

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

LEE E. JOHNSON,  
Appellant,

DOCKET NUMBER  
DC-0752-11-0932-I-1

v.

DEPARTMENT OF HOMELAND  
SECURITY,  
Agency.

DATE: August 7, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL \***

Lee A. Johnson, Pembroke, Massachusetts, pro se.

Christina Anne Cotter, Washington, D.C., 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

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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 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](#)).

On review, the appellant does not challenge the administrative judge's decision to dismiss for lack of jurisdiction his appeal of the agency's placement of alleged derogatory information in his personnel file after he resigned. Instead, he alleges that the administrative judge erred in affirming his indefinite suspension in MSPB Docket No. DC-0752-11-0888-I-1. *See* Petition for Review File, Tab 1. We note that this petition for review is identical to the appellant's petition in MSPB Docket No. DC-0752-11-0888-I-1. We address the appellant's arguments regarding the indefinite suspension action in our decision in the aforementioned matter.

The Board's jurisdiction is not plenary; it is limited to those matters over which it has been given jurisdiction by law, rule or regulation. *Maddox v. Merit Systems Protection Board*, [759 F.2d 9](#), 10 (Fed. Cir. 1985). The record evidence and the applicable law support the administrative judge's findings that the appellant failed to make a nonfrivolous allegation of jurisdiction over his appeal of the agency's placement of alleged derogatory information in his personnel file after he resigned, and that the Board has no independent source of jurisdiction to adjudicate the appellant's affirmative defenses absent an otherwise appealable action. *See* Initial Decision at 4-5; *Young v. U.S. Postal Service*, [115 M.S.P.R. 424](#), ¶ 15 (2010). Accordingly, we discern no reason to disturb the initial decision that dismissed this appeal 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.caafc.uscourts.gov](http://www.caafc.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.