

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

JAMILA TAMESHA BOUNDS,
Appellant,

DOCKET NUMBER
AT-1221-11-0675-W-1

v.

DEPARTMENT OF THE TREASURY,
Agency.

DATE: July 19, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Jamila Tamesha Bounds, Detroit, Michigan, pro se.

Ashlyann L. Harrison, Atlanta, Georgia, 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 that was not available for consideration earlier or when the administrative judge

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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 filed this appeal claiming that, in retaliation for her whistleblowing, the agency issued her a written admonishment, placed her in an absence without leave (AWOL) status, withheld a within-grade increase (WIGI), and proposed her removal. The matter was docketed as an individual right of action (IRA) appeal. The administrative judge dismissed for lack of jurisdiction, finding that the appellant failed to exhaust her administrative remedies before the Office of Special Counsel (OSC) under [5 U.S.C. § 1214](#).

After the close of the record on petition for review, the appellant filed a copy of a September 30, 2011 letter from OSC responding to the appellant's request under the Freedom of Information Act for a copy of the file in the complaint that she had filed with OSC. Petition for Review File, Tab 8. OSC provided the appellant a November 8, 2010 letter closing her complaint file and an October 22, 2010 letter stating that the appellant had filed a complaint alleging "violations of the prohibited personnel practices described in [5 U.S.C. §§ 2302\(b\)\(1\), \(b\)\(10\), \(b\)\(4\) and \(b\)\(5\)](#)." *Id.* These letters were available before the close of the record below and the Board will not consider them on petition for review. *Avansino v. U.S. Postal Service*, [3 M.S.P.R. 211](#), 214 (1980) (under [5 C.F.R. § 1201.115](#), the Board will not consider evidence submitted for the first time with the petition for review absent a showing that it was unavailable before the record was closed despite the party's due diligence). Even if the Board were to consider this evidence because the appellant received copies from OSC after the close of the record below, the submission does not constitute evidence that the appellant filed a complaint with OSC alleging a violation of [5 U.S.C. § 2302\(b\)\(8\)](#), and does not show that she exhausted her administrative remedies to file an IRA appeal. Thus, with respect to the written admonishment, placement in AWOL status, and proposed removal, the administrative judge properly found

that the appellant failed to show that she had exhausted her administrative remedies and dismissed the appeal for lack of jurisdiction.

The administrative judge's reasoning does not apply to the WIGI withholding because, unlike the other three actions the appellant raises, an agency's decision to withhold a WIGI is directly appealable to the Board; there is no requirement that an individual first file a complaint with OSC before appealing a WIGI withholding. See [5 U.S.C. § 5335\(c\)](#). Still, on this record, jurisdiction has not been established over the WIGI matter. The appellant may appeal the withholding of the WIGI only if she sought reconsideration at the agency level and reconsideration was denied. See [5 U.S.C. § 5335\(c\)](#); [5 C.F.R. § 532.410](#). Additionally, the appellant appears to have been a member of the National Treasury Employees Union while she was employed by the agency, Initial Appeal File (IAF), Tab 16, Exhibit (Ex.) 2, raising the possibility that she was covered by a collective bargaining agreement whose negotiated grievance procedure was the exclusive means for resolving WIGI disputes. See [5 U.S.C. § 7121\(a\)\(1\)](#); *Hunt v. Department of Veterans Affairs*, [88 M.S.P.R. 365](#), ¶ 8 (2001). Further, a WIGI appeal may be barred by the broad waiver provisions of the agreement between the appellant and the agency that settled another dispute. See IAF, Tab 16, Ex. 2, ¶ 7.

If the appellant wishes to pursue an appeal of the WIGI withholding, she must file a new appeal with the administrative judge within 30 days of receipt of this decision. In that event, for purposes of timeliness, the new appeal should be deemed filed on May 20, 2011, the date the appellant filed this appeal. The administrative judge shall then issue an appropriate jurisdictional notice and afford the parties an opportunity to submit argument and evidence on jurisdiction, and shall conduct further proceedings as appropriate.

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.