

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

DEBORAH R. FEHER,
Appellant,

DOCKET NUMBER
DC-3443-11-0969-I-1

v.

SMITHSONIAN INSTITUTION,
Agency.

DATE: July 17, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Raymond Scoggins, Washington, D.C., for the appellant.

Dania Palosky, Washington, D.C., 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 in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 ([5 C.F.R. § 1201.115](#)).

On review, the appellant argues that the Acknowledgment Order and the Order to Show Cause (both issued by the administrative judge on September 26, 2011) were in conflict, and therefore that the Acknowledgment Order “canceled out” the Order to Show Cause. Petition for Review File (PFR File), Tab 1 at 6, Tab 5 at 1. The appellant also seems to be claiming that because of the alleged conflict between the orders, she was confused and was under the belief that her request for a hearing had been granted. PFR File, Tab 5 at 1-2. This contention is without merit. The Order to Show Cause stated in unequivocal terms that the administrative judge believed that the Board may lack jurisdiction over the appeal. Initial Appeal File, Tab 3 at 1. The order also clearly instructed the appellant that she must file evidence or argument to prove Board jurisdiction and clearly gave a timeline for compliance. *Id.* at 2. Although the appellant had plenty of time to seek clarification on the meaning of the order if she was confused, the appellant made no effort to contact the administrative judge. Further, the appellant has not raised any arguments in her petition for review that are material to the jurisdictional issue.

Instead, the appellant argues the merits of her appeal and claims that she should have been granted a hearing in her case. PFR File, Tab 1. The Board, however, lacks jurisdiction to consider the appellant’s arguments regarding the merits of her appeal. *See Fassett v. U.S. Postal Service*, [76 M.S.P.R. 137](#), 139 (arguments on review that addressed the merits of the agency’s removal action, rather than the threshold issue of the Board’s jurisdiction over the appeal, did not meet the criteria for review), *appeal dismissed*, 132 F.3d 49 (Fed. Cir. 1997) (Table). With respect to her request for a hearing, the appellant has failed to make non-frivolous allegations that the Board has jurisdiction over her appeal,

and thus, the administrative judge properly denied her request for a hearing. *See Ferdon v. U.S. Postal Service*, [60 M.S.P.R. 325](#), 329 (1994).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made no error in law or regulation that affects the outcome. [5 C.F.R. § 1201.115](#)(d). Therefore, we DENY the petition for review and AFFIRM the initial decision dismissing the appeal for lack of jurisdiction.²

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

This is the Board's final decision in this matter. [5 C.F.R. § 1201.113](#). 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 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

² Because we dismiss this appeal on jurisdictional grounds, we need not address the question of the timeliness of the petition for review.

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. 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:

William D. Spencer
Clerk of the Board

Washington, D.C.