

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

WALESKA RODRIGUEZ,
Appellant,

DOCKET NUMBER
DC-1221-11-0406-C-1

v.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
Agency.

DATE: August 2, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Waleska Rodriguez, Silver Spring, Maryland, pro se.

Rebecca Wulffen, Esquire, Washington, D.C., for the agency.

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant filed a petition for enforcement asserting that the agency failed to comply with the parties' settlement agreement that was accepted into the record. Initial Appeal File, Tab 15; Compliance File (CF), Tab 1. The administrative judge found the agency in compliance and dismissed the petition for enforcement. CF, Tab 8 at 1, 5. In her petition for review, the appellant does not contest the administrative judge's findings in the Compliance Initial Decision. Petition for Review File, Tab 1. Rather, the appellant seeks a response to her request for an explanation and interpretation of the settlement agreement clause that bars the appellant from seeking or accepting a position with the agency for two years following the agreement. *Id.* at 4-5; CF, Tab 4 at 3. Because the appellant is not contesting the Compliance Initial Decision, and there is no error in the administrative judge's finding that the agency is in compliance with the settlement agreement, the appellant has provided no basis for further review.

Moreover, the appellant's request for an interpretation of this clause in the settlement agreement is not ripe for consideration because the appellant does not allege that the agency has breached this term or that the agreement is otherwise invalid based on this term. The Board is prohibited by statute from issuing advisory opinions. [5 U.S.C. § 1204](#)(h). Because the appellant is not contesting this term, the Board may not issue a decision providing advice or guidance regarding its meaning. *See Winston v. Department of the Treasury*, [114 M.S.P.R. 594](#), ¶¶ 7-9 (2010) (the Board does not have authority to issue an advisory opinion regarding whether an agency could terminate an employee based on an alleged breach of a settlement agreement, but could only review the action after the agency took it).

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. The initial decision of the administrative judge is the Board's final decision. [5 C.F.R. § 1201.113](#).

**NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS**

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.