UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DOUGLAS D. MCPHERSON, Appellant,	DOCKET NUMBER CH-3443-11-0444-I-1
v.	
DEPARTMENT OF THE ARMY, Agency.	DATE: August 10, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Douglas D. McPherson, Saint Louis, Missouri, pro se.

John L. Simion, Kansas City, Missouri, 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

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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 properly found that the agency's actions did not violate the appellant's veterans' preference rights for the reasons articulated in the initial decision. The GS-11 position was advertised under merit promotion procedures, and the agency undisputedly considered the appellant, interviewed him, and ranked him as second alternate for the position. When an agency accepts applications from individuals outside its workforce under merit promotion procedures, the Veterans Employment Opportunities Act of 1998 (VEOA) guarantees a veteran "only a right to apply and an opportunity to compete." *Joseph v. Federal Trade Commission*, 505 F.3d 1380, 1383 (Fed. Cir. 2007). The administrative judge correctly found that the agency's action in canceling the invalid announcement and re-advertising the position was proper. *See, e.g.*, *Willingham v. Department of the Navy*, 118 M.S.P.R. 21, ¶¶ 21-25 (2012); *Jones v. Department of Veterans Affairs*, 113 M.S.P.R. 385, ¶ 12 (2010); *Dean v. Consumer Product Safety Commission*, 108 M.S.P.R. 137, ¶¶ 4, 11 (2008).

With respect to the appellant's allegations of prohibited personnel practices, the administrative judge considered the merits of the agency's actions to determine whether the agency violated the appellant's veterans' preference rights. The appellant has not otherwise articulated a prohibited personnel practice that did or could give rise to a violation of statute or regulation relating to veteran's preference. *See Lazaro v. Department of Veterans Affairs*, 666 F.3d 1316, 1320-21 (Fed. Cir. 2012). Finally, the appellant's remaining arguments do not provide a basis for disturbing the initial decision. For example, the appellant asserts that the chairman of the selection board provided false testimony when he testified that he did not know the selectee before the interview process; however, the appellant provides no evidence to cast doubt on such testimony. The

appellant also argues that the administrative judge failed to consider all of the documentary evidence in the initial decision. The administrative judge's failure to mention all of the evidence of record does not mean that she did not consider it in reaching her decision. *See Marques v. Department of Health & Human Services*, 22 M.S.P.R. 129, 132 (1984), *aff'd*, 776 F.2d 1062 (Fed. Cir. 1985) (Table). The appellant's argument that the agency circumvented his rights under VEOA by trying to reach the selectee through the Veterans' Recruitment Authority (VRA) fails because the agency did not take any action under the VRA to appoint Mr. Strom after it canceled the vacancy announcement for the GS-11 position. Finally, the appellant's arguments regarding the hiring freeze are immaterial to the outcome of his appeal.

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.