her 3-year-old granddaughter while her mother works second shift as a front line health care worker in one of Charleston’s Trauma Care Hospitals. Ms. Cross is still experiencing debilitating migraine headaches, albeit not as frequently as before. Ms. Cross is so close to completing the petition; she is formatting, re-arranging, citing, proofing and fixing grammatical errors, redundancies and citation inconsistencies. Three months ago, Ms. Cross could not have been convinced she would still be working on this document today. Ms. Cross is disappointed to have to ask for a third 30-day-extension, but she must. Please work with her this final time so she can respond adequately to this most important review petition.

CONCLUSION

The appellant respectfully requests the Clerk of the Board to grant a third and FINAL 30-day extension of time to allow the appellant time to file her Review Request.

Respectfully submitted,

Doreen Cross, Pro se Appellant  
788 E Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF THE CLERK OF THE BOARD**

DOREEN CROSS,  
Appellant,

DOCKET NUMBER  
AT-0843-19-0760-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: June 8, 2020

**ORDER**

On June 5, 2020, the appellant requested a third extension to file a petition for review of the administrative judge's March 2, 2020 initial decision.

The Board finds sufficient cause for an extension. The appellant may file a petition for review on or before July 5, 2020, must serve the petition for review on the parties, and must provide proof of service to the Board.

If a petition is not filed by July 5, 2020, the administrative judge's March 2, 2020 initial decision will remain the final decision of the Board and any further right of appeal must then be exercised in accordance with the provisions as stated in that initial decision.

The agency may file a response or cross-petition within 25 days after the date of service of the petition for review. Any response or cross-petition must be served on the parties and proof of service must be provided to the Board.

FOR THE BOARD:

---

Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.

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            Doreen Cross  
788 E. Butternut Road  
Summerville, SC 29483-8407

Agency Representative

Electronic Mail            Sherri McCall  
Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415

---

June 8, 2020  
(Date)

---

Jennifer Everling  
Acting Clerk of the Board

**UNITED STATES OF AMERICA  
THE CLERK OF THE BOARD  
MERIT SYSTEMS PROTECTION BOARD  
1615 M STREET NW.  
WASHINGTON, DC 24019**

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**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

**on**

**PETITION FOR REVIEW OF MSPB INITIAL DECISION**

**March 2, 2020**

**Jeffrey S. Morris, Administrative Judge**

**Hearing Date: February 27, 2020**

DOREEN CROSS,

Appellant,

OFFICE OF PERSONNEL  
MANAGEMENT,  
Sherry McCall for the

Agency.

v.

DOCKET NUMBER  
AT-0843-19-0760-I-1

DATE: July 5, 2020

---

**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

---

Doreen C. Cross, pro se  
788 E. Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME

First, the appellant cannot tell you how much she appreciates your understanding concerning her family and health issues over the past several months.

In response to the INITIAL DECISION dated March 2, 2020, the appellant Doreen Cross (hereinafter “appellant”), respectfully moves for a final 30-day time extension to file The Petition for Review of the Merit System Protection Board’s Initial Decision. This motion remains necessary due to family and work circumstances directly related to the COVID19 Corona Virus, which are completely out of my control, and must take priority at this time.

ARGUMENT

The opportunity to speak to and be heard defending my rights and my ex-husband’s wishes is very important to me. I hope sincerely that you will consider and accept this final request for an extension to complete my pleading appropriately.

CONCLUSION

Considering the unusual circumstances, we all find ourselves in, the appellant respectfully requests the Clerk of the Board grant a 30-day extension of time to allow the appellant additional time to file her Review Request.

Respectfully submitted,

Doreen Cross, Pro se Appellant  
788 E Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF THE CLERK OF THE BOARD**

DOREEN CROSS,  
Appellant,

DOCKET NUMBER  
AT-0843-19-0760-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: July 6, 2020

**ORDER**

On July 5, 2020, the appellant requested a fourth extension to file a petition for review of the administrative judge's March 2, 2020 initial decision.

The Board finds sufficient cause for **one last extension**. The appellant may file a petition for review on or before August 4, 2020, must serve the petition for review on the parties, and must provide proof of service to the Board. **The appellant is reminded that the Board will not grant any further extension in this matter**, absent extraordinary circumstances.

If a petition is not filed by August 4, 2020, the administrative judge's March 2, 2020 initial decision will remain the final decision of the Board and any further right of appeal must then be exercised in accordance with the provisions as stated in that initial decision.



2

The agency may file a response or cross-petition within 25 days after the date of service of the petition for review. Any response or cross-petition must be served on the parties and proof of service must be provided to the Board.

FOR THE BOARD:

---

Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.

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      Doreen Cross  
788 E. Butternut Road  
Summerville, SC 29483-8407

Agency Representative

Electronic Mail      Sherri McCall  
Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415

July 6, 2020  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Jennifer Everling  
Acting Clerk of the Board

**UNITED STATES OF AMERICA  
THE CLERK OF THE BOARD  
MERIT SYSTEMS PROTECTION BOARD  
1615 M STREET NW.  
WASHINGTON, DC 24019**

---

**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

**on**

**PETITION FOR REVIEW OF MSPB INITIAL DECISION**

**March 2, 2020**

**Jeffrey S. Morris, Administrative Judge**

**Hearing Date: February 27, 2020**

DOREEN CROSS,

Appellant,

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Sherry McCall for the

Agency.

DOCKET NUMBER  
AT-0843-19-0760-I-1

DATE: August 4, 2020

---

**APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME**

---

Doreen C. Cross, pro se  
788 E. Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

Appx40

APPELLANT MOTION FOR 30-DAY EXTENSION OF TIME

The appellant, Doreen Cross, is humbly requesting one more extension. The finishing touches were coming together when my family was stricken with the virus. We have all stayed out of the hospital but the headaches and inability to concentrate are preventing my completion of the petition. If the court will bear with the appellant this one last time, I expect to be better soon.

In response to the INITIAL DECISION dated March 2, 2020, the appellant respectfully moves for a final 30-day time extension to file The Petition for Review of the Merit System Protection Board's Initial Decision. This motion is necessary, as the symptoms are completely out of my control, and for me make it nearly impossible to hold a train of thought for extended periods of time.

ARGUMENT

Once again, the opportunity to speak to and be heard defending my rights and my ex-husband's wishes is very important to me. I hope sincerely that you will consider and accept this final request for an extension to complete my pleading appropriately.

CONCLUSION

Considering the unusual circumstances, we all find ourselves in, the appellant respectfully requests the Clerk of the Board grant a 30-day extension of time to allow the appellant additional time to file her Review Request.

Respectfully submitted,

Doreen Cross, Pro se Appellant  
788 E Butternut Road  
Summerville, SC 29483-8407  
(843) 534-3733

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF THE CLERK OF THE BOARD**

DOREEN CROSS,  
Appellant,

DOCKET NUMBER  
AT-0843-19-0760-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: August 5, 2020

**ORDER**

On August 4, 2020, the appellant requested a fifth extension to file a petition for review of the administrative judge's March 2, 2020 initial decision. The Board has previously granted four prior requests by the appellant for an extension to file a petition for review.

In the July 6, 2020 order granting the appellant's most recent request for an extension to file a petition for review, the Board indicated that no further extensions would be granted absent extraordinary circumstances. Under the particular circumstances presented here, the Board finds sufficient cause for **one final extension**. The appellant may file a petition for review on or before September 3, 2020, must serve the petition for review on the parties, and must provide proof of service to the Board. **The appellant is reminded that the Board will not grant any further extension in this matter. The appellant should be prepared to file her petition for review on or before September 3, 2020.**

If a petition is not filed by September 3, 2020, the administrative judge's March 2, 2020 initial decision will remain the final decision of the Board and any

further right of appeal must then be exercised in accordance with the provisions as stated in that initial decision.

The agency may file a response or cross-petition within 25 days after the date of service of the petition for review. Any response or cross-petition must be served on the parties and proof of service must be provided to the Board.

FOR THE BOARD:

---

Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.

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      Doreen Cross  
788 E. Butternut Road  
Summerville, SC 29483-8407

Agency Representative

Electronic Mail      Sherri McCall  
Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415

August 5, 2020  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Jennifer Everling  
Acting Clerk of the Board

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 WAYNE W. CROSS, )  
 )  
 Plaintiff, )  
 )  
 -versus- )  
 )  
 DOREEN C. CROSS, )  
 )  
 Defendant. )

IN THE FAMILY COURT FOR  
 THE FIRST JUDICIAL CIRCUIT  
 CASE NO. 98-DR-18-601

PROPERTY SETTLEMENT  
 AGREEMENT; CHILD CUSTODY  
 AND SUPPORT AGREEMENT

98 APR 21 PM 3:19

CERTIFIED TRUE COPY  
 MARIE CAROL HICKS  
 CLERK OF COURT  
 FORT MCHENRY

This agreement is made between Wayne W. Cross, hereinafter referred to as the Husband, and Doreen C. Cross, hereinafter referred to as the Wife.

The parties were married on the 3rd day of August, 1982, in Chester, South Carolina. One child has been born of this marriage, to wit: Christin Cayce Cross, born ~~XX~~ ~~XXXX~~.

The Husband and the Wife intend, and it is the purpose of this Agreement, to make a complete and final settlement of all claims the parties may have against each other for alimony and/or separate maintenance and support, child custody and child support, a division of property and other related matters.

The Husband has been represented throughout the negotiation of this Agreement by Nancy Chiles Stith, Esquire. The Wife has not been represented by Counsel.

NOW THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, receipt of which is hereby acknowledged by each party, the parties covenant and agree as follows:

1. LIVING SEPARATE: The parties may and shall hereafter live separate and apart, each free from all dominion, restraint and control of the other, whether

Appx45

CERTIFIED TRUE COPY



direct or indirect. Each party shall hereafter reside at such place or places as he or she may select.

A. No Molestation And Interference. Neither party shall molest nor interfere with the other, nor compel or attempt to compel the other to cohabit or dwell with him or her by any means whatsoever, by legal action or otherwise.

B. Restraining Order. Each party shall be restrained and strictly joined from bothering, abusing, threatening abuse, harassing, or in any manner interfering with the other party.

2. CHILD CUSTODY, CHILD SUPPORT AND VISITATION:

A. Child Custody and Visitation.

The Mother and Father shall share joint custody of the parties' child, Christin, a 14 year old female, with the Father designated as the primary caretaker and the Mother as the secondary caretaker. The parties acknowledge that they are entering into this arrangement with the intent of the parties being the "best interest of the child" and the least possible disruption to the child's security and welfare. The parties may agree that the child's best interest is not being served by the visitation schedule outlined in the Agreement and may seek to modify this Agreement by court order or by an agreement of the parties..

The parties are entering into a joint custodial arrangement in regard to their minor child with the understanding that the parties presently reside in Dorchester County in close proximity to one another. Should either party move their residence outside of a geographic area, which would make the joint custodial arrangement impossible, the provisions of the joint custody shall be null and void.

1. Alternating Residences.

The parties acknowledge that the child will reside at the residence of the Father during the weeks of the school year. The child shall reside with the Mother subject to the child's schedule and mutual agreement of the parties.

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Appx46

a. Weekend Visitation: The child may elect alternating weekend visitation between the parties; the child shall enjoy weekend visitation with the Mother from Friday evenings at 5:00 p.m. until Sunday evening at 6:00 p.m. at her election.

Vacation visitation will be as follows:

b. Summer Vacation: The Mother and Father shall, in addition to other access as set forth herein, have the Child at different times or consecutive times for a total of two (2) weeks during the summer months which run from June 1 through August 1 or one (1) week prior to the start of the Fall semester of each calendar year, and the parties are to notify each other one (1) week in advance of the dates that they want to exercise summer visitation with the Child. The two (2) weeks vacation does not have to be consecutive weeks. The summer visitation may be extended with the approval of both parties. If either party takes the Child out of State, they will notify the other party of the location and how the Child can be reached by telephone.

c. Thanksgiving Vacation: Notwithstanding any other provisions hereof, the parties shall alternate visitation periods each year. The Mother shall have the Child with her on Thanksgiving until 2:00pm on the same day; whereby the Father is to have the Child from 2:00pm on the same day until 8:00am the following day. Each party will be responsible for taking and picking up the Child from the other's residence.

d. Christmas Vacation: Notwithstanding any other provisions hereof, every other year, the Father shall have the Child on Christmas Eve after the Mother has celebrated the holiday with her family so the Child can wake on Christmas Day at her Father's house. The Mother shall deliver the Child to the Father's house by 10:00 p.m. on Christmas Eve. The Father shall return the child to the Mother by 5:00 p.m. on Christmas Day. During the other years, the Mother shall have the Child with her on Christmas Day until 2:00 p.m. on the same day; whereby the Father is to have the Child 2:00 p.m. on the same day until 8:00 a.m. the following day. The Mother will be responsible for taking and picking up the Child from the Father's residence unless the Father resides in another County

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Appx47

of South Carolina or in another State; thus the Father will be responsible for the costs to transport the Child from the Mother's residence to his residence and back.

2. Parental Responsibilities. The parent who has the Child for visitation shall not have an unrelated member of the opposite sex stay overnight at that parent's residence while that child is present unless that parent is married. Further, the parent with whom the Child is currently residing shall be responsible for daily care and shall make necessary decisions regarding emergency medical or dental care, and each party will inform the other of the emergency medical or dental care as soon as possible. All of the major decisions regarding the Child's education, religious training, cultural and artistic activities, non-emergency health treatment, and general welfare shall be made by the Mother and Father. Each parent agrees to confer with the other parent on a regular basis concerning the Child's needs and care, and the Mother will share and make accessible all school records and report cards, medical records, dental charts, and other records or documents pertaining to the Child to the Father at his request. The Mother will permit and encourage teachers, school administrators, health care professionals, guidance counselors, therapists, and other individuals to communicate to the Father regarding the Child's educational, developmental and social progress.

The Father will provide health, dental insurance and life insurance for the Child for as long as said insurance is offered through the father's place of employment.

3. Modification and Interpretation of this Agreement.

a. It is expressly understood by the Mother and Father that the above enumerated times that Mother or Father shall be with the Child and responsible for his care are subject to modifications by mutual agreement. Flexibility in child care responsibilities and involvement is to be encouraged in order to allow the Child to receive the maximum benefit of love, concern, and care of both parents.

b. It is agreed and expressly understood that the Mother and Father submit themselves to the Jurisdiction of the Family Court where the Child is residing

CERTIFIED TRUE COPY  
OK

Appx48

for the resolution of and/or adjudication of any disagreement, dispute or action which may arise between the parties on account of this Agreement, the custody and/or visitation of the Child. Any cause of action, petition, or complaint for a modification or change in custody and/or visitation shall be brought in the Family Court of the Circuit where the Child is residing, and they agree that they will be bound by the decisions, judgments, and orders of the Family Court and the appellate courts of the State where the Child is residing.

4. Holidays. Major Holidays (namely Easter, Labor Day Weekend, Memorial Weekend, and July 4) shall be spent in the care of the Mother and Father depending upon the schedule previously delineated in Paragraph IA 1(a). On Mother's Day weekend, the Mother shall have the option of visitation provided the Mother gives five (5) days advance notice to the Father. On Father's Day weekend, the Father shall have the option of visitation provided the Father gives five (5) days advance notice to the Mother. Each parent shall have access, at least by telephone, to the Child on the Child's birthday and other important times as long as the Parent does not make a telephone call later than 9:00pm (eastern standard time).

5. Communication Regarding Health Care. Each parent will permit and encourage communication by the other parent with teachers, doctors, therapists, church officials, counselors, and others regarding the Child's health, education, and welfare.

6. Health Care Notice and Emergencies. The Mother or Father agrees to provide advance notification to each other about proposed and forthcoming medical and dental care, and the Mother or Father whomever has the Child at the time will inform the others of any medical emergencies as soon as possible. Each party agrees to list the other as a contact person in case of emergency for their child.

7. Communication Regarding the Child.  
a. Both parents shall have reasonable telephone access to the Child while he is in the physical control of the other parent except telephone calls are not to

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Appx49

be made to the Child past 9:00pm(eastern standard time). The Child shall have reasonable telephone access to the other parent at all reasonable times which will not be beyond 9:00pm(eastern standard time).

b. At all times hereafter, each parent shall keep the parent informed of his or her respective business and home telephone numbers and his or her respective street and mailing address.

c. Discussions and Communication Concerning the Child.

Both parents will make themselves available for direct communication for the purpose of discussion pertaining to the Child; provided, however, that neither parent will harass or burden the other with excessive or abusive telephone calls or any other such non-productive communication. Moreover, all communication between the Parents shall be at home after working hours, except for bona fide emergencies. Each parent shall refrain from delegating to a third person their responsibility of communicating with the other parent, except in bona fide emergencies, and will at all reasonable times and places make themselves available and will communicate directly with the other parent pertaining to the needs and interests of the child.

8. Alienation of the Child's Affection. Both parents shall encourage the Child to love, respect, and honor the other parent. Neither parent shall alienate, attempt to alienate or permit others to alienate the affection of the Child for the parent, or disparage or permit anyone else to disparage the other parent to or in the presence of the Child. Each parent shall see to it the designations of the "Father" and "Mother" or their equivalents, shall be used by the Child only to refer to the parties hereto and to no other persons. Neither parent shall allow any third party to use such designations when referring to the relationship between the Child and any third party.

9. Child Support. The parties agree that the Mother/Father will provide for the child's needs while the child is in their physical custody. Neither party will pay support to one another.

Appx50

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The parties each agree that they will be responsible for one-half(1/2) of the medical costs including deductibles that are not covered by the Father's health and dental insurance. The Mother agrees that she will reimburse the Father for his one-half of the medical costs within fifteen (15) days from the date the Father produces the receipt of such medical costs.

3. GENERAL PROPERTY DIVISION: The parties have divided the property acquired between them during their marriage as equally as is possible in an effort to assure that each party receives one-half (1/2) of the net value of any and all marital assets. In this connection, one party may have taken a larger share of certain jointly owned property, so that the other party should receive a particular item of jointly owned property that he or she desires; but the overall division of jointly owned property is approximately equal. Each party shall take and hold any and all property set aside to him or her as a result of this Agreement free and clear of any right, title, interest, or claim of the other party by way of equitable distribution, community property, partition, dower, courtesy, resulting trust, constructive trust, special equity, or any other legal or equitable theory of property ownership under the laws of the State of South Carolina or any other jurisdiction.

A. DIVISION OF PERSONAL PROPERTY: The parties shall divide all personal property that was accumulated between the two of them during the course of their marriage pursuant to the attached Property List, hereinafter referred to as Exhibit "A"; the Wife is to have all personal property in her possession, and she is to have this property free and clear of any claim and/or interest from the Husband. The Husband is to have that personal property in his possession, and he will have such property free and clear of any claim and/or interest from the Wife.

B. REAL PROPERTY: The parties own a marital home at 236 Cady Drive, Summerville, South Carolina. The Wife shall be granted full use and possession of

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Appx51

the marital home and shall have sole and exclusive right, title and interest to the marital residence upon refinancing said residence.

The Wife shall be responsible for the mortgage lien on the property, taxes, insurance and any other costs associated with the marital home. The Wife shall hold the Husband harmless on these costs, including the mortgage. Upon the Husband's vacating of the marital home, the Wife will be able to claim as a deduction for income tax purposes the interest payments on the mortgage from the date the Husband vacates the marital residence.

The Wife shall refinance the mortgage which is currently in the name of both parties and into her name within one (1) year of this Agreement. The Husband shall convey his interest in the marital home to the Wife upon her refinancing of the property. The Wife agrees to be responsible for closing costs from this refinancing.

The parties acknowledge that necessary and appropriate documents of title shall be executed to facilitate such transfer of title so that the Wife shall have all right, title and interest to the property. The Wife agrees to indemnify and hold the Husband harmless from any debts incurred related to the marital residence subsequent to the date of "refinancing."

C. AUTOMOBILES: The Wife shall have full use, ownership and possession of the 1987 Nissan pick-up truck currently titled in the name of the Husband and the Wife. The Husband shall have full use, ownership and possession of the 1988 Ford F150 pick-up truck currently titled in the name of the Husband.

D. BANK FUNDS: The Wife shall have full use and ownership of her checking account funds located at SC Federal Credit Union, account number ~~XXXXXX~~

The Husband shall have his checking account funds located at SC Federal Credit Union, account number ~~XXXX~~

Appx52

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**E. FURNITURE, LAWN EQUIPMENT AND HOUSEHOLD**

**BELONGINGS:** The Husband shall have full use and ownership of the property identified and listed in Exhibit "A."

The Husband is entitled to all property identified and listed in Exhibit "A."

**F. LIFE INSURANCE POLICY:** The parties acknowledge that

there exists one whole life insurance policy which is marital property of the marriage: Integon & Son Life Insurance Corporation; Policy Number ~~XXXXXXXXXX~~ Insuring Wayne W. Cross; Policy Date 9/23/83. The approximate cash value of this life insurance policy is \$7,062.60. The Husband shall have full title and interest in the cash value of the insurance policy.

**G. TRANSFER OF MARITAL PROPERTY:** The parties elect to have

the transfer of all marital property, real and personal, between them to be subject to the provisions of the Tax Reform Act of 1984 or any such similar legislation now pending in the United States Congress or which may hereinafter be enacted so that these transfers shall be non-taxable at the time of the transfer with the recipient having a carry-over basis in the property.

**H. SEPARATE PROPERTY:** Each party shall retain, have, and enjoy,

independent of any claim, right or demand of the other party, all property of every kind, nature and description and whatsoever situated which is now owned or held, or is hereafter acquired by him or her as a result of this Agreement.

**I. DEBTS AND OBLIGATIONS:** Each party shall pay all debts

incurred by him or her after the date of this Agreement and shall indemnify and hold harmless the other party against any responsibility or liability therefor.

The Wife has incurred debt in the form of a credit card, USAA Master Card/Visa, Account # ~~54209960100269X2~~ and will be responsible for said debt. The Wife has incurred student loans in association from Trident Technical College. All student

Appx53

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loans are the sole debt of the Wife and she shall hold the Husband harmless for this debt. The Husband knows of no debts for which the Wife will be responsible except as set forth in this Agreement.

The marital debt consists of the mortgage on the home and the credit card debt of the Wife. The Wife shall be responsible for the credit card debt. The Wife shall hold the Husband harmless on this debt. The Wife shall refinance the mortgage within one (1) year of this Agreement into her own name and shall then be fully liable for the new mortgage.

J. ALIMONY AND/OR SEPARATE MAINTENANCE AND

SUPPORT: The Wife acknowledges that she is in reasonably good health, and that she is employed.

The Husband acknowledges that he is in reasonably good health. The Husband is employed by W.O. Blackstone Mechanical Contractor.

That both parties feel that they are totally familiar with the financial status of the other party.

The Wife does not desire to receive alimony and/or separate maintenance and support of and from the Husband, she acknowledges that she knows that if she does not reserve her right to receive alimony and/or separate maintenance and support of and from her Husband at this time, that she will not be able to receive such support from him in the future, she specifically waives her right to receive alimony and/or separate maintenance and support of and from her Husband and she specifically consents to being forever barred from receiving same.

The Husband does not desire to receive alimony and/or separate maintenance and support of and from the Wife, he acknowledges that he knows that if he does not reserve the right to receive alimony and/or separate maintenance and support of and from the Wife at this time, that he will not be able to receive such support from her in the future, he specifically waives his right to receive alimony and/or separate maintenance

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Appx 34

and support of and from his Wife, and he specifically consent to being forever barred from receiving same.

K. MEDICAL AND HEALTH INSURANCE: The parties are currently covered under the health insurance of the Husband. Once the Wife graduates from technical school in December 1997 and resumes full time employment, both parties will maintain their own medical and health insurance. Husband agrees to maintain medical insurance on the Wife until she becomes eligible for health insurance at her place of employment.

L. ATTORNEY'S FEES AND COSTS: The Husband and Wife agree that they will be responsible for their own attorney's fees and costs incurred in the negotiations of this Agreement. The parties agree they will split the attorney's fees and costs incurred in having this Agreement approved by the Family Court.

M. INCOME TAX RETURNS: The parties agree to file federal and state income tax returns for the 1997 tax year under the status of "married." The parties agree to file individual federal and state income tax returns for the 1998 tax year under the status "married filing separate." In the event the parties determine it is advantageous to file a joint return, the parties reserve the right to file joint federal and state income tax returns for the 1998 tax year, provided that they are Husband and Wife at the end of 1998. The Wife agrees to cooperate by expeditiously providing the Husband or their accountant with all documents and information which are reasonably necessary to assist the accountant and the Husband in the preparation of their 1997 and 1998 income tax returns. The Husband likewise agrees to provide the Wife and/or her accountant with such documents and/or information as might be recently necessary to facilitate the filing of such return in a timely fashion.

N. WAIVER OF INTEREST IN ESTATE: Each of the parties forever waives, releases and relinquishes to the other, and to the heirs, executors, administrators, devisees, legatees, and assigns of the other, all rights, interest, or claims to an elective share,

Appx 35

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homestead allowance, or exempt property either as a widow, widower, heir, survivor, distributee, or next of kin, in and to all of the estate of the other, whether now owned or hereafter acquired, and all other claims whatsoever which may in any manner arise or accrue by virtue of marriage of the parties under any present or future law of the State of South Carolina, or of any other state in the United States, except as otherwise provided in this Agreement.

O. COURT APPROVAL OF AGREEMENT: The parties hereto agree that this Agreement shall be submitted to the Court for approval, and if approved, shall be incorporated in and merged with the Order of the Court.

P. BINDING EFFECT: This Agreement shall be binding upon the parties, their respective heirs, executors, administrators, and assigns and shall in any event be governed by the laws of the State of South Carolina.

Q. EXECUTION OF NECESSARY INSTRUMENTS: The parties in each event shall hereafter execute all instruments necessary to carry out the terms of this Agreement.

R. EFFECT OF DIVORCE: This Agreement shall not be construed in any measure as a consent or condonation of a divorce in favor of either party, nor shall it be a bar to any action or proceedings for divorce to be hereinafter instituted; it is an Agreement which is contractual in nature and is intended as a binding settlement of the parties' rights, duties, and responsibilities regarding all matters dealt with herein. Should a judgment or decree of divorce or separate maintenance be entered in any court of competent jurisdiction in any proceeding currently pending or in the future, then this Agreement shall be submitted to the court as an Agreement, to be incorporated and merged with any judgment or decree of divorce or separate maintenance entered between the parties.

S. WAIVER OF REVIEW OF THE AGREEMENT: The Husband and the Wife acknowledge that according to the applicable law of the State of South

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Appx 56

Carolina, that the Court has the right, duty, and/or obligation to review the Agreement at a hearing on the merits of an action for a divorce between the parties; both parties specifically waive the right, duty, and/or obligation for the court to review this agreement at a hearing on the merits of a divorce action which may be later instituted between the parties, and both parties specifically consent to being bound by the Agreement without further review, modifications, and/or scrutiny by the court, once the Agreement is reviewed by the court and approved by the court, except as provided in the Agreement.

Nothing in this paragraph is to be construed to prohibit either party from petitioning the court for an increase or decrease in the alimony and/or child support obligations of the parties based upon a substantial change of conditions.

T. MODIFICATION OF AGREEMENT: The provisions of this Agreement shall not be modified or changed except by mutual consent and the agreement of the parties expressed in writing or by further court order upon a change of circumstance.

U. SEVERABILITY: Should one or more provisions of this Agreement become null and void, all remaining provisions shall remain in full force and effect.

WHEREFORE, we hereby subscribed our names at the end of this instrument, consisting of this page and all preceding pages, typewritten on one side only of each page, and for the purposes of identification, we have subscribed our initials at the bottom of each preceding page on the date or dates herein below indicated.

WITNESSES:

This 5<sup>th</sup> day of March, 1998 <sup>www</sup>

[Signature]  
[Signature]

[Signature]  
WAYNE W. CROSS

This 14<sup>th</sup> day of March, 1998 <sup>or</sup>

[Signature]

Appx5

[Signature]  
DOREEN C. CROSS

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Janet M. Taylor

Appx58

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*JA*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

)  
)  
)

PROBATE

PERSONALLY appeared before me, George Cross, who  
being the person duly sworn says that he/she saw the within named  
Kimberly Hassell, as his/her act and deed, sign the foregoing  
Agreement; and that he/she with Marry Chiles Stahl witnessed the  
execution thereof.

Kimberly Hassell  
WITNESS

SWORN to before me this

26<sup>th</sup> day of March, 1998 ACS

Marry Chiles Stahl  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 2/06/2001

Appx59

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me, DOREEN C. CROSS, who  
being the person duly sworn says that he/she saw the within named  
Janet M. Langdon as his/her act and deed, sign the foregoing  
Agreement; and that he/she with Michael G. Bowden witnessed the  
execution thereof.

Janet M. Langdon  
WITNESS

SWORN to before me this

9th day of April, ~~1998~~ <sup>1998</sup> JMB

Jr. Janet M. Bowden  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: ~~NOTARY PUBLIC FOR SOUTH CAROLINA~~  
My Commission expires December 11, 2001

Appx60

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**EXHIBIT "A"**

**Husband's Property**

**Bedroom Suite (Includes 2 dressers)**

**1 Television**

**Artifacts**


**ATV 4-Wheeler**

**Personal Belongings (including clothes)**

**Appx61**

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 <b>FERS</b> Federal Employees Retirement System	<h2 style="margin: 0;">Application for Immediate Retirement</h2> <h3 style="margin: 0;">Federal Employees Retirement System</h3>	See Privacy Act Information on Instruction Sheet
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SECTION A - Identifying Information			
1. Name (last, first, middle) <u>CROSS WAYNE WESLEY</u>	2. List all other names you have used <u>NONE</u>		
3. Address (number, street, city, state, ZIP code) <u>297 REMINGTON RD WHITE OAK, GA 31568</u>	4a. Daytime tele.# (area code) <u>912 674 1233</u>	5. Date of birth (month, day, year) <u>XXXXXX</u>	6. Social Security Number <u>XXXXXXXXXX</u>
	4b. Best time to reach you <u>ANY</u>		
7. Are you a citizen of the United States of America? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	8. Is this an application for disability retirement? <input checked="" type="checkbox"/> Yes (Ask your employing office about other documents you must submit) <input type="checkbox"/> No		

SECTION B - Federal Service			
1. Department or agency from which you are retiring (include bureau or division, address and ZIP code) <u>TICENT Relit facility KINGS BAY GA 31547</u>		2. Date of final separation (month, day, year) <u>5/9/05</u>	
		3. Title of position from which you are retiring <u>HUMMELH WO-10 STEP 5</u>	
4. Have you performed active honorable service in the Armed Service or other uniformed services of the United States? (See instructions for definition) <input type="checkbox"/> Yes (Complete Schedule A and attach to this form) <input checked="" type="checkbox"/> No	5. Are you receiving or have you applied for military retired pay? (Note: If you later become entitled to military retired pay you must notify OPM.) <input type="checkbox"/> Yes (Complete Schedule A and attach to this form) <input checked="" type="checkbox"/> No		

SECTION C - Marital Information (All applicants must complete Questions 1 and 2 below.)			
1. Are you married now? (A marriage exists until ended by death, divorce, or annulment) <input checked="" type="checkbox"/> Yes (Also complete items 1a-f below) <input type="checkbox"/> No		1a. Spouse's name (last, first, middle) <u>CROSS Doreen</u>	
1b. Spouse's date of birth (month, day, year) <u>XXXXXXXXXX</u>	1c. Spouse's social security number <u>XXXXXXXXXX</u>	1d. Place of marriage (city, state) <u>Charter S.C.</u>	1e. Date of marriage (month, day, year) <u>8/3/82</u>
1f. Marriage performed by <input checked="" type="checkbox"/> Clergyman or Justice of the Peace <input type="checkbox"/> Other (explain):		2. Do you have a living former spouse(s) to whom a court order gives a survivor annuity? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

SECTION D - Annuity Election			
Make your election by initialing the box beside the type of annuity you want to receive and give any other information requested. Read the pamphlet SF 3113, <i>Applying for Immediate Retirement under FERS</i> and the explanations below and consider your election carefully. No change will be permitted after your annuity is granted except as explained in the pamphlet. If you are married at retirement, the law provides an annuity with full survivor benefits for your spouse unless your spouse consents to your election not to provide maximum survivor benefits.			
1. I choose a reduced annuity with maximum survivor annuity for my spouse.	INITIALS	<u>WWC</u>	If you are married at retirement, you will receive this type of annuity unless your spouse consents to your election not to provide maximum survivor benefits. If you receive this annuity, your annuity will be reduced by 10%. Your spouse's annuity upon your death will be 50% of your annuity.
2. I choose a reduced annuity with a partial survivor annuity for my spouse.	INITIALS		If you choose this option, your annuity will be reduced by 5%. Upon your death, your spouse's annuity will be 25% of your unreduced annuity. You <b>MUST</b> have your spouse's consent to choose this option. Complete form SF 3107-2 (Spouse's Consent to Survivor Election) and attach it to your application.
3. I choose an annuity payable only during my lifetime.	INITIALS		If you are married at retirement, you <b>CANNOT</b> choose this type of annuity without your spouse's consent. <b>No survivor annuity will be paid to your spouse after your death if he or she consents to this election and any health benefits will cease.</b> If you are married and elect this, complete form SF 3107-2 (Spouse's Consent to Survivor Election) and attach it to your application.
4. I choose a reduced annuity with survivor annuity for the person named below who has an insurable interest in me.	INITIALS		You must be healthy and willing to provide medical evidence if you choose this type of annuity. (Disability annuitants are not eligible to choose this type of annuity.)
Name of person with insurable interest		Relationship to you	Date of birth
			Social Security Number
5. I choose a reduced annuity with survivor annuity for my former spouse(s) as follows:	INITIALS	You must attach: 1. Copies of divorce decrees for all former spouses for whom you elect to provide a survivor annuity. 2. If you are married, attach a completed SF 3107-2, Spouses' Consent to Survivor Election. You cannot choose this option and provide a maximum survivor annuity for your spouse (Box 1).	
Name and address of former spouse		Date of marriage	Date of divorce
		Date of birth	Social Security Number
		Survivor annuity equal to _____ % of my annuity	

  
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 Annex 6

Name and address of former spouse	Date of marriage	Date of divorce	Survivor annuity equal to _____ %
	Date of birth	Social Security Number	of my annuity
Total (either 25% or 50% of your unreduced annuity)			

**Section E - Insurance Information** See the pamphlet SF 3113, *Applying for Immediate Retirement Under the Federal Employees Retirement System*, for information.

1. Are you eligible to continue Federal Employees Health Benefits coverage as a retiree?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	2. Are you eligible to continue Federal Employees' Group Life Insurance coverage as a retiree?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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**Section F - Other Claim Information**

1. Are you receiving, or have you applied for or received within the past 2 years, workers' compensation from the Department of Labor because of a job-related illness or injury?	<input checked="" type="checkbox"/> Yes (Complete Schedule C and attach to this form) <input type="checkbox"/> No
2. Have you previously filed any application under the Civil Service Retirement System or the Federal Employees Retirement System (for retirement, refund, deposit or redeposit, or voluntary contributions)?	<input type="checkbox"/> Yes (Complete items 2a and 2b below) <input checked="" type="checkbox"/> No
2a. Type of application	<input type="checkbox"/> Retirement <input type="checkbox"/> Refund <input type="checkbox"/> Return of excess deductions <input type="checkbox"/> Deposit or redeposit <input type="checkbox"/> Voluntary contributions
2b. Claim numbers	

**Section G - Information About Your Unmarried Dependent Children**

1. Dependent child's name (first, middle, last)	2. Date of birth (month, day, year)	3. Disabled (X)	1. Dependent child's name (first, middle, last)	2. Date of birth (month, day, year)	3. Disabled (X)
N/A					

**Section H - Direct Deposit and Tax Withholding Information**

Public Law 104-134 requires that most Federal payments be paid by Direct Deposit through Electronic Funds Transfer (EFT) into a savings or checking account at a financial institution. However, if receiving your payment electronically would cause you a financial hardship, or a hardship because you have a disability, or because of a geographic, language or literacy barrier, you may invoke your legal right to a waiver of the Direct Deposit requirement, and continue to receive your payment by check.

Therefore, you must select one of the following:

Please send my annuity payments directly to my checking or savings account. (Go to item 2)

Receiving my payment(s) electronically would cause me a financial hardship, or a hardship because of a disability, or because of a geographic, language or literacy barrier. I hereby invoke my legal right to a waiver of the Direct Deposit requirements of Public Law 104-134. Please send me my payment(s) by check. (Go to item 4)

My permanent payment address is outside the United States in a country not accessible via direct deposit. (Go to item 4)

2. Financial Institution Routing Number (You may obtain this number by calling your bank, credit union, or savings institution. This number is very important. We cannot pay by direct deposit without it.)

3. Checking or Savings Account Number	3a. What kind of account is this? <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	3b. Telephone number of your Financial Institution ( ) ( ) ( )
Name and Address of Financial Institution NAVY Federal Credit Union Kings Bay Ga 31547	Special Note: If you prefer, you may attach a cancelled personal check that shows the information requested above, instead of filling in the requested financial institution information. If you attach your personal check, it is especially important that you contact your bank, credit union, or savings institution to confirm that the information on the check is the correct information for direct deposit. (Some institutions, especially credit unions, use different routing numbers on checks.) We can then use this information to start paying you by direct deposit.	

4. Do you want Federal income tax withheld from your annuity payments? <input checked="" type="checkbox"/> Yes (Go to item 4a) <input type="checkbox"/> No (Go to Section I)	4a. Do you want to have Federal Income Tax withheld at the rate currently being withheld from your salary? <input checked="" type="checkbox"/> Yes (Attach copy of W-4 form on file with your employing agency.) <input type="checkbox"/> No (Attach new W-4 form, otherwise withholding will be at rate for married with 3 exemptions.)
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**Section I - Applicant's Certification**

**WARNING**  
Any intentional false statement in the application or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)

I hereby certify that all statements made in this application are true to the best of my knowledge and belief.

Signature (Do not print) Walter W. Wos Date 4/22/05

**Applicant's Checklist**

This checklist is provided to help you be certain you have attached all the necessary documents and to help your employing office be certain it forwards all of your retirement documentation to the Office of Personnel Management.

	Yes	No	Not Applicable
1. Military Service - If you answered "yes" to Section B, item 4, did you attach Schedule A?			<input checked="" type="checkbox"/>
2. Military Service - If you completed Schedule A, did you attach a copy of your discharge certificate or other certificate of active military service?			<input checked="" type="checkbox"/>
3. Military Retired Pay - If you answered "yes" to Section B, item 5, did you attach Schedule B?			<input checked="" type="checkbox"/>
4. Military Retired Pay - If you completed Schedule B and answered "yes" to item b or c, did you attach a copy of the notice of award or other documentation of the type of military retired pay you are receiving?			<input checked="" type="checkbox"/>
5. Military Retired Pay - If you completed Schedule B and answered "yes" to item d, did you attach a copy of your request for waiver and a copy of the military finance office's acknowledgment or approval of your request for waiver (if applicable)?			<input checked="" type="checkbox"/>
6. Survivor Election - If you are married and did not initial box 1 of Section D, did you attach SF 3107-2, Spouse's Consent to Survivor Election?		<input checked="" type="checkbox"/>	
7. Life Insurance - If you answered "yes" to Section E, item 2, did you attach SF 2818, Election of Post-Retirement Basic Life Insurance Coverage?		<input checked="" type="checkbox"/>	
8. OWCP - If you answered "yes" to Section F, item 1, did you attach Schedule C?	<input checked="" type="checkbox"/>		
9. Tax - If you want to elect a Federal Income Tax withholding rate, did you attach a W-4 form?	<input checked="" type="checkbox"/>		

**Schedules A, B and C**

1. Name (last, first, middle) <i>CROSS WAYNE WESTLEY</i>	2. Date of birth (month, day, year) <del>XXXXXX</del>	3. Social Security Number <del>XXXXXXXXXX</del>
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**Schedule A - Military Service Information**

1. If you have performed active honorable service in the Armed Services, or other uniformed services, complete 1a-d below and attach a copy of your discharge certificate or other certificate of active military service (if available).  
See instructions for definitions of Armed Services and Uniformed Services.

a. Branch or service	b. Serial number	c. Dates of active duty		d. Last grade or rank
		From (month, day, year)	To (month, day, year)	
<i>N/A</i>				

2. If any of your military service occurred on or after January 1, 1957, have you paid a deposit to your agency for this service? You must pay this deposit to your agency. You cannot pay OPM after you retire.  Yes  No  Not applicable

**Schedule B - Military Retired Pay**

1. If you are receiving or have applied for military retired or retainer pay, including disability or retired pay, complete Parts 1a-d below.

a. Are you receiving or have you ever applied for military retired or retainer pay? <input type="checkbox"/> Yes <i>N/A</i> <input type="checkbox"/> No	b. Was your military retired or retainer pay awarded for reserve service under Chapter 1223, title 10, U.S. Code (formerly Chapter 67, title 10)? <input type="checkbox"/> Yes (Attach a copy of notice of award) <input type="checkbox"/> No
c. Was your military retired pay or retainer pay awarded for a disability incurred in combat or caused by an instrumentality of war and incurred in the line of duty during a period of war? <input type="checkbox"/> Yes (Attach a copy of notice of award) <input type="checkbox"/> No	d. Are you waiving your military retired or retainer pay in order to receive credit for military service for FERS retirement benefits? <input type="checkbox"/> Yes (Attach a copy of your request for waiver and a copy of military finance officer's acknowledgment or approval of your request for waiver) <input type="checkbox"/> No

**Schedule C - Federal Employees Compensation Information**

1. Are you receiving or have you received workers' compensation from the Office of Workers' Compensation Programs (OWCP), Department of Labor, because of a job-related illness or injury within the last 2 years?  
 Yes (Complete parts 1a-c below)  No (Go to question 2)

a. Compensation claim number	b. Benefit received		c. Type of benefit
	From (month, day, year)	To (month, day, year)	
			Scheduled award
			Total or partial disability compensation
			Scheduled award
			Total or partial disability compensation

2. If you have applied for workers' compensation (other than as listed in item 1a above) but are NOT receiving benefits, check reason below and give the information requested.

<input type="checkbox"/> Awaiting OWCP decision	<input checked="" type="checkbox"/> Claim denied	Date claim denied
Compensation claim number	Compensation claim number	

3. Except for scheduled compensation awards, workers' compensation and FERS retirement benefits CANNOT be paid for the same period of time. Please complete the information below regarding your claim.

a. Do you agree to notify us promptly if the status of your workers' compensation claim changes?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b. Do you authorize the Office of Personnel Management and/or the Office of Workers' Compensation Programs (OWCP) to collect any overpayment if we later find you are ineligible for both compensation and annuity payments covering the same period of time?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**Applicant's Certification**

I certify that all statements made on these schedules are true to the best of my knowledge and belief.	Signature (do not print) <i>Wayne W. Cross</i>	Date <i>4/22/05</i>
--	---	------------------------

**YOUR BENEFIT COMPUTATION**

Many factors go into the computation of your monthly benefit. The following information summarizes the major components of your benefit computation.

**Type Of Computation**

You received the special computation for a disability retirement.

**Average Salary**

The "high-3" average salary in your case is: \$40,533.00

Your benefit is based, in part, on the highest average salary during any three year period while you were employed. This three year period does not always occur in the last three years of employment. We have ensured that the average salary we computed is the highest average applicable to your salary history.

**Length Of Service**

Your benefit is also based, in part, on the amount of Federal service you performed as an employee. Your retirement records showed the following:

Military service included in total: 00 Years, 00 Months  
Total Federal Service: 10 Years, 06 Months

Only years and full months are used in the computation; partial months are not counted.

**SURVIVOR BENEFITS**

In the event of your death, your survivors should call our Retirement Information Office at: (1-888) 767-6738. Customers within the local Washington, DC, calling area must call (202) 606-0500.

You elected to provide survivor benefits as follows based upon the full amount of the annuity. As noted on your retirement application, you may change your election by filing a new election in writing not later than 30 days after the date of your first regular monthly payment.

The reduction to provide survivor benefits is made from your basic annual annuity at retirement. There are no separate monthly deductions for providing survivor annuities.

**Surviving Spouse**

Name: DOREEN  
Social Security Number: [REDACTED]  
Date of Birth: XXXXX

**Surviving Children**

Any dependent, unmarried children under age 18 (or disabled children over 18 if disabled prior to age 18, or full-time students under age 22) could be eligible for a survivor annuity.

**COST OF LIVING, ADJUSTMENTS AND NOTICES**

**Future Check Adjustments**

As your various monthly deductions change for any reason, we will send you a Notice of Annuity Adjustment explaining the change.

Your health insurance premium can change each year, effective January 1. Any change in premiums will appear in your February 1 payment, which represents your annuity and insurance premium deduction for the month of January.

If your spouse dies before you do, we will recompute your annuity to eliminate the reduction we made to provide for the survivor benefit. You should contact us if this is necessary.

When you turn 62, we will recompute your benefit as an "earned" annuity as if you had worked until age 62, with all applicable salary increases. Unlike the disability annuity, this "earned" annuity will not be reduced by any Social Security benefits you receive.

The premiums you pay for your life insurance depend on your age. The premiums we have already described will continue until you turn age 50.

**COST OF LIVING, ADJUSTMENTS AND NOTICES**

**Other OPM Notices**

Each October, we will send you information about the upcoming Health Insurance Open Season (see Health Benefits chapter). That material will explain what kind of changes you can make in your coverage, what your new premiums will be, and if you do make a change in coverage, we will send you a confirmation that the change has been made.

By the end of each January, we will send you a form 1099R, Statement of Annuity Paid. This statement will report how much you received from OPM, any Federal and state taxes withheld, and should be used to file your tax return(s). If you do not receive the statement, please call our Retirement Information Office at 1-888-767-6738. Customers within the Washington, DC, calling area must call (202) 606-0500.

Each time we update your address (either your direct deposit information, or your correspondence address), we will send you a confirmation of that change and let you know which will be the first payment to go to the new address, if applicable.

We have recently sent you an Identification Card, to keep as a permanent record of your retirement claim number.

**COST OF LIVING, ADJUSTMENTS AND NOTICES**

**Future Check Adjustments**

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We have recently sent you an Identification Card, to keep as a permanent record of your retirement claim number.

STATE OF SOUTH CAROLINA )  
 COUNTY OF DORCHESTER )  
 WAYNE W. CROSS, )  
 )  
 Plaintiff, )  
 vs. )  
 DOREEN C. CROSS, )  
 )  
 Defendant. )

IN THE FAMILY COURT FOR THE  
 FIRST JUDICIAL CIRCUIT  
 CASE NO.: 2014-DR-18-1450  
**FINAL DIVORCE DECREE**

MARCH 27 AM 11:17  
 CLERK OF COURT  
 COUNTY OF DORCHESTER  
 SOUTH CAROLINA

Hearing Date: March 27, 2015  
 Presiding Judge: The Honorable Randall E. McGee  
 Plaintiff's Attorney: J. Reaves McLeod  
 Defendant's Attorney: *Pro Se*  
 Court Reporter: Rose Walker

This matter comes before the Court by way of Plaintiff's Complaint for divorce based on the no fault grounds of one year separation without cohabitation; waiving alimony; setting forth that marital property has been previously equitably apportioned; making each party responsible for their own attorney's fees and costs. The Defendant was served with the Summons and Complaint on October 29, 2014 by personally delivering a copy of same to her, as evidenced by the Affidavit of Service. The Defendant did not file an Answer or Counterclaim.

The Plaintiff appeared at the hearing of this matter with her attorney, J. Reaves McLeod, and a witness, who testified. The *Pro Se* Defendant was not present. The Defendant was notified of the hearing by way of Notice of Hearing dated February 20, 2015 and served by Process Server, Mary Fisk, on March 3, 2015.

**FACTUAL BACKGROUND AND FAULT GROUNDS FOR DIVORCE**

It appears unto the Court that the parties were married on August 3, 1982 in Chester, South Carolina and last resided together as husband and wife in Dorchester County, South Carolina. The Plaintiff has resided in Colleton County, South Carolina for more than one year prior to the commencement of this action. The Defendant currently resides in Dorchester County and has been so for more than one year prior to the commencement of this action. As the

Defendant has been a citizen and resident of Dorchester County for more than one year prior to the commencement of this action, this Court has personal and subject matter jurisdiction and the venue is proper.

It further appears unto the Court, that during the course of the marriage one child was born, to wit, Christin Cayce Cross (~~XXXXXX~~4), who has now reached the age of majority and no other children are expected.

Further, it appears unto the Court that, due to certain marital difficulties, the parties separated on or about April 21, 1998 and the parties have lived separate and apart continuously since that time. A Property Settlement Agreement, Child Custody and Support Agreement was filed in Dorchester County, South Carolina on April 21, 1998, under Case No.: 98-DR-18-601, a copy of which is attached hereto and incorporated into this Order. As such, the Plaintiff has brought this action based on the parties' separation for more than one year without cohabitation. The Plaintiff was examined by the Court and it appears that there is no hope for reconciliation of the parties. The Plaintiff's witness was examined and testified that the parties have lived separate and apart continuously since April 21, 1998.

#### **SPOUSAL SUPPORT**

The Plaintiff filed his action seeking for both parties to waive their rights to seek alimony or spousal support from each other.

#### **EQUITABLE APPORTIONMENT OF MARITAL PROPERTY**

It appears unto this Court that the parties have previously separated all marital property as recorded in the Property Settlement Agreement, Child Custody and Support Agreement filed in Dorchester County, South Carolina on April 21, 1998, a copy of which is attached hereto and incorporated into this Order.

#### **ATTORNEY'S FEES AND COSTS**

It appears unto this Court that the parties have agreed to be solely responsible for their own attorney's fees and costs and the issue is not before this Court.

Appx<sup>2</sup>68


Based on the above findings of fact, testimony given, and for good cause shown, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Plaintiff is hereby granted a divorce from the Defendant based on the no fault grounds of one year separation without cohabitation in that good cause was shown and a witness provided undisputed testimony that the parties separated on April 21, 1998 and have lived separate and apart since that time. Further, the Plaintiff was examined and it is apparent that there is no hope of reconciliation of the parties.

2. That the parties are hereby denied alimony and/or spousal support both and are hereby forever barred from seeking alimony from each other, this is based upon an agreement of the parties in the Property Settlement Agreement, Child Custody and Support Agreement filed in Dorchester County, South Carolina on April 21, 1998.

**IT IS SO ORDERED**

Summerville, South Carolina  
3-27, 2015

  
The Honorable Randall E. McGee  
Family Court Judge for the  
First Judicial Circuit

App<sup>3</sup>x69



STATE OF SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-15-033680

DECEDENT'S NAME: \*WAYNE WESLEY CROSS\*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: ~~XXXXXX~~

TYPE OF PLACE OF DEATH: OTHER (SPECIFY)

NAME AND ADDRESS OF PLACE OF DEATH: 1913 SNOW GOOSE CIRCLE, GOOSE CREEK, SC 29445

PLACE OF DISPOSITION: CAROLINA MEMORIAL PARK

DISPOSITION LOCATION: NORTH CHARLESTON, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 2720 DRAIN ROAD, SMOAKS, COLLETON COUNTY, SC, 29481

PLACE OF BIRTH: NORTH CAROLINA

SEX: MALE

SOCIAL SECURITY NUMBER: ~~XXXXXX~~

AGE: 59 YEARS

COUNTY OF DEATH: BERKELEY

MARITAL STATUS: DIVORCED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: JAMES O CROSS

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: ANNELIESE KANNON

INFORMANT'S NAME: CAYCE CROSS

RELATIONSHIP: DAUGHTER

MAILING ADDRESS: 1521 LYNTON AVENUE, CHARLESTON, SC, 29412

FUNERAL HOME: CAROLINA MEMORIAL FUNERAL HOME, INC, 7113 RIVERS AVE, NORTH CHARLESTON, SC, 29406

FUNERAL DIRECTOR: JAMIE R. SHELLEY

LICENSE NUMBER: 2658

EMBALMER'S NAME: NOT EMBALMED

LICENSE NUMBER: NOT EMBALMED

ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 23, 2015

MANNER OF DEATH: NATURAL

ACTUAL OR PRESUMED TIME OF DEATH: 0530

CAUSE OF DEATH - PART I

SMALL CELL LUNG CANCER

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? NO

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: MD YANIS BELLIL

LICENSE NUMBER: 33433

CERTIFIER'S ADDRESS: NA

DATE FILED: OCTOBER 01, 2015

DATE OF ISSUANCE: OCTOBER 01, 2015

SPECIAL INSTRUCTIONS:

NA

SC04669582

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E Heigel  
Catherine E. Heigel  
Director and State Registrar

Appx70

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

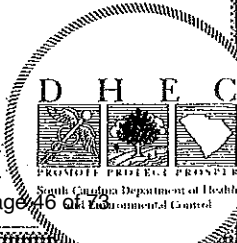
Revision Date: 07/31/2015

Reading Number: 2019048197

Submission date: 2019-11-22 14:13:57

Confirmation Number: 44096946

page 46 of 46 South Carolina Department of Health and Environmental Control





**Application for Death Benefits**  
Federal Employees Retirement System

Form Approved  
OMB No. 3206-0172

**CSF-7 186 495**

**Section A - Information About the Deceased**

CROSS WAYNE W

1. Full name of the deceased (last, first, middle)  
WAYNE WESLEY CROSS

3. Date of death (mm/dd/yyyy) (Attach a certified copy of the death certificate.)  
09/23/15

5. List any other names the deceased used (ex. maiden name or his/her middle name)  
N/A

6. CSA number (if retired)  
CSA 8 280 130

7a. Was the deceased applying for or receiving workers' compensation from the Office of Workers' Compensation Programs (OWCP), Department of Labor?  
 No  Yes → ?

7b. OWCP claim number  
?

8. What was the employment status of the deceased at the time of death (see pamphlet entitled, Applying for Death Benefits Under the Federal Employees Retirement System, SF 3114)  
 Employee → Complete SF 3104B, which can be obtained from the former employing agency of the deceased.  Former employee  Retiree → If you are the surviving spouse, complete SF 3104A (attached)

9. Name of the spouse of the deceased at the time of death (if not married at time of death write "none")  
NONE

10a. Name of the spouses from all former marriages of the deceased  
DOREEN ANITA CRAMER CROSS

10b. How did each marriage end?  
 Death  Divorce/annulment

10c. Date each marriage ended (mm/dd/yyyy)  
03/27/2015

**Section B - Information About the Applicant**

1. Your full name (last, first, middle)  
CROSS, DOREEN, CRAMER

2. Date of birth (mm/dd/yyyy)  
XXXXXXXXXX

3. Social Security Number  
XXXXXXXXXX

4. Are you a citizen of the United States of America?  
 Yes  No

5. I am applying for benefits as (check all boxes that apply):  
 Widow(er) → complete Section C below  
 Designated beneficiary (attach copy of designation, if available)  
 Parent of decedent (Each parent should complete a separate application. If one parent is deceased, attach a copy of the death certificate.)  
 Executor or administrator of estate (attach copy of court order)  
 Former spouse → Complete Section D on page 2  
 Child (or as guardian of minor or disabled child)  
 Other (specify):

6. Did you cash any check(s) issued to the deceased or did you withdraw funds paid by direct deposit from the deceased's savings or checking account after the date of death?  
 No  Yes

**Section C - Information About the Spouse of the Deceased (Complete if you are the widow[er].)**

1. Marriage performed by  
 Clergy/Justice of the Peace  Other (explain)

2. Date of marriage (mm/dd/yyyy)

3. Have you remarried after your spouse died?  
 Yes  No

4a. Have you ever applied for a survivor annuity based on the Federal service of a deceased spouse other than the one named above in Section A.1?  
 No → Go to Section E  
 Yes → Complete items 4b-4c below

4b. Name of deceased former spouse

4c. Date of birth (mm/dd/yyyy)

4d. Name of retirement system (e.g. Civil Service, Foreign Service)

4e. Claim number (assigned to you by retirement system in item 4d.)

If you will be receiving monthly payments, make sure you complete the payment instructions in Section I.

Appx 71

**Section D - Information About the Former Spouse of the Deceased (Complete if you are a former spouse)**

1a. Date of marriage to the deceased (mm/dd/yyyy)  
 08 / 03 / 1982

1b. Date of divorce from the deceased (mm/dd/yyyy)  
 03 / 27 / 2015

2. Is there a court order awarding you any portion of the Federal Employees Retirement System (FERS) retirement or survivor benefits of the deceased?  
 Yes, on record at OPM  Yes, attached  No

3a. Are you paying for Federal Employees Health Benefits coverage to a former employing office?  
 No → Go to item 4a  Yes → Go to item 3b

3b. Give name and address of agency where you send health benefit premiums:

4a. Have you married again since your marriage to the deceased?  
 No → Go to item 5a  Yes → Go to item 4b

4b. Date of first marriage after marriage to the deceased ended (mm/dd/yyyy)

5a. Have you ever applied for a survivor annuity based on the Federal service of a deceased spouse or former spouse other than the one named on page 1, Section A1?  
 No → Go to Section E  Yes → Complete items 5b-5c below

5b. Name of deceased former spouse (last, first, middle initial)

5c. Date of birth (mm/dd/yyyy)

5d. Name of retirement system (ex. Civil Service, Foreign Service, etc.)

5e. Claim number assigned to you by retirement system in item 5d.

*If you will be receiving monthly payments, make sure you complete the payment instructions in Section I.*

**Special Note:** If you checked "Employee" in Section A.8, and your former spouse performed more than 18 months of creditable civilian Federal service, and a court awards you all or a portion of the Basic Employee Death Benefit or a survivor annuity, contact the former employing agency of the deceased in order to complete the necessary election forms in Standard Form 3104B.

**Section E - Information About the Deceased Person's Dependent Children**

1a. Are there any *unmarried* dependent children as defined in the instructions?  
 Yes → Complete items 1b-1f below  No → Go to Section F

1b. Name(s) of unmarried dependent children (list in order of birth)	1c. Date of birth (mm/dd/yyyy)	1d. Child's relationship to the deceased (child of former marriage, adopted, etc.)	1e. Age 18 or over		1f. Child's Social Security Number
			Student	Disabled	

2. Is there a child of the deceased not yet born?  
 Yes → When born, send birth certificate for child to OPM  No

3a. Do you (the applicant) have responsibility for all the children in Section E1?  
 No → Complete items 3b-3d below  Yes → Go to item 4a

3b. Name and address of person having responsibility for child	3c. Name(s) of children	3d. Custodian's Relationship to child
		<input type="checkbox"/> Legal guardian <input type="checkbox"/> Other → Specify
		<input type="checkbox"/> Legal guardian <input type="checkbox"/> Other → Specify
		<input type="checkbox"/> Legal guardian <input type="checkbox"/> Other → Specify

Appx 72

- 4a. Has anyone applied for benefits from the Social Security Administration (SSA) for minor or disabled children of deceased?  No → (Application required for payment of benefits)  Yes
- 4b. Have you attached a copy of the SSA's Notice of Award of benefits, and/or denial of benefits, and/or disability determinations for each child?  No → Not yet received (Forward to OPM upon receipt)  Yes

**Section F - Information About Other Heirs**

List other relatives who can inherit from the deceased as explained in the instructions.

1. Full name of relative	2. Complete address	3. Relationship to deceased
CHRISTIN CAYCE CROSS	1521 LYNTON AVE. CHARLESTON, SC 29412	DAUGHTER

**Section G - Information About the Estate of the Deceased**

1. Has an executor, administrator or other official been appointed by the court to settle the estate of the deceased?  No → Go to item 3 below  Yes →
2. Full name and address of person appointed (street, city, state, ZIP code)  
 DISCREET DECREE WILINCHED
3. If an executor, administrator or other official has not been court appointed, will one be appointed?  Yes  No

**Section H - Active Military Service (Complete ONLY if you are the surviving spouse or former spouse)**

Complete if deceased was an employee or former employee at time of death. Do not complete if the deceased was retired at the time of death, since OPM already has this information.

1. If the deceased performed active, honorable service in the Armed Forces or other uniformed services as described in the instructions, complete items 1a-b below and attach a copy of the discharge certificate or other certificate of active military service (if available).
- | a. Branch of service | b. Dates of active duty |                 |
|----------------------|-------------------------|-----------------|
|                      | From (mm/dd/yyyy)       | To (mm/dd/yyyy) |
|                      |                         |                 |
2. Complete if the deceased was an employee or former employee at time of death. If any of the above listed service was performed after 12/31/56, was a deposit to the Retirement Fund made for the service?  Yes  Don't know  No → If the deceased was an employee at the time of death, complete and attach Standard Form 3104B which can be obtained from the former employing agency of the deceased.
- 3a. All surviving spouses and former spouses complete. Was the deceased receiving military retired pay at the time of death?  Yes  No
- 3b. Did the deceased ever waive military retired pay?  Yes  No
- 3c. Are you eligible for military survivor benefits? (Attach verification of your eligibility/ineligibility for such benefits)  Yes  No

**Section I - Payment Instructions**

1. Federal benefits payments will be made electronically by Direct Deposit into a savings or checking account or by a Direct Express debit card provided by the Department of the Treasury. See the instructions for Section I of this application and SF 3114 (Applying for Death Benefits Under the Federal Employees Retirement System) for additional information. This does not apply to you if your permanent payment address is outside the United States in a country not accessible via direct deposit.
- Please select one of the following:
- Please send my survivor annuity payments directly to my checking or savings account. (Go to item 2.)
- Please send my survivor annuity payments to my Direct Express card. (Go to Section J.)
- My permanent payment address is outside the United States in a country not accessible via Direct Deposit/Direct Express. (Go to Section J.)

Appx 73

**Section I - Payment Instructions (Continued)**

2. Do you want to have your survivor annuity payments made to the same checking or savings account to which OPM made payments by direct deposit to the deceased before his or her death (must be an active account and you must be a co-owner)?  Yes  No

3. Do you want your survivor annuity payments made to a checking or savings account to which we have not already been making payments by direct deposit?  Yes  No

4. Financial institution routing number (You may obtain this number by calling your bank, credit union, or savings institution. This number is very important. We cannot pay by direct deposit without it. We suggest you call your financial institution to verify this number.)  
~~XXXXXXXXXX~~

5. Checking or savings account number  Checking  Savings  
~~XXXXXXXXXX~~

6. What kind of account is this?  
 Checking  Savings


7. Name and address of your financial institution  
 SOUTH CAROLINA FEDERAL CREDIT UNION  
 P.O. BOX 190012, NORTH CHARLESTON, SC 29419

8. Telephone number of your financial institution (including area code)  
 843-797-8300

**Special note:** If you prefer, you may attach a cancelled personal check that shows the information requested above, instead of filling in the requested financial institution information. If you attach your personal check, it is especially important that you contact your bank, credit union, or savings institution to confirm that the information on the check is the correct information for direct deposit. (Some institutions, especially credit unions, use different routing numbers on checks.) OPM can use this information to start paying you by direct deposit.

**Section J - Certification**

I hereby certify that all statements made in this application are true to the best of my knowledge and that no evidence relating to the settlement of this claim is withheld. I have read and understand all of the information provided in the instructions to this application.

1. Signature of applicant named in Section B. (Sign in ink; do not print.)  


2. Mailing address  
 236 CADY DRIVE  
 SUMMERVILLE, SC 29483

3. Daytime telephone # (area code)  
 843 574 6956

3a. Best time to call you

4. Email Address  
 DOREEN.CROSS@TRIDENTTECH.B

5. Date (mm/dd/yyyy)  
 11/09/2015

**Warning:** Any intentionally false or misleading statement or response you provide in this application is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years or both. (18 USC 1001)

**Section K - Applicant's Checklist**

**✓ DIVORCE DECREE ATTACHED**

Attach copies of the following documents to expedite the processing of your application.

Document Title	Requirement	Attached			Comments
		Yes	No	N/A	
Death certificate	Certified copy required in <i>all</i> cases	✓			
Marriage certificate	Required if <i>you</i> were the spouse of the deceased at time of death (if married more than once, provide copies of all certificates)				
Child(ren)'s birth certificate	Recommended for all children for whom <i>you</i> are applying for benefits				
Social security award determinations	Needed for <i>all</i> minor children <i>and</i> spouse if spouse is under 60 and is currently eligible for mother, father or disability benefits from the Social Security Administration (SSA), based on deceased person's service. Also needed for all children who are unmarried and are age 18 or older, but who became mentally and/or physically disabled before age 18 and who, because of disability, are incapable of self-support. If not submitted, the Office of Personnel Management (OPM) will obtain the information from SSA; however, this may delay the processing of your claim.				
Court papers appointing executor/administrator	Required if <i>you</i> are applying as executor or administrator of deceased person's estate				
Court papers appointing guardian for minor or disabled child(ren)	Required if <i>you</i> are applying on behalf of minor or disabled children of the deceased and guardian has been appointed by court.				
DD 214's or other military discharge certificates	Provide if <i>you</i> are applying as surviving spouse or former spouse, and the deceased was a former employee at time of death. Failure to attach this information may delay the processing of your claim.				

Appx 74



Retirement Services

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

September 12, 2016

CSF 7 186 495W  
Wayne W. Cross

Doreen Cross  
236 Cady Dr.  
Summerville, SC 29483

Dear Ms. Cross:

This concerns an overpayment of \$1,241.73 as a result of survivor annuity benefits being paid to you in error.

A review of the retirement records show that Wayne W. Cross, a deceased Federal annuitant, died on September 23, 2015. At the time of his retirement, Mr. Cross elected to provide a survivor annuity for you as his spouse. The survivor annuity that was paid to you was based on your report of death of Wayne W. Cross as the spouse of the decease. We placed you into express pay, whereby the Office of Personnel Management (OPM) paid monies out prior to receiving a signed application. Subsequently, an application for death benefits was sent to you to complete. Upon receipt of your application, we discovered that you were not the surviving spouse of Wayne W. Cross. You were the former spouse of the decease. Therefore, the survivor annuity benefits paid to you were erroneous and must be returned to OPM. You would not be eligible for payment as a former spouse unless a former spouse survivor annuity benefit was stipulated in your divorce decree by the court. Your divorce decree does not award you a survivor annuity due to the death of Wayne W. Cross.

As a result of the delay in terminating your annuity, there is an overpayment. You were paid survivor annuity benefits in the gross amount of \$1,241.73 for the period covering September 24, 2015, through November 30, 2015. We have included a "Paid and Due Calculation" in this package to explain how we got the gross amount payable. Below is an explanation of the net overpayment.

Because we were not able to terminate your survivor annuity until August 2016, you received a total gross survivor annuity overpayment of \$1,241.73 payable by money order or personal check to the U.S. Office of Personnel Management.

We request that you make this repayment or request reconsideration to let us know what you plan to do regarding this overpayment by 30 days from the date of this letter. You may use the enclosed self-addressed envelope to return your payment or to send us any other option listed on the last page of this package for resolving the overpayment. **Please note that your**

Appx 75

reconsideration request must be made within 30 days of the date of this letter. Generally, upon receiving a request for reconsideration, waiver, or compromise, we will stop collection of the overpayment until your due process has been exhausted.

The information you need in order to make your decision regarding the repayment is contained in the enclosures. We hope this information is helpful. If you have any questions or need any assistance to complete the forms, please contact us on (202) 606-0555, Monday through Friday between the hours of 8:00 am and 4:00 pm Eastern Time.

Sincerely,



Antionette Vanderhorst  
Legal Reconsideration Team  
Retirement Services Program  
U.S. Office of Personnel Management

Enclosures:

Paid and Due Explanation of the Overpayment  
Information for Individuals Who Have Received an Overpayment  
Request for Reconsideration, Waiver, Compromise, or Repayment Agreement  
Financial Resources Questionnaire (FRQ)  
Self-Addressed Envelope

Appx76

October 12, 2016

CSF 7 186 495W  
Wayne W. Cross

Antionette Vanderhorst  
Legal Reconsideration Team  
Retirement Services Program  
U.S. Office of Personnel Management

Dear Ms. Vanderhorst

This correspondence is a Request for Reconsideration, and in response to the Office of Personnel Management's (OPM) withdrawal of survivor benefits elected and paid for by Wayne W. Cross through the FERS program.

As stated in your letter of September 12, 2016, at retirement (November 11, 2004), my now deceased ex-husband, Wayne W. Cross, confirmed my election for survivor annuity benefits as his spouse. At that time, we were separated and he expressed to me that he was continuing to pay for the benefits, through deduction, and wanted to enable me to help our daughter and possible grandchildren if he wasn't able to be here himself.

Wayne and I were married, to each other only, for 32 years, 7 months, and 24 days. Our marriage produced one child, and we now have one grandchild, born 8 months and 17 days after his death. Wayne never knew he was going to be a grandpa. Our daughter Christin, was the light of her dad's life and the sole beneficiary to his estate. Wayne and I remained friends and continued to spend holidays together as an extended family. Neither Wayne nor I re-married. My fifty-fifth birthday has come and gone.

Christin requested that I be appointed her dad's Personal Representative, and the probate court of Colleton County, South Carolina, made the official appointment. I contacted the OPM office and provided a death certificate. I never said or suggested that Wayne and I were currently married. I provided all the requested documentation in a timely fashion. Wayne nor I were aware of a need to manipulate our divorce decree in order for OPM to pay what we had previously agreed upon via formal elections. I have not and will not relinquish my right to benefits we elected and my ex-husband worked hard for with dedication to and respect for the United States Federal Government.

Wayne was diagnosed with lung cancer a year before he succumbed to the disease. The treatment had a devastating effect on his body. He spent the last months of his life struggling to tie up loose ends and make the transition as easy as possible on his survivors. Our divorce decree was stamped by the Dorchester County, South Carolina, probate court just 5 months and 27 days prior to his death.

According to my calculated benefits, the OPM terminated survivor annuity payments on December 1, 2015, and to date, or through September 30, 2016, I have not received \$5,560.00 of benefits.

I pray that the Office of Personnel Management for the Federal Government of the United States of America will honor my ex-husband's deliberate election of benefits and respect his final wishes as to his directive of survivor benefits.

Sincerely,



Doreen Cross

Appx77





United States  
**Office of  
Personnel Management** Washington, DC 20415-0001  
June 21, 2018

AMENDED

CSF 2 587 282  
Wayne W. Cross

DOREEN CROSS  
236 CADY DR  
SUMMERVILLE, SC 29483

Dear Ms. Cross:

This is reply to your October 12, 2016, request for reconsideration of the initial decision of the Office of Personnel Management (OPM). This decision found that you were not entitled to survivor annuity benefits as the former spouse of the late Wayne W. Cross. For the reason(s) explained below, we affirm the initial decision.

**BACKGROUND**

Mr. Cross retired on disability under the Federal Retirement System (FERS) on May 10, 2005. You and Mr. Cross were married on August 3, 1982. Your marriage ended in divorce on March 27, 2015. The survivor annuity benefit Mr. Cross elected for you as his wife terminated with your divorce. The FINAL DECREE OF DIVORCE issued on March 27, 2015 by the Family Court for the First Judicial Circuit, South Carolina, did not award you a survivor benefit. When you called in to OPM you identified yourself as the spouse of Mr. Cross and we therefore put on our rolls as his surviving spouse and payment commenced. When your application was received it was determined you were actually divorced from Mr. Cross. You were overpaid \$1,241.73.

**ANALYSIS AND FINDINGS**

OPM is charged with the administration of the CSR law and is expected to pay benefits only as provided by law. Also, we are obligated under the law and regulation to correct any errors) in payment of benefits. The laws that apply to your situation are:

Section 831.603 of Title 5, U.S. Code of Federal Regulations defines current spouse and current spouse annuity as follows:

*Current Spouse* means a living person, who is married to the employee, Member, or retiree at the time of the employee's, Member's or retiree's death.

Appx78

*Current spouse annuity* means a recurring benefit under CSRS that is Payable (after the employee's, Member's, or retiree's death) to a current Spouse who meets the requirements of §831.642.

When you obtained your divorce you lost your status as a current spouse and your entitlement to the benefit that was elected for you as a current spouse.

Section 838.804, Title 5, Code of Federal Regulations, provides in pertinent part:

**§838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.**

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it expressly awards a former spouse survivor annuity or expressly directs an employee or retiree to elect to provide a former spouse survivor annuity as described in paragraph (b) of this section.

(b) To expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity as required by paragraph (a) of this section the court order must-

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in §838.911; and

(2)(i) Expressly state that the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in §838.912; or

(ii) Expressly direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in §838.912.

Section 838.912 of title 5, Code of Federal Regulations, provides in pertinent part, the following:

(a) To satisfy the requirements of Section 838.804(b)(2), a court order must specify that it is awarding a former spouse survivor annuity. The court order must contain language such as "survivor annuity," "death benefits," "former spouse survivor annuity under 5 U.S.C. 8341(h)(1), etc.

The FINAL DECREE OF DIVORCE issued by the Family Court for the First Judicial Circuit, South Carolina, on March 27, 1995, did not award you a survivor benefit. Therefore, you are not entitled to a former spouse survivor annuity based on a court order.

You and Mr. Cross were divorced on July 8, 1988. We find that Mr. Cross did not submit a request to make an election to provide a former spouse survivor annuity for you. Consequently, you are not entitled under this provision of law.

In view of the above, we must affirm the initial decision and deny your request for a former spouse survivor annuity benefit.

Appx79

### **REPAYMENT**

We have enclosed a repayment agreement for recovering the balance of \$1,241.73 in 6 monthly installments of \$200.00, and one final installment of \$41.73. However, the remaining debt of \$1,241.73 will become due payable in the event of failure to adhere to the established installment schedule. If the repayment agreement is not completed and returned within 30 days of the date of this letter, the indebtedness of \$1,241.73 will be instituted if you do not file a timely appeal with the Merit System Protection Board (MSPB). See appeals rights below.

### **APPEAL RIGHTS**

This constitutes the final decision of OPM. You have the right to appeal to the Merit Systems Protection Board (MSPB). We are enclosing a package that contains 1) MSPB regulations, 2) MSPB office locations, and 3) an MSPB application form providing filing instructions. Please note that an appeal must be filed within 30 calendar days after the date of this decision, or 30 days after receipt of this decision, whichever is later.

Sincerely,  
*Janet Jones*  
Legal Administrative Specialist  
Disability, Reconsideration and Appeals

Enclosure

Appx80



United States  
**Office of  
Personnel Management** Washington, DC 20415-0001  
August 2, 2019

AMENDED

CSF 7 186 495  
Wayne W. Cross

DOREEN CROSS  
236 CADY DR  
SUMMERVILLE, SC 29483

Dear Ms. Cross:

This is reply to your October 12, 2016, request for reconsideration of the initial decision of the Office of Personnel Management (OPM). This decision found that you were not entitled to survivor annuity benefits as the former spouse of the late Wayne W. Cross. For the reason(s) explained below, we affirm the initial decision.

#### **BACKGROUND**

Mr. Cross retired on disability under the Federal Retirement System (FERS) on May 10, 2005. You and Mr. Cross were married on August 3, 1982. Your marriage ended in divorce on March 27, 2015. The survivor annuity benefit Mr. Cross elected for you as his wife terminated with your divorce. The FINAL DECREE OF DIVORCE issued on March 27, 2015 by the Family Court for the First Judicial Circuit, South Carolina, did not award you a survivor benefit. When you called in to OPM you identified yourself as the spouse of Mr. Cross and we therefore put on our rolls as his surviving spouse and payment commenced. When your application was received it was determined you were actually divorced from Mr. Cross. You were overpaid \$1,241.73.

#### **ANALYSIS AND FINDINGS**

OPM is charged with the administration of the CSR law and is expected to pay benefits only as provided by law. Also, we are obligated under the law and regulation to correct any errors) in payment of benefits. The laws that apply to your situation are:

Section 831.603 of Title 5, U.S. Code of Federal Regulations defines current spouse and current spouse annuity as follows:

*Current Spouse means a living person, who is married to the employee, Member, or retiree at the time of the employee's, Member 's or retiree's death.*

*Current spouse annuity means a recurring benefit under CSRS that is Payable (after the employee's, Member's, or retiree's death) to a current*

# Appx81

*Spouse who meets the requirements of §831.642.*

When you obtained your divorce you lost your status as a current spouse and your entitlement to the benefit that was elected for you as a current spouse.

Section 838.804, Title 5, Code of Federal Regulations, provides in pertinent part:

**§838.804, Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.**

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(b) To expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity as required by paragraph (a) of this section the court order must-

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in §838.911; and

(2)(i) Expressly state that the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in §838.912; or

(ii) Expressly direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in §838.912.

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The FINAL DECREE OF DIVORCE issued by the Family Court for the First Judicial Circuit, South Carolina, on March 27, 2015, did not award you a survivor benefit. Therefore, you are not entitled to a former spouse survivor annuity based on a court order.

You and Mr. Cross were divorced on March 27, 2015. We find that Mr. Cross did not submit a request to make an election to provide a former spouse survivor annuity for you. Consequently, you are not entitled under this provision of law.

In view of the above, we must affirm the initial decision and deny your request for a former spouse survivor annuity benefit.

**REPAYMENT**

**Appx82**

We have enclosed a repayment agreement for recovering the balance of \$1,241.73 in 6 monthly installments of \$200.00, and one final payment of \$41.73. However, the remaining debt of \$1,241.73 will become due payable the event of failure to adhere to the established installment schedule. If the repayment agreement is not completed and returned within 30 days of the date of this letter, the indebtedness of \$1,241.73 will be instituted if you do not file a timely appeal with the Merit System Protection Board (MSPB). See appeals rights below.

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Sincerely,

***Janet Jones***

Legal Administrative Specialist

Disability, Reconsideration and Appeals

Enclosure

Appx83