

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

CARTER EUGENE LINN,
Appellant,

DOCKET NUMBER
AT-0831-11-0984-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: July 19, 2012

THIS ORDER IS NONPRECEDENTIAL¹

Carter Eugene Linn, Bainbridge, Georgia, pro se.

Roxann Johnson, Washington, D.C., for the agency.

BEFORE

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

REMAND ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. For the reasons discussed below, we GRANT the appellant's petition for review, AFFIRM the

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

initial decision as MODIFIED, and REMAND the matter to the Office of Personnel Management (OPM) for further consideration of the issue of the proper calculation of the appellant's recomputed annuity and the issuance of a new final decision on that issue.

DISCUSSION OF ARGUMENTS ON REVIEW

The appellant does not challenge OPM's decision stating that his annuity must be recomputed to eliminate credit for his post-1956 military service, and we discern no error in the administrative judge's finding that OPM properly made that determination. The appellant does argue that OPM incorrectly recomputed his annuity. However, OPM issued only a final decision in this case, and the appellant did not challenge the correctness of OPM's calculations by means of a request for reconsideration. Therefore, OPM has not, in an appealable decision, explained its calculations or addressed the appellant's argument that the recomputed amount of his annuity is incorrect. Under these circumstances, while we agree with the administrative judge that the Board lacks jurisdiction to consider the appellant's challenge to his annuity recalculation in the absence of an OPM decision on that issue, *see Litzenberger v. Office of Personnel Management*, [88 M.S.P.R. 419](#), ¶ 9 (2001); *Lewis v. Office of Personnel Management*, [69 M.S.P.R. 395](#), 397-98 (1996), we find, for reasons of judicial economy, that, rather than requiring the appellant to bring this matter to OPM, it would be more efficient to remand the appeal to OPM for issuance of a new final decision explaining its method of calculating the appellant's new monthly annuity.² *See, e.g., Kilpatrick v. Office of Personnel Management*, [94 M.S.P.R.](#)

² As to the appellant's claim regarding the timeliness of OPM's response to the administrative judge's order, that response, which did not contain a postmark, was timely filed with the Board, based on the date of receipt. *See* [5 C.F.R. § 1201.4\(1\)](#); Initial Appeal File (IAF), Tab 5 at 1. The appellant asserts that the copy to him was postmarked two days late, but he has not shown or even suggested how he was harmed by the agency's service and therefore has not shown that the agency's service provides any basis for reversing the initial decision. *Cf. Kukish v. U.S. Postal Service*, [68](#)

[609](#), ¶ 11 (2003); *Litzenberger*, [88 M.S.P.R., 419](#), ¶ 10; *Lewis*, 69 M.S.P.R. at 398.

ORDER

On remand, OPM shall, within 60 days of the date of this Order, issue a new final decision explaining the basis for its calculation of the appellant's recomputed annuity. OPM shall then advise the appellant of his right to file an appeal with the Board if he disagrees with that new decision.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.

[M.S.P.R. 360](#), 362 (1995) (agency's error in service provided no basis for granting employee's petition for review because no harm accrued, and employee made no showing in support of his claim that he was harmed by the failure of service). Nor has the appellant supported his claim that the agency's certificate of service is false within the meaning of [18 U.S.C. § 1621](#)(2), which provides that whoever, in any declaration, certificate, verification, or statement under penalty of perjury, willfully subscribes as true any material matter which he does not believe to be true, is guilty of perjury. The Board's regulations do not require that a certificate of service be made under penalty of perjury, [5 C.F.R. § 1201.26](#)(b)(2), the Board's order did not include such a requirement, IAF, Tab 2 at 5, and OPM's certificate of service was not made under penalty of perjury, *id.*, Tab 6 at 6. Moreover, the appellant has not explained why he believes OPM's certificate of service contains any information that the person who signed it believed to be not true. *Id.*