

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

ANGELA D. MCCURRY,
Appellant,

DOCKET NUMBER
AT-3330-12-0013-I-1

v.

DEPARTMENT OF JUSTICE,
Agency.

DATE: August 17, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Angela D. McCurry, Stockton, Alabama, pro se.

John Caterini, Esquire, and John E. Thompson, Esquire, 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant filed a complaint under the Veterans Employment Opportunities Act of 1998 (VEOA) with the Department of Labor's Veterans' Employment and Training Service on August 9, 2011, when she was not selected for a position under a May 2009 vacancy announcement that was cancelled. Initial Appeal File (IAF), Tab 6 at 14. By letter dated September 19, 2011, the Department of Labor informed the appellant that her complaint was dismissed as untimely because it was not filed within the 60-day statutory deadline. *Id.* at 12. The appellant timely filed an appeal with the Board. IAF, Tab 1. The administrative judge issued an initial decision denying the appellant's request for corrective action, finding that her 2011 complaint to the Department of Labor concerning her non-selection was untimely because it was filed more than 60 days after the agency's May 2009 decision not to select her, and that she did not establish that equitable tolling principles should apply to extend the filing deadline. IAF, Tab 16 at 6.

In her petition for review, the appellant argues that the agency fraudulently and intentionally misled her in the emails informing her of her non-selection and that as a result, the deadline for her claim under VEOA should be equitably tolled. Petition for Review File (PFR File), Tab 1 at 18. The administrative judge thoroughly addressed these issues in the initial decision and we discern no reason to disturb these well-reasoned findings. *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).

Regarding the appellant's arguments that material facts remain in dispute and that it was "harmful error" for the administrative judge not to conduct a hearing, the appellant does not identify these alleged missing facts or explain what they would have added to the record, nor does she identify any specific documents or witnesses that she believes are missing from the record. PFR File, Tab 1 at 5, 16, 18. In the absence of any genuine dispute of material fact, the appellant has not shown that the administrative judge erred in denying her request for a hearing. *See Williamson v. U.S. Postal Service*, [106 M.S.P.R. 502](#), ¶¶ 8-9 (2007).

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 appellant's petition for review and AFFIRM the initial decision that denied her request for corrective action under VEOA.

We note that, in her petition for review the appellant renews her employment practices claim. PFR File, Tab 1 at 19. Though unmentioned in her initial appeal, in an "Objection to Jurisdiction Submission," the appellant vaguely alleged "unlawful employment practices" on the part of the agency in connection with her non-selection. IAF, Tab 14 at 10. Because the administrative judge did not provide the appellant appropriate jurisdictional notice as to this claim, and did not address it in the initial decision, we FORWARD the appellant's employment practices claim to the Atlanta Regional Office for docketing as a separate appeal.

**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.