

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

CECIL WHITEHOUSE,
Appellant,

DOCKET NUMBER
CH-0752-11-0519-I-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: July 31, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Peter M. Napolitano, Esquire, Clarksville, Tennessee, for the appellant.

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

DISCUSSION OF ARGUMENTS ON REVIEW

On review, the appellant asserts that the agency improperly suspended his security clearance. Petition for Review File, Tab 1 at 5-7. In addition, the appellant contends that the administrative judge failed to consider evidence and argument relating to the suspension of his security clearance. *Id.* at 3-5. The appellant further argues that his security clearance claim would have prevented his appeal from being moot. *Id.* Moreover, the appellant asserts that the administrative judge improperly denied him a hearing. *Id.*

Contrary to the appellant's assertions, the administrative judge did address the appellant's security clearance claim in the initial decision. Initial Appeal File, Tab 17, Initial Decision at 4. The administrative judge properly found that the Board lacks jurisdiction to review the merits of such a claim. *Id.* Specifically, while the Board has jurisdiction to review adverse actions, the denial of a security clearance is not an adverse action under [5 U.S.C. § 7513](#) and is not subject to Board review "by its own force." *Department of the Navy v. Egan*, [484 U.S. 518](#), 530 (1988). Here, the appellant has failed to show, or even contend, that the agency subjected him to an adverse action. Accordingly, the Board lacks jurisdiction over his security clearance claim. *See id.* Furthermore, because the appellant has failed to present a nonfrivolous allegation of jurisdiction, he is not entitled to a hearing. *Cf. Ferdon v. U.S. Postal Service*, [60 M.S.P.R. 325](#), 329 (1994) (where an appellant makes a nonfrivolous allegation that the Board has jurisdiction over an appeal, the appellant is entitled to a hearing on the jurisdictional question).

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.ca9c.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.