

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

MILO D. BURROUGHS,
Appellant,

DOCKET NUMBER
AT-3330-12-0070-I-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: August 9, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL *

Milo D. Burroughs, Yelm, Washington, pro se.

Ashleigh Ciulla, Esquire, Fort Rucker, Alabama, 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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 correctly dismissed the appeal for lack of jurisdiction. We agree that the appellant failed to demonstrate that he exhausted his administrative remedies with the Department of Labor; therefore, he failed to establish jurisdiction over his Veterans Employment Opportunities Act of 1998 claim. *See Burroughs v. Department of the Army*, [116 M.S.P.R. 292](#), ¶¶ 9-10, *appeal dismissed*, 446 F. App'x 293 (Fed. Cir. 2011). Further, as the administrative judge correctly found, the Veterans' Preference Act of 1944 does not provide an independent basis for Board jurisdiction. *See id.*, ¶¶ 11-12. Finally, the administrative judge correctly found that the appellant did not make a nonfrivolous allegation that his military status was a substantial or motivating factor in his nonselection, and the appellant has presented nothing on review to challenge the administrative judge's finding regarding his Uniformed Services Employment and Reemployment Rights Act of 1994 (codified at [38 U.S.C. §§ 4301-4333](#)) claim. *See Baney v. Merit Systems Protection Board*, 415 F. App'x 244, 246 (Fed. Cir. 2011); *Thompson v. Department of the Army*, [112 M.S.P.R. 153](#), ¶ 8 (2009).

The appellant's arguments on review concern the agency's failure to participate in discovery. The agency filed a motion to stay discovery pending a jurisdictional determination, the administrative judge granted the agency's motion, and the appellant did not object to the agency's motion or present any argument that the administrative judge abused his discretion by granting a stay of discovery. *See West v. U.S. Postal Service*, [44 M.S.P.R. 551](#), 563-64 (1990). We discern no error in the administrative judge's determination, and the appellant's arguments on review do not warrant disturbing the initial decision.

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.ca9.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.