

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

GLENN O. KALLEVIG,
Appellant,

DOCKET NUMBER
CH-3330-12-0155-I-1

v.

DEPARTMENT OF VETERANS
AFFAIRS,
Agency.

DATE: September 7, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Glenn O. Kallevig, Foley, Minnesota, pro se.

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

Generally, the withdrawal of an appeal is an act of finality that has the effect of removing the appeal from the Board's jurisdiction, and, in the absence of unusual circumstances such as misinformation or new and material evidence, the Board will not reinstate an appeal once it has been withdrawn merely because the appellant now wishes to proceed before the Board. *Cason v. Department of the Army*, [118 M.S.P.R. 58](#), ¶ 5 (2012). However, a relinquishment of one's right to appeal to the Board must be by clear, unequivocal, and decisive action. *Id.*

Here, the record reflects that the appellant voluntarily and unequivocally withdrew his Board appeal after receiving notice from the administrative judge that the withdrawal of his appeal would be an act of finality. Initial Appeal File, Tabs 9-11, 13-14. In his petition for review, the appellant does not contest that he withdrew his appeal below. Rather, he states that he is satisfied and willing to withdraw his petition, "[i]f it is determined that proper usage of veterans preference was applied" Petition for Review File, Tab 1 at 3. The appellant, however, has not presented any reason to reinstate his appeal other than that he now seeks the Board's assurance that there was no violation of his veterans' preference rights. *Id.* This reason is not sufficient to justify reinstating his appeal. *See Cason*, [118 M.S.P.R. 58](#), ¶ 5.

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.