

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

SEAN MOUDY,
Appellant,

DOCKET NUMBER
DE-3443-11-0521-I-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: August 30, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL *

Sean Moudy, Colorado Springs, Colorado, pro se.

CPT Jason Tighe Easterly, Fort Meade, Maryland, 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 for lack of jurisdiction his appeal alleging that he was not paid the salary he was promised upon hiring when, due to a pay-for-performance conversion process, his general grade equivalent was set at a rate of GS-12, step 6,

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

rather than at a rate of GS-13, step 1. Initial Appeal File, Tab 13 (ID). For the reasons set forth below, we DISMISS the petition as untimely filed without a showing of good cause for the delay.

In the January 6, 2012 initial decision, the administrative judge apprised the appellant that the initial decision would become final on February 10, 2012, unless a petition for review was filed by that date or the Board reopened the case on its own motion. ID at 7. The appellant filed a petition for review on February 14, 2012. Petition for Review (PFR) File, Tab 1. The Office of the Clerk of the Board, by notice dated February 17, 2012, informed the appellant that the Board may dismiss his petition for review as untimely unless he filed a motion, including a statement, signed under penalty of perjury, or an affidavit, showing that his petition for review was timely filed or that good cause existed for the filing delay. PFR File, Tab 2. The Clerk enclosed with the notice a "Motion to Accept Filing as Timely or to Waive Time Limit." *Id.* The Clerk's notice afforded the appellant until March 3, 2012, to file that motion. *Id.* The appellant did not respond to the Clerk's notice.

A petition for review must be filed within 35 days after the date of issuance of the initial decision, or if the party shows he received the initial decision more than 5 days after it was issued, within 30 days of his receipt. *See Williams v. Office of Personnel Management*, [109 M.S.P.R. 237](#), ¶ 7 (2008); [5 C.F.R. § 1201.114](#)(d). The Board will waive the filing deadline for a petition for review only upon a showing of good cause for the delay in filing. *Lawson v. Department of Homeland Security*, [102 M.S.P.R. 185](#), ¶ 5 (2006); [5 C.F.R. §§ 1201.12, 1201.114](#)(f). The Clerk notified the appellant of his need to establish good cause for an untimely filing and provided a form "Motion to Accept Filing as Timely or to Waive Time Limit." PFR File, Tab 2. Because the appellant did not respond to the Clerk's notice regarding timeliness and has offered no explanation for the delay in filing his petition for review, he has not established good cause for the

untimely filing. 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.