

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

RICKY L. HILLIARD,
Petitioner,

v.

UNITED STATES POSTAL SERVICE,
Respondent.

2009-3291

Petition for review of the Merit Systems Protection Board in CH0752080376-A-1.

ON MOTION

Before NEWMAN, *Circuit Judge.*

ORDER

Ricky L. Hilliard moves for reconsideration of the court's order dismissing his petition for review for failure to file an appendix. The United States Postal Service opposes.

The clerk dismissed Hilliard's petition for review for failure to file the appendix required by Fed. R. App. P. 30. In his reconsideration motion, Hilliard states that the

“brief filed by the Petitioner fulfilled the requirements of rule 30” because attached to the brief were the initial decision of the administrative judge and the decision of the Merit Systems Protection Board.

The court disagrees that the materials included with Hilliard’s opening brief satisfy the Rule 30 appendix requirement. Hilliard did not include with those materials the certified index of the Board. *See* Fed. R. App. P. 30(a)(1)(A). Nor did the cover of the brief indicate that Hilliard intended to submit a combined brief and appendix pursuant to Fed. Cir. R. 30(d). Hilliard further failed to submit any of the materials cited in the briefs. Throughout Hilliard’s opening and reply* briefs, he cites materials from the agency file and hearing transcripts. However, he did not submit any of those materials with his brief or in a separate appendix. Thus, Hilliard has not met the requirements of Rule 30.

Moreover, upon review of the briefs, we note that in his principal and reply briefs Hilliard cites documents by name and cites the administrative record (e.g., Agency File tab __, Hearing transcript page __ line __) rather than using appendix page citations and thus it is difficult to determine which document is referred to by the citations. Under these circumstances, the court will reinstate the petition only if Hilliard promptly files corrected versions of his principal brief and reply brief and files a joint appendix. The joint appendix must contain “JA__” cites, and the corrected briefs must use citations to the joint appendix page numbers.

Accordingly,

* Hilliard’s reply brief was rejected as untimely. If Hilliard wishes for his reply brief to be filed, in addition to submitting a corrected reply brief he must submit a motion seeking leave to file it out of time.

IT IS ORDERED THAT:

The motion for reconsideration will be granted, the mandate will be recalled, and the petition will be reinstated if, within 10 days of the date of filing of this order, Hilliard files corrected versions of his principal brief and reply brief using joint appendix citations and files a joint appendix. The corrected briefs must be identical to the original briefs in all respects other than the correction of citations.

FOR THE COURT

JUL 01 2010

Date

/s/ Jan HorbalyJan Horbaly
Clerkcc: Nathaniel M. Jones, Esq.
Alex P. Hontos, Esq.

s17

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 01 2010

JAN HORBALY
CLERK