

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

JACK N. NICHOLS,  
Appellant,

DOCKET NUMBER  
DA-0831-11-0519-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: September 6, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL<sup>1</sup>**

Jack N. Nichols, Bentley, Louisiana, 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 that dismissed as untimely filed his appeal of an Office of Personnel Management (OPM)

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<sup>1</sup> A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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\(c\)](#).

reconsideration decision finding that he received an overpayment of his Civil Service Retirement System disability retirement annuity. 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 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 does not challenge the administrative judge's findings that his appeal was untimely filed and that he failed to show good cause for the delay. Rather, he argues that he did not receive the overpayment from OPM because the account to which OPM allegedly credited the payment had already been closed. Petition for Review File, Tab 1. The appellant's arguments on the merits of his appeal, however, are not relevant to the timeliness issue and he therefore has not set forth any basis to disturb the well-reasoned findings of the administrative judge.

In its February 7, 2011 reconsideration decision, OPM properly notified the appellant that he had the right to appeal its decision to the Board within 30 days of the date of the decision or 30 days after his receipt of the decision, whichever was later. Initial Appeal File (IAF), Tab 5, subtab 2 at 2-3; *see* [5 C.F.R. § 1201.22\(b\)](#). OPM submitted un rebutted evidence below showing that the decision was delivered to the appellant on February 14, 2011.<sup>2</sup> IAF, Tab 5, Subtab 5 at 1-2. Accordingly, the appellant's appeal was due on or before March 16, 2011. Because the appellant did not file his appeal until June 7, 2011, his appeal was filed 83 days late.

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<sup>2</sup> In her initial decision, the administrative judge indicated that the record did not contain any evidence that the appellant received OPM's February 7, 2011 reconsideration decision on a date later than February 7, 2011. IAF, Tab 9, Initial Decision at 5 n.2. However, OPM submitted proof of certified delivery showing that the decision was delivered to the appellant on February 14, 2011. IAF, Tab 5, Subtab 5 at 1-2.

On July 6, 2011, the administrative judge issued an order to show cause regarding timeliness, noting that it appeared the appellant had filed an untimely appeal, explaining that the time limit for filing an appeal may be waived upon a showing of good cause if the appellant could show that he acted with due diligence under the circumstances, and ordering him to file evidence and argument to show that his appeal was timely filed or that good cause existed for the delay. IAF, Tab 6. The appellant, however, failed to address the timeliness of his appeal in his response to the administrative judge's order and the appellant did not otherwise submit any evidence or argument below to suggest that good cause existed for the 83-day delay in filing his Board appeal. Therefore, the administrative judge properly dismissed the appellant's appeal. *See 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); *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980).

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](http://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:

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William D. Spencer  
Clerk of the Board

Washington, D.C.