

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

ROMAN J. ANDERSON,  
Appellant,

DOCKET NUMBER  
SF-0752-11-0627-I-2

v.

DEPARTMENT OF THE NAVY,  
Agency.

DATE: August 17, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

Brook L. Beesley, Alameda, California, for the appellant.

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

On review, the appellant simply asserts that the administrative judge “incorrectly decided important material facts, witness credibility findings and reliability of testimony and, specifically, unfounded opinions contradicted by reliable documentary evidence and appellant testimony, which were not based on facts.” Petition for Review (PFR) File, Tab 3. Similarly, the appellant makes a bare assertion that the administrative judge “erred in ruling on the appellant’s opening Motion for Partial Summary Judgment and Reconsideration, directly associated with appellant’s MSPB submissions of record, which harmfully impacted appellant the opportunity to fairly present his removal case at hearing and violated his minimum due process rights.” *Id.* However, because the appellant has failed to explain how the administrative judge erred or provide any evidence or argument to support these assertions, we have not addressed them. *See Tines v. Department of the Air Force*, [56 M.S.P.R. 90](#), 92 (1992) (a petition for review must contain sufficient specificity to enable the Board to ascertain whether there is a serious evidentiary challenge justifying a complete review of the record); *Weaver v. Department of the Navy*, [2 M.S.P.R. 129](#), 133 (1980) (before the Board will undertake a complete review of the record, the petitioning party must explain why the challenged factual determination is incorrect, and identify the specific evidence in the record which demonstrates the error).

In any event, we have reviewed the record and find no error by the administrative judge. The administrative judge accurately set forth the relevant Board law under *Rivera v. Department of Homeland Security*, [116 M.S.P.R. 429](#), ¶ 15 (2011), and *Scull v. Department of Homeland Security*, [113 M.S.P.R. 287](#), ¶¶ 6, 12 (2010). Specifically, a Federal Career Intern Program (FCIP) appointment automatically expires at the end of the intern’s tour of duty on the last day of the internship, i.e., the day before the 2-year anniversary date of the

appointment, unless the agency takes affirmative steps to extend the appointment or convert it to the competitive service. Initial Decision (ID) at 20-21. An appellant's termination upon expiration of his FCIP appointment is generally not an appealable action. ID at 21. However, where an intern is eligible for placement under [5 C.F.R. § 213.3203\(o\)\(6\)\(ii\)](#) and otherwise has Board appeal rights under 5 U.S.C. chapter 75, the termination of the intern's employment upon the expiration of his FCIP internship constitutes an adverse action within the Board's jurisdiction unless his failure to successfully complete the internship is related to misconduct or suitability. ID at 22.

The appellant also asserts that he is relying on his "MSPB submissions of record," i.e., his prehearing submission and written closing arguments, and he states that he is incorporating them as his specific objections and challenges to the initial decision. PFR File, Tab 3. However, the simple resubmission of documents filed below does not meet the petition for review criteria because it specifies no error in the administrative judge's analysis. *See Mawson v. Department of the Navy*, [48 M.S.P.R. 318](#), 321 (1991). To the extent the appellant is rearguing these issues, he is merely disagreeing with the administrative judge's finding that the Board lacks jurisdiction over his appeal. *See Weaver*, 2 M.S.P.R. at 133-34.

In addition, the appellant makes a general allegation, without any evidence or argument, that the agency violated his "undisputed veterans' preference rights by using the Federal Career Intern Program (FCIP)." PFR File, Tab 3 at 2. However, this argument was not raised below and the appellant has made no showing that it is based on new and material evidence not previously available despite the party's due diligence. Thus, we have not considered it. *See Banks v. Department of the Air Force*, [4 M.S.P.R. 268](#), 271 (1980).

Finally, the administrative judge thoroughly addressed the issues raised in this appeal, including credibility of the witnesses, and we discern no reason to disturb those well-reasoned findings. *See Crosby v. U.S. Postal Service*, [74](#)

[M.S.P.R. 98](#), 106 (1997) (stating 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).

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](http://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.