

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

WAYLAND H. PATTERSON,
Appellant,

DOCKET NUMBER
AT-0752-11-0021-I-2

v.

DEPARTMENT OF THE AIR FORCE,
Agency.

DATE: July 31, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Wayland H. Patterson, Tyndall Air Force Base, Florida, pro se.

Daniel J. Watson, Eglin Air Force Base, Florida, for the agency.

Meghan T. McCauley, Tyndall Air Force Base, Florida, 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 in which the administrative judge dismissed his appeal of an alleged reduction in grade or pay for lack of jurisdiction. For the

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

reasons set forth below, we AFFIRM the initial decision AS MODIFIED, still DISMISSING the appeal for lack of jurisdiction.

The appellant applied for and was selected to fill a permanent career position as a YD-02 Civil Engineer within the National Security Personnel System (NSPS) with the Department of the Air Force. Initial Appeal File, MSPB Docket No. AT-0752-11-0021-I-1 (IAF 1), Tab 13 at 83. Immediately preceding that appointment, the appellant encumbered a General Engineer position in a term appointment within the General Schedule (GS) at a 13 level also with the Department of the Air Force. *Id.*

On October 28, 2009, the President signed into law the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190, 2498, which repealed the statutory authority for the NSPS and called for the conversion of all employees and positions under NSPS to the pay system and all other aspects of the personnel system that applied prior to conversion to NSPS, or that would have applied had NSPS never been established. *Id.*, § 1113(b)-(c). Effective September 12, 2010, the agency converted the appellant's position to GS-12 Civil Engineer with no change in pay. IAF 1, Tab 13 at 18.

The appellant filed an appeal in which he alleged that the agency reduced him in pay and grade. After a hearing, the administrative judge dismissed the appeal for lack of jurisdiction. Initial Appeal File, MSPB Docket No. AT-0752-11-0021-I-2, Tab 12. The appellant petitions for review.

We see no reason to disturb the administrative judge's determination that the appellant failed to show that he was reduced in pay or grade. We recently found in *Arrington v. Department of the Navy*, [117 M.S.P.R. 301](#) (2012), that the appellant suffered an appealable reduction in grade when she was a GS-14 prior to her conversion to the NSPS, but was returned to a GS-13 position when the NSPS was abolished. *Id.*, ¶¶ 10-13. The Board found that, under the unique circumstances surrounding the institution of the NSPS and its subsequent repeal, and given the broad Congressional intent that employees not be harmed when

their positions were converted back into the General Schedule, the cumulative effect of the personnel actions effected in that case was a reduction in grade from a GS-14 position to a GS-13 position. *Arrington*, [117 M.S.P.R. 301](#), ¶ 13 & n.7.

This case, however, is distinguishable from *Arrington*, and instead is more closely analogous to *Ellis v. Department of the Navy*, [117 M.S.P.R. 511](#) (2012). In *Ellis*, the appellant was hired into the NSPS at the YA-2 level and was converted to a GS-12 level position when the NSPS was abolished. *Id.*, ¶¶ 2, 8. Similarly, the appellant here voluntarily applied for and was selected to fill a permanent appointment in the NSPS, unlike the appellant in *Arrington*, who transitioned into the NSPS in the same position that he held as a GS appointee. *Arrington*, [117 M.S.P.R. 301](#), ¶ 2. Had the appellant in this case not applied for the permanent civil engineer position in the NSPS, he could have remained in his term appointment as a GS-13, and he would have been terminated when his term expired unless he obtained another appointment. Therefore, we find that the appellant's decision to leave his term appointment and compete for a permanent appointment in the NSPS does not create the same cumulative series of transactions that we found compelling in *Arrington*. See *Ellis*, [117 M.S.P.R. 511](#), ¶ 8. Accordingly, the appellant did not show that he suffered an appealable reduction in grade or pay, and the Board lacks jurisdiction over this appeal.

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.