

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

TIMOTHY W. HART,
Appellant,

DOCKET NUMBER
PH-315H-12-0008-I-1

v.

DEPARTMENT OF VETERANS
AFFAIRS,
Agency.

DATE: September 13, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Timothy W. Hart, McKees Rocks, Pennsylvania, pro se.

Marcus S. Graham, Esquire, Pittsburgh, Pennsylvania, 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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 dismissing for lack of jurisdiction his appeal of the agency's action terminating him during his probationary period. The appellant asserts that he has documents that were not filed below, but he has neither described nor submitted any documents. The appellant asserts that he should not have been considered a probationary employee. The administrative judge thoroughly addressed that issue, and we discern no reason to disturb her finding that the appellant was a probationary employee. Initial Decision at 3-4; *see, e.g., Niemi v. Department of the Interior*, [114 M.S.P.R. 143](#), ¶¶ 10, 16 (2010).

The appellant apparently asserts that the agency first asked him to submit evidence to support his need for a leave of absence and informed him that he could have a part-time position, but, after he submitted documentation, told him that he could not have a leave of absence or work part-time. The appellant's assertions address the merits of the agency's action in removing him for unauthorized absence. Because the Board lacks jurisdiction over his appeal, his assertions concerning the merits do not provide a basis for Board review. *See, e.g., Schumert v. U.S. Postal Service*, [41 M.S.P.R. 350](#), 352 (1989).

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 and AFFIRM the initial decision issued by the administrative judge, which is now the Board's final decision. 5 C.F.R. § 1201.113(b).

**NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS**

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.