

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

FREDERICK MOSLEY,
Appellant,

DOCKET NUMBER
AT-0752-11-0939-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: July 26, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

William Simpson, Esquire, Philadelphia, Pennsylvania, for the appellant.

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¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

In his petition for review, the appellant argues that the penalty of removal is too severe and that the deciding official failed to consider the *Douglas* factors in determining the appropriate penalty. Petition for Review (PFR) File, Tab 4 at 8-9. Where, as here, the Board sustains the agency's charges, but not all of the specifications of those charges, the Board reviews the agency-imposed penalty only to determine whether it is within the parameters of reasonableness. *See Dunn v. Department of the Air Force*, [96 M.S.P.R. 166](#), ¶ 10 (2004), *aff'd*, 139 F. App'x 280 (Fed. Cir. 2005). The Board will modify a penalty only when it finds that the agency failed to weigh the relevant factors or that the penalty the agency imposed clearly exceeded the bounds of reasonableness. *Id.*

The decision letter and the hearing testimony of deciding official Carol Smith show that she properly considered the *Douglas* factors. Specifically, Ms. Smith considered the seriousness of the appellant's misconduct, his position as a supervisor, the impact of his misconduct on the reputation of the agency, his lack of remorse, and his failure to offer restitution. Hearing Compact Disc (testimony of Ms. Smith). She also considered the appellant's 25 years of service with the agency but determined that it was not sufficient to mitigate the penalty. *Id.* Ms. Smith found that the appellant had "violated trust" and that he had no rehabilitation potential because "the Postal Service can't give a person character and integrity." *Id.*; Initial Appeal File (IAF) Tab 7 at 24. Ms. Smith determined that the appellant's actions were egregious and that his removal was in the best interest of the Postal Service. IAF, Tab 7 at 25.

In assessing the reasonableness of the penalty, the administrative judge noted that the Board has long viewed any misconduct involving interference with the mail as going directly to the heart of the Postal Service's mission, and that the

Board has sustained removals for misconduct substantially similar to that committed by the appellant in this case. IAF, Tab 15, Initial Decision at 10. The administrative judge found that “the violation of the sanctity of the mails and the false statements and the attendant loss of trust as a result of these violations are sufficiently compelling to warrant the penalty of removal even in light of the appellant’s claim of mitigating factors.” *Id.* at 11-12. Therefore, the administrative judge found the penalty of removal is within the tolerable limits of reasonableness and promotes the efficiency of the service. *Id.* at 12. We see no basis to disturb this explained finding.

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.² 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

² We also deny the appellant’s request that the Board reopen his appeal on the Board’s own motion under [5 C.F.R. § 1201.118](#). *See* PFR File, Tab 4 at 8. Where, as here, the appellant has filed a timely petition for review, the appeal remains open and there is no basis for the Board to exercise its reopening authority under 5 C.F.R. § 1201.118.

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.