

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

CHRISTINE Y. ZHANG,
Appellant,

DOCKET NUMBER
DC-315H-12-0155-I-1

v.

DEPARTMENT OF THE TREASURY,
Agency.

DATE: August 29, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Christine Y. Zhang, Euless, Texas, pro se.

Byron D. Smalley, Esquire, and Craig A. Corlis, 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 of the initial decision that dismissed her probationary termination appeal for lack of jurisdiction. 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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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](#)).

In her petition for review, the appellant argues the merits of her case and asserts that the Board has jurisdiction over her appeal but she does not submit any evidence or argument to support that assertion. Petition for Review File, Tab 1. The Board need not consider the appellant's arguments because they are not relevant to the issue currently before the Board – whether the Board has jurisdiction over this appeal. *See Fasset v. U.S. Postal Service*, [76 M.S.P.R. 137](#), 139 (1997) (arguments on review that address the merits of the agency's removal action, rather than the Board's jurisdiction over the appeal, do not meet the criteria for review).

It is undisputed that, at the time of her termination, the appellant was a probationary employee in the competitive service with less than one year of current continuous service. Initial Appeal File (IAF), Tab 1 at 2, 4; Tab 4, Subtabs 4a, 4b, 4d, 4j. Consequently, she could only bring an appeal of her termination to the Board in three limited circumstances: (1) she was discriminated against on account of her marital status; (2) she was discriminated against based on partisan political affiliation; or (3) the agency action was based (in whole or part) on issues that arose pre-appointment and the agency did not follow the required procedures. *Blount v. Department of the Treasury*, [109 M.S.P.R. 174](#), ¶ 5 (2008); [5 C.F.R. §§ 315.805](#), 315.806. Those procedures are: advance written notice stating the reasons for the proposed action; a reasonable time to file a written answer to the notice and for furnishing evidence in support of the answer, as well as consideration of the answer by the agency in reaching its decision; and written notice of the agency's decision at the earliest practicable date. [5 C.F.R. § 315.805](#).

As the administrative judge explained, the appellant did not claim that her termination was based upon marital status or partisan politics and the documentary evidence submitted by the agency shows that it satisfied the procedural requirements set forth in [5 C.F.R. § 315.805](#). IAF, Tab 6 (Initial Decision) at 2-3. Therefore, the administrative judge correctly found that the Board does not have jurisdiction over the appellant's termination appeal. *Id.*

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.