

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

ROOSEVELT ANTHONY,
Appellant,

DOCKET NUMBER
AT-844E-12-0345-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: August 17, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Roosevelt Anthony, Waynesboro, Georgia, pro se.

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant seeks review of an initial decision dismissing for lack of jurisdiction his appeal of a reconsideration decision by the Office of Personnel Management (OPM) which rescinded its reconsideration decision to further review and determine whether the appellant's annuity was computed correctly. Petition for Review (PFR) File, Tab 1; Initial Appeal File (IAF), Tab 4. In his petition for review, the appellant argues that he filed a timely request for reconsideration and that the OPM decision was discriminatory and wrong. He also discusses the circumstances of his retirement, claiming that he was treated unfairly by the Postal Service and he should have received workers' compensation. PFR File, Tab 1.

Under [5 U.S.C. § 8461](#)(e)(1), an administrative action or order affecting the rights or interests of an individual under the provisions of 5 U.S.C. chapter 84 administered by OPM may be appealed to the Board. An individual whose rights or interests under the Federal Employees' Retirement System are affected by a "final decision" of OPM may request the Board to review the decision. [5 C.F.R. § 841.308](#). In *Rogers v. Office of Personnel Management*, [87 F.3d 471](#), 475 (Fed. Cir. 1996), the court recognized that OPM has the authority to correct a previous mistaken or unlawful decision and to issue a new reconsideration decision. Thus, if OPM completely rescinds a reconsideration decision its rescission divests the Board of jurisdiction over the appeal in which the reconsideration decision is at issue and the appeal must be dismissed for lack of jurisdiction. *See, e.g., Hunt v. Office of Personnel Management*, [114 M.S.P.R. 590](#), ¶ 5 (2010).

Here, because OPM completely rescinded its reconsideration decision and informed the appellant that "[n]ew reconsideration rights will be given," the administrative judge correctly dismissed this appeal. IAF, Tab 4. The

appellant's arguments regarding the merits of the rescinded reconsideration decision and the circumstances of his retirement do not establish Board jurisdiction over this appeal. When OPM issues a new final or reconsideration decision, the appellant may file a new appeal if he disagrees with OPM's 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. 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.