

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

JAMES ELMORE HILL,
Appellant,

DOCKET NUMBER
PH-0752-12-0050-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: August 3, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

James Elmore Hill, Darby, Pennsylvania, pro se.

Julie Kitze, Philadelphia, Pennsylvania, 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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 administrative judge dismissed the appeal of the appellant's termination from the position of Motor Vehicle Operator for lack of jurisdiction, finding that the appellant, a preference eligible employee, did not have one year of current continuous service. In his petition for review, the appellant contends that he has additional service with the agency that was not reflected in the record below. He states that he was a casual employee from November 1995 to November 1996 and from November 1997 to July 1998. Petition for Review File, Tab 1. In its response to the petition, the agency admits that the appellant had additional service at a different facility than that at which he was a Motor Vehicle Operator but argues that the additional service was neither similar to nor continuous with the appellant's subsequent service as a Motor Vehicle Operator and thus does not establish Board jurisdiction over this appeal.

The issue of Board jurisdiction is always before the Board and may be raised by either party or sua sponte by the Board at any time during a Board proceeding. *E.g., Hasanadka v. Office of Personnel Management*, [116 M.S.P.R. 636](#), ¶ 19 (2011). The evidence of the appellant's prior service submitted for the first time on petition for review does not constitute even a nonfrivolous allegation of Board jurisdiction. Neither period of service identified by the appellant immediately preceded his termination from the Motor Vehicle Operator position. The most recent prior service that he identifies ended in July 1998, and his service as a Motor Vehicle Operator began nearly 13 years later, in August 2011. *See Fitzgerald v. Department of the Air Force*, [108 M.S.P.R. 620](#), ¶ 10 (2008) (the term "current continuous service" means a period of employment or service, either in the competitive or excepted service, that immediately precedes an adverse action without a break in federal civilian employment of a workday). The appeal is properly dismissed for lack of jurisdiction.

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.