

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

RICHARD A. BECKER,  
Appellant,

DOCKET NUMBER  
NY-1221-11-0351-W-1

v.

DEPARTMENT OF VETERANS  
AFFAIRS,  
Agency.

DATE: July 17, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

Richard A. Becker, Coram, New York, pro se.

Aaron J. Fields, Esquire, Brooklyn, New York, 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

---

\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant, a GS-5 Nursing Assistant, appealed the agency's action of issuing him a memorandum of verbal counseling in connection with his care of a patient. Initial Appeal File (IAF), Tab 1. The appellant alleged that the agency's action constituted a violation of the Whistleblower Protection Act (WPA). *Id.* The administrative judge dismissed the appeal for lack of jurisdiction, finding that the appellant failed to show that he exhausted his administrative remedies before the Office of Special Counsel (OSC) with regard to the memorandum of counseling. IAF, Tab 8.

In his petition, the appellant asserts that the administrative judge erred in not granting his request for an extension of time to receive a response from OSC. Administrative judges have broad discretion to control proceedings before them. *See Blake v. Department of Justice*, [81 M.S.P.R. 394](#), ¶ 14 (1999); [5 C.F.R. § 1201.41\(b\)](#). The appellant requested an extension based on a letter he received from OSC regarding its processing of a complaint that the appellant filed alleging a violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). IAF, Tab 7. The administrative judge properly denied his request for an extension with regard to his USERRA complaint because it was irrelevant to the critical issue in this appeal, i.e., whether he had exhausted his administrative remedies with OSC regarding his allegation of a violation of the WPA.

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](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:

-----  
William D. Spencer  
Clerk of the Board

Washington, D.C.