

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

LORI MILLER,

Appellant,

DOCKET NUMBER

SF-0752-11-0806-I-1

v.

DEPARTMENT OF THE NAVY,

Agency.

DATE: July 17, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

James R. Hefflin, Denver, Colorado, and Carl E. Stahl, Esquire, Steamboat Springs, Colorado, for the appellant.

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¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

An administrative judge's conduct during the course of a Board proceeding warrants a new adjudication only if the administrative judge's comments or actions evidence a deep-seated favoritism or antagonism that would make fair judgment impossible. *Young v. U.S. Postal Service*, [115 M.S.P.R. 424](#), ¶ 19 (2010). Further, in making a claim of bias or prejudice against an administrative judge, a party must overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *Id.* The administrative judge carefully considered the appellant's arguments concerning his ability to adjudicate her appeal, and he gave her further opportunity to make out a claim of bias or prejudice prior to the close of the record. She failed to do so, and the appellant's complaints about the administrative judge's conduct in the adjudication of her appeal do not evidence anything that would make fair judgment impossible and are insufficient to overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *See id.*

To the extent that the appellant is arguing that she did not have notice of her mixed-case Board appeal rights, we agree with the administrative judge's finding that the appellant was on notice of her mixed-case appeal rights as of her filing of her 2006 Board appeal, which was dismissed with prejudice as withdrawn. Further, for the reasons set forth in the initial decision, we agree with the administrative judge's finding that the appellant did not establish that her appeal was timely filed or that there was good cause for the delay.²

² In light of our disposition, we do not reach the issue of the timeliness of the petition for review.

Finally, an administrative judge has wide discretion in deciding whether to grant or deny a motion to dismiss an appeal without prejudice. *See Cassel v. Department of Agriculture*, [72 M.S.P.R. 542](#), 546 (1996). The appellant's notice to withdraw her appeal indicated that she was displeased with the administrative judge's adjudication of her appeal, and we find that the administrative judge did not abuse his discretion by denying the appellant's motion to dismiss the appeal without prejudice. *See Keefer v. Department of Agriculture*, [92 M.S.P.R. 476](#), ¶¶ 8-9 (2002).

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. Except as modified by this Final Order, the initial decision of the administrative judge is the Board's final decision.

**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 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.