

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

EDERICK D. TAYLOR,
Appellant,

DOCKET NUMBER
AT-0752-11-0754-I-1

v.

DEPARTMENT OF THE AIR FORCE,
Agency.

DATE: August 1, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Ederick D. Taylor, Crestview, Florida, pro se.

Daniel J. Watson, Eglin 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 issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 challenges the initial decision dismissing his appeal of an alleged constructive demotion for lack of jurisdiction. The appellant argues, among other things, that: 1) he was told that his GS-525-07 position was “going to be reclassified to GS-501-9”; 2) the duties, classification standards, and position descriptions for three of the positions in question were the same or similar; 3) the agency never detailed him to a GS-503-7 position; and 4) the agency directed his reassignment to a GS-503-7 position in May or June 2008, which was upgraded to a GS-501-9 in September 2008. The administrative judge thoroughly addressed these issues in the initial decision and we discern no reason to disturb those well-reasoned findings. *Crosby v. U.S. Postal Service*, [74 M.S.P.R. 98](#), 106 (1997) (stating that there is no reason to disturb the initial decision when the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions); *Broughton v. Department of Health & Human Services*, [33 M.S.P.R. 357](#), 359 (1987) (same).

Moreover, a constructive demotion can be established only if the agency has actually upgraded the prior position due to the issuance of a new classification standard or correction of a classification error, not if the former position merely could have been or should have been upgraded but was not. *See Hogan v. Department of the Navy*, [218 F.3d 1361](#), 1364 (Fed. Cir. 2000). The appellant has not nonfrivolously alleged or shown such facts. To the extent that the appellant is alleging that he was constructively demoted from a position to which he had been detailed, an appealable action such as a constructive demotion cannot be based on a position to which an employee has not been officially appointed. *See Strobe v. U.S. Postal Service*, [71 M.S.P.R. 429](#), 437 (1996) (an employee’s entitlement to the rights of a position is based on his or her official

appointment to a position, not on his or her service in an acting capacity in a position); *Wafford v. U.S. Postal Service*, [34 M.S.P.R. 691](#), 693-94 (1987) (a detail by its very nature involves no formal appointment because the employee continues to be the incumbent of the position from which he was detailed).

Regarding the appellant's argument that the agency did not produce a document that would allegedly show that he "was being permanently management-directed reassigned," the administrative judge denied the appellant's motion to compel with respect to this request because the agency had already produced all relevant documents and had no additional documents responsive to the request. The appellant has shown no abuse of discretion in the administrative judge's ruling. Regarding the claims that the agency misinterpreted the time-in-grade and specialized experience regulations and did not provide the appellant with his rights or documentation for being a displaced employee, these assertions do not address the constructive demotion criteria. *See Bobie v. Department of the Army*, [105 M.S.P.R. 592](#), ¶ 6 (2007).

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.