

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

JOHN P. PAUL, JR,
Appellant,

DOCKET NUMBER
CH-0831-11-0769-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: August 30, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

John P. Paul, Jr., Grosse Ile, Michigan, pro se.

Kristine Prentice, 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 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 his petition for review, the appellant challenges the initial decision that affirmed the final decision of the Office of Personnel Management denying the appellant's application for a deferred Civil Service Retirement System (CSRS) annuity based on the appellant's withdrawal of his retirement contributions. Petition for Review (PFR) File, Tab 1. The appellant does not challenge, however, the administrative judge's findings that he received – and has not redeposited – a full refund of his retirement contributions. Therefore, we affirm the administrative judge's finding that the appellant is not eligible to receive a deferred annuity under the CSRS. *See Youngblood v. Office of Personnel Management*, [108 M.S.P.R. 278](#), ¶ 12 (2008) (finding that the receipt of a refund of CSRS retirement contributions voids all annuity rights based on the service for which the refund is made unless the employee redeposits the contributions while serving in a position subject to the CSRS).

On review, the appellant argues that he was denied the opportunity to subpoena records showing that other similarly-situated individuals were receiving annuities, and that he was unable to call witnesses to testify to that fact at the hearing. PFR File, Tab 1. Because the appellant did not attempt to secure this documentary evidence and witness testimony below after receipt of ample notice from the administrative judge, he is precluded from doing so for the first time on review. Even if we considered the evidence he seeks, however, the appellant has not shown that it would change the outcome of his appeal. During his hearing testimony, the appellant referenced the allegedly similarly-situated individuals who received annuities and stated that they did return to work at some point at the Federal Aviation Administration (FAA). Hearing Compact Disc. Having returned to work at the FAA, these individuals would have been eligible, unlike

the appellant, to redeposit their retirement contribution refunds and consequently receive annuity benefits. *See Youngblood*, [108 M.S.P.R. 278](#), ¶ 12.

Accordingly, 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.