

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

CHAKEEN JAMEL PAULING,
Appellant,

DOCKET NUMBER
NY-0752-10-0282-I-1

v.

DEPARTMENT OF
TRANSPORTATION,
Agency.

DATE: September 23, 2016

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Chakeen Jamel Pauling, Chesapeake, Virginia, pro se.

Christian Lewerenz, Esquire, Jamaica, New York, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Mark A. Robbins, Member

FINAL ORDER

¶1 The appellant has filed a petition for review of the initial decision, which dismissed his termination appeal for lack of jurisdiction. For the reasons set forth below, the appellant's petition for review is DISMISSED as untimely filed without good cause shown. [5 C.F.R. § 1201.114](#)(e), (g).

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See [5 C.F.R. § 1201.117](#)(c).

BACKGROUND

¶2 On July 1, 2009, the agency appointed the appellant to a temporary Air Traffic Control Specialist position. Initial Appeal File (IAF), Tab 6, Subtab 4U. Effective August 17, 2009, the agency converted his appointment to a permanent excepted-service position. *Id.*, Subtab 4T. Less than 1 year later, the agency terminated the appellant from his position, effective July 20, 2010, for unauthorized absences. *Id.*, Subtabs 4A-4B. The appellant filed a timely appeal challenging his termination. IAF, Tab 1. The administrative judge issued an initial decision dismissing the appeal without holding the requested hearing. IAF, Tab 21, Initial Decision (ID) at 1. He found that, because the appellant failed to show that he was an “employee” as defined by [5 U.S.C. § 7511](#), the Board lacked jurisdiction over his termination. ID at 1-6.

¶3 The appellant filed two timely motions for an extension of time to file his petition for review. Petition for Review (PFR) File, Tabs 1, 3. The Clerk of the Board determined that the appellant had shown good cause for the extensions and granted his motions. PFR File, Tab 2 at 1, Tab 4 at 1. After granting the second extension, the Clerk notified the appellant that, if he failed to file his petition for review by February 9, 2011, the initial decision would remain the Board’s final decision regarding his termination. PFR File, Tab 4 at 1.

¶4 Nonetheless, the appellant failed to file his petition for review until May 11, 2016. PFR File, Tab 6.² In a May 20, 2016 letter acknowledging the petition for review, the Clerk informed the appellant that, because his petition for review was apparently untimely, he needed to file a motion establishing that it was timely or that there was good cause for the untimely filing. PFR File, Tab 7 at 2. The

² On May 11, 2016, the appellant filed an initial appeal concerning his termination with the Board’s New York Field Office. That office construed the appellant’s filing as a petition for review of the administrative judge’s November 4, 2010 initial decision and referred it to the Office of the Clerk of the Board. PFR File, Tab 7 at 1.

Clerk enclosed a blank copy of a form motion to assist in that effort. *Id.* at 7-8. The appellant, however, failed to respond or otherwise explain the delay in filing his petition for review. The agency has not responded to the petition for review.

DISCUSSION OF ARGUMENTS ON REVIEW

¶5 A petition for review must be filed within 35 days after the date of issuance of the initial decision or within 30 days after the date that the appellant received the initial decision if he shows that he received the initial decision more than 5 days after it was issued. [5 C.F.R. § 1201.114\(e\)](#). The Board, however, may grant an extension of the time limit upon a showing of good cause. [5 C.F.R. § 1201.114\(f\)](#).

¶6 Here, the Clerk granted the appellant two extensions of time beyond the deadline set forth in section 1201.114(e), until February 9, 2011, to file his petition for review. But, the appellant did not file his petition for review until May 11, 2016, over 5 years late.

¶7 The Board will excuse the untimely filing of a petition for review only upon a showing of good cause for the delay. *Via v. Office of Personnel Management*, [114 M.S.P.R. 632](#), ¶ 5 (2010); [5 C.F.R. § 1201.114\(g\)](#). To determine whether an appellant has shown good cause, the Board will consider the length of the delay; the reasonableness of his excuse and his showing of due diligence; whether he is proceeding pro se; and whether he has presented evidence of the existence of circumstances beyond his control that affected his ability to comply with the time limits or of unavoidable casualty or misfortune that similarly shows a causal relationship to his inability to timely file his petition for review. *Moorman v. Department of the Army*, [68 M.S.P.R. 60](#), 62-63 (1995), *aff'd*, 79 F.3d 1167 (Fed. Cir. 1996) (Table).

¶8 Upon applying these factors, we find that the appellant has not shown good cause for his filing delay. Even considering the appellant's pro se status, a 5-year delay in filing a petition for review is significant. *Dow v. Department of*

Homeland Security, [109 M.S.P.R. 633](#), ¶¶ 3, 8 (2008) (finding a delay of more than 1 month to be significant, notwithstanding the appellant's pro se status). Furthermore, the appellant did not respond to the Clerk's acknowledgment letter or provide any explanation for the delay despite being apprised of the requirements and of the consequences for failing to respond. *See Bell v. Department of Homeland Security*, [112 M.S.P.R. 33](#), ¶¶ 8, 10 (2009) (dismissing a petition for review as untimely filed because the pro se appellant failed to respond to the order on timeliness or otherwise demonstrate good cause for the delay). Therefore, we conclude that the appellant has set forth no grounds for finding good cause to waive the time limit to file a petition for review.

¶9 Accordingly, we dismiss the petition for review as untimely filed. This is the final decision of the Merit Systems Protection Board regarding the timeliness of the petition for review. The initial decision remains the final decision of the Board regarding the appellant's termination appeal.

**NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS**

You have the right to request review of this final decision by the U.S. Court of Appeals for the Federal Circuit. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after the date of this order. *See* [5 U.S.C. § 7703\(b\)\(1\)\(A\)](#) (as rev. eff. Dec. 27, 2012). If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the Federal law that gives you this right. It is found in title 5 of the U.S. Code, section 7703 ([5 U.S.C. § 7703](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the U.S. Code, at our website, <http://www.mspb.gov/appeals/uscode.htm>. Additional information is available at the court's website, 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, and 11](#).

If you are interested in securing pro bono representation for your court appeal, you may visit our website at <http://www.mspb.gov/probono> for a list of attorneys who have expressed interest in providing pro bono representation for Merit Systems Protection Board appellants before the court. The Merit Systems Protection Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

FOR THE BOARD:

Jennifer Everling
Acting Clerk of the Board

Washington, D.C.