

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

JAN TYLER,  
Appellant,

DOCKET NUMBER  
DC-315H-11-0600-I-1

v.

DEPARTMENT OF DEFENSE,  
Agency.

DATE: July 17, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL<sup>1</sup>**

Jan Tyler, Arlington, Virginia, pro se.

Richard D. Saviet, Esquire, Fort Belvoir, Virginia, for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Anne M. Wagner, Vice Chairman  
Mark A. Robbins, Member

**FINAL ORDER**

The appellant has filed a petition for review of the initial decision dismissing her probationary termination appeal as withdrawn, pursuant to the parties' settlement agreement. For the following reasons, we DISMISS the petition for review as untimely filed with no showing of good cause for the delay.

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<sup>1</sup> A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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\(c\)](#).

A petition for review must be filed within 35 days after the date of issuance of the initial decision, or, if a party shows that she received the initial decision more than 5 days after it was issued, within 30 days after the date of receipt. *Williams v. Office of Personnel Management*, [109 M.S.P.R. 237](#), ¶ 7 (2008); [5 C.F.R. § 1201.114\(d\)](#). Here, the administrative judge issued the initial decision on July 20, 2011, and informed the appellant that the deadline for filing a petition for review was August 24, 2011. Initial Appeal File (IAF), Tab 7, Initial Decision. Thus, the appellant's February 9, 2012 petition for review was filed more than 5 months late. Petition for Review (PFR) File, Tab 1.

The Board will waive the filing deadline for a petition for review only upon a showing of good cause for the delay in filing. *Lawson v. Department of Homeland Security*, [102 M.S.P.R. 185](#), ¶ 5 (2006); [5 C.F.R. §§ 1201.12, 1201.114\(f\)](#). To establish good cause for the untimely filing, a party must show that she exercised due diligence or ordinary prudence under the particular circumstances of the case. *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980). To determine whether an appellant has shown good cause, the Board will consider the length of the delay, the reasonableness of her excuse and her showing of due diligence, whether she is proceeding pro se, and whether she has presented evidence of the existence of circumstances beyond her control that affected her ability to comply with the time limits or of unavoidable casualty or misfortune which similarly shows a causal relationship to her inability to timely file her petition. *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).

Applying the *Moorman* factors, we find that the appellant has not shown good cause for her untimely filed petition for review.<sup>2</sup> The appellant's 5-month

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<sup>2</sup> We have not considered the appellant's March 21, 2012 reply to the agency's response to the appellant's petition for review because it was filed after the close of the record on petition for review. PFR File, Tabs 2, 4.

delay in filing is significant.<sup>3</sup> See *Summerset v. Department of the Navy*, [100 M.S.P.R. 292](#), ¶ 7 (2005) (a filing delay of 33 days is significant). Moreover, the appellant offers no explanation for her untimely filing and did not respond to the notice from the Clerk of the Board informing her of the timeliness issue and providing her with a copy of the required “Motion to Accept Filing as Timely and/or To Ask the Board to Waive or Set Aside the Time Limit.” PFR File, Tab 2 at 2. Therefore, the appellant has failed to show good cause for her delay in filing the petition for review, and we DISMISS the petition as untimely.

This is the Board's final decision regarding the timeliness of the appellant's petition for review. [5 C.F.R. § 1201.113](#). The initial decision of the administrative judge is the Board's final decision regarding the substance of the appellant's appeal.

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

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. 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 your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does

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<sup>3</sup> Insofar as the appellant claims on review that the agency failed to comply with a settlement agreement, the Board has no jurisdiction to enforce an agreement that was not entered into the record for enforcement purposes. See *Wise v. Department of the Navy*, [73 M.S.P.R. 95](#), 97 (1997).

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 United States Code, section 7703 ([5 U.S.C. § 7703](#)). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information 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, and 11](#).

FOR THE BOARD:

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William D. Spencer  
Clerk of the Board

Washington, D.C.