

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

MARK EUGENE BROWN,  
Appellant,

DOCKET NUMBER  
DC-315H-10-0889-I-1

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: August 1, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

Mark Eugene Brown, Port Saint Lucie, Florida, pro se.

Tracy A. Allred, APO, APO/FPO Europe, 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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 has based his petition for review on several redacted documents he obtained pursuant to a request under the Freedom of Information Act. Petition for Review (PFR) File, Tab 1 at 2, 10-12, 14-18. The Board may grant a petition for review to consider new and material evidence that, despite due diligence, was not available when the record closed. [5 C.F.R. § 1201.115](#)(d)(1). Assuming *arguendo* that these documents are new, the appellant has not shown that they are material. The Board will not grant a petition for review based on new evidence absent a showing that it is of sufficient weight to warrant an outcome different from that of the initial decision. *Russo v. Veterans Administration*, [3 M.S.P.R. 345](#), 349 (1980). The documents here pertain largely to the appellant's allegations of unsafe working conditions. PFR File, Tab 1 at 10-12, 14-18. His appeal pertains only to his termination while he was still a probationer. None of the documents would suggest that he met the definition of "employee" set forth in [5 U.S.C. § 7511](#)(a)(1)(A), or that the agency terminated him based on partisan political reasons or marital status, or for pre-appointment reasons, [5 C.F.R. § 315.806](#)(b), (c). They would thus not change the administrative judge's finding that the Board lacks jurisdiction over this appeal. *See* Initial Decision at 1, 5.

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, material evidence and that the administrative judge made no error in law or regulation that affects the outcome. [5 C.F.R. § 1201.115](#)(d). In light of this conclusion, we need not reach the question of whether the appellant's petition for review was timely filed. We DENY the petition for review and AFFIRM the administrative judge's initial decision dismissing the appeal for lack of jurisdiction.

**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](http://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.