UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

EDERICK D. TAYLOR, Appellant,	DOCKET NUMBER AT-300A-10-0718-B-1
v.	
DEPARTMENT OF THE AIR FORCE, Agency.	DATE: August 1, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

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

Crystal L. Wong and 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

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 employment practices appeal for lack of jurisdiction. The appellant argues, among other things, that the agency: (1) erroneously required that specialized experience be in the same series to meet minimum qualifications; (2) discriminated against him based on race; and (3) failed to consider that the duties of his former GS-7 Accounting Technician position were the same as or similar to those of a GS-9 Financial Management Specialist. The administrative judge thoroughly addressed these issues in the initial decision and we discern no reason to disturb those findings. *See 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). To the extent that the appellant alleges that the agency failed to apply provisions that would have required it to review his specialized experience, an agency's failure to apply an employment practice is not a claim within the Board's jurisdiction. *See Metzenbaum v. General Services Administration*, 96 M.S.P.R. 104, ¶ 13 (2004); 5 C.F.R. § 300.104(a); *see also Chadwell v. Merit Systems Protection Board*, 629 F.3d 1306, 1309 (Fed. Cir. 2010) (holding that Board jurisdiction rests on whether, among other things, the employment practice "was applied to him in violation of a basic requirement of 5 C.F.R. § 300.103").

Regarding the appellant's argument that the administrative judge improperly decided the case by weighing the evidence submitted by the agency, we disagree. The administrative judge found that, although the appellant asserted that the agency was required to review his specialized experience when he

applied for the position, he did not raise a nonfrivolous allegation of jurisdiction because he did identify any legal authority that required the agency to do so. In any event, the appellant's own evidence shows that he accepted a lower-graded position in a different job series as part of a career enhancement program jointly developed by management and the local union, and that this reduction in grade did not involve the application of an employment practice administered by the Office of Personnel Management. Regarding the claim that the agency constructively demoted him and limited his right to compete for only three positions under the career enhancement program, such claims do not address the relevant jurisdictional criteria for an employment practices appeal and go beyond the scope of the Board's remand order in this case.

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:

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William D. Spencer
Clerk of the Board

Washington, D.C.