

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

JASON B. POE,
Appellant,

DOCKET NUMBER
SF-3443-11-0797-I-1

v.

DEPARTMENT OF THE NAVY,
Agency.

DATE: August 28, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Jason B. Poe, Vista, California, pro se.

Thomas Cook, San Diego, 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

In his petition for review, the appellant challenges the initial decision dismissing his appeal for lack of jurisdiction. The appellant argues, among other things, that the Board has jurisdiction in this case because he has raised a nonfrivolous allegation of fraud, waste, abuse, and violation of law, and because the Small Business Innovative Research Program Manager suspended him from the majority of his duties. With his petition for review, he submitted a copy of his March 2011 interim self-assessment and a February 2011 e-mail addressed to him.

The appellant has failed to provide a basis for Board review. He has not shown that the self-assessment and e-mail were unavailable before the record closed despite his due diligence. Thus, he has not explained why the Board should consider them, or the arguments based upon them, on review. *See Banks v. Department of the Air Force*, [4 M.S.P.R. 268](#), 271 (1980); *Avansino v. U.S. Postal Service*, [3 M.S.P.R. 211](#), 214 (1980). In any event, they do not provide a basis for granting his petition for review because he has not shown that they are of sufficient weight to warrant an outcome different from that of the initial decision. *See Russo v. Veterans Administration*, [3 M.S.P.R. 345](#), 349 (1980).

In that regard, the appellant has failed to show that the administrative judge erred in finding that he did not establish Board jurisdiction over his appeal as an otherwise appealable action because he has made no nonfrivolous allegation that he was actually suspended by being placed in a nonduty, nonpay status. *See, e.g., Edwards v. U.S. Postal Service*, [112 M.S.P.R. 196](#), ¶ 6 (2009). Similarly, he has failed to show that the administrative judge erred in finding that he did not establish Board jurisdiction over his appeal as an individual right of action appeal because he has presented no evidence that he exhausted his remedies before the

Office of Special Counsel. *See Yunus v. Department of Veterans Affairs*, [242 F.3d 1367](#), 1371 (Fed. Cir. 2001).

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.