

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

MARIANNE L. BRUHN-POPIK,
Appellant,

DOCKET NUMBER
SF-3443-12-0013-I-1

v.

DEPARTMENT OF THE NAVY,
Agency.

DATE: August 17, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Marianne L. Bruhn-Popik, Albany, Georgia, pro se.

Frederick A. Congdon, FPO, APO/FPO Pacific, for the agency.

Scott Vogeley, FPO, APO/FPO Pacific, 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

DISCUSSION OF ARGUMENTS ON REVIEW

In her petition for review, the appellant challenges the initial decision which dismissed her appeal of the agency's action curtailing her overseas assignment for lack of jurisdiction. Petition for Review (PFR) File, Tab 1. The appellant argues, among other things, that: (1) the evidence she provided to the administrative judge showed that the agency improperly curtailed her overseas assignment; (2) the agency retaliated against her for her whistleblowing activity; and (3) the agency discriminated against her. *Id.* at 4-5. The administrative judge thoroughly addressed these issues in the initial decision, and we discern no reason to disturb those well-reasoned findings. Initial Appeal File (IAF), Tab 17, Initial Decision at 4-6; *Crosby v. U.S. Postal Service*, 74 M.S.P.R. 98, 106 (1997) (stating that there is no reason to disturb the initial decision where the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions); *Broughton v. Department of Health & Human Services*, 33 M.S.P.R. 357, 359 (1987) (same).

The appellant also requests that the Board appoint her an attorney. PFR File, Tab 1 at 5. There is no statute or regulation that requires the Board to appoint a representative for an appellant; it is the appellant's obligation to secure her own representation. *Brum v. Department of Veterans Affairs*, 109 M.S.P.R. 129, ¶ 5 (2008). In the acknowledgment order, the administrative judge notified the appellant of her right to representation. IAF, Tab 2 at 2-3. It was within the appellant's discretion whether to have a representative and, having chosen to represent herself, she cannot now claim inadequate representation. *See Burge v. Department of the Air Force*, 82 M.S.P.R. 75, ¶ 32 (1999).

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.