

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

STEVEN C. MOOREHEAD,
Appellant,

DOCKET NUMBER
SF-3443-11-0735-I-1

v.

DEPARTMENT OF THE INTERIOR,
Agency.

DATE: August 28, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Steven C. Moorehead, Cottage Grove, Oregon, pro se.

Marianne King, Esquire, Portland, Oregon, 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 of the November 15, 2011 initial decision that dismissed his appeal for lack of jurisdiction. For the reasons set forth below, we DISMISS the petition as untimely filed without a showing of good cause for the delay.

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

On July 20, 2011, the appellant filed an appeal of the agency's decision to not promote him to a supervisory position. Initial Appeal File (IAF), Tab 1. In a November 15, 2011 initial decision, the administrative judge dismissed the appellant's appeal for lack of jurisdiction. IAF, Tab 12, Initial Decision (ID) at 1, 9. In the initial decision, the administrative judge informed the appellant of the finality date, December 20, 2011, and provided him with the address of the Clerk of the Board in the event he wished to file a petition for review. *Id.* at 9-10. Because neither party filed a petition for review prior to December 20, 2011, the initial decision became the Board's final decision.

On February 14, 2012, the appellant filed a petition for review. Petition for Review (PFR) File, Tab 1. The Clerk of the Board issued a letter informing the appellant that it appeared that his petition was untimely filed, advising him of his burden of proof to establish timeliness, and providing him with a "Motion to Accept Filing as Timely or to Waive Time Limit" form. PFR File, Tab 2.

The Board's regulations provide that a petition for review must be filed within 35 days of the issuance of an initial decision. *See* [5 C.F.R. § 1201.114](#)(d). The Board will waive this time limit only upon a showing of good cause for the delay in filing. [5 C.F.R. §§ 1201.12](#), .114(f). To establish good cause for an untimely filing, a party must show that he exercised due diligence or ordinary prudence under the particular circumstances of the case. *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980). To determine whether an appellant has shown good cause, the Board will consider the length of the delay, the reasonableness of his excuse and his showing of due diligence, whether he is proceeding pro se, and whether he has presented evidence of the existence of circumstances beyond his control that affected his ability to comply with the time limits or of unavoidable casualty or misfortune which similarly shows a causal relationship to his inability to timely file his petition. *Moorman v. Department of the Army*, [68 M.S.P.R. 60](#), 62-63 (1995), *aff'd*, 79 F.3d 1167 (Fed. Cir. 1996) (Table). The length of the delay is a consideration in every good cause

determination. *Walls v. Merit Systems Protection Board*, [29 F.3d 1578](#), 1582 (Fed. Cir. 1994).

Here, the appellant filed his petition for review with the Board over seven weeks after the initial decision became final. PFR File, Tab 1; ID at 9. The appellant's filing delay of over seven weeks is not insignificant. *See Reaves v. Department of Veterans Affairs*, [92 M.S.P.R. 352](#), ¶ 8 (2002) (finding a delay of 18 days to be significant). Further, the appellant has failed to respond to the Clerk of the Board's letter providing him with his burden of proof on timeliness. Accordingly, despite the fact that the appellant is proceeding pro se, he has failed to show that he exercised due diligence or ordinary prudence in this case that would justify waiving the filing deadline. *See Alonzo*, 4 M.S.P.R. at 184. Thus, we DISMISS the petition for review as untimely filed with no showing of good cause for the delay. [5 C.F.R. § 1201.114\(f\)](#).

This is the final decision of the Merit Systems Protection Board concerning the timeliness of the petition for review. The initial decision will remain the final decision of the Board with regard to the Board's jurisdiction over the underlying appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) ([5 C.F.R. § 1201.113\(c\)](#)).

**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.