

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

KAMINI P. HAWN,  
Appellant,

DOCKET NUMBER  
SF-1221-10-0374-B-2

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: September 13, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL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

Kenneth J. Kroopf, Esquire, Monterey, California, for the appellant.

Curtis L. Heidtke, Monterey, California, 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 that was not available for consideration earlier or when the administrative judge

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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 a March 31, 2011 Order, the Board found that the appellant had made a nonfrivolous allegation of fact which, if proven, could justify setting aside the settlement agreement entered into by the parties resolving the appellant's appeal before the Board. MSPB Docket No. SF-1221-10-0374-W-2, Final Order at 2 (Mar. 31, 2011). Accordingly, the Board remanded this matter to the administrative judge for further adjudication. *Id.*

On remand, the administrative judge first found that the appellant met her burden of showing that the settlement agreement should be set aside. Remand File, Tab 20, March 2, 2012 Order; *see* Tab 22, Initial Decision (ID) at 16-19. Having determined that the settlement agreement should be set aside, the administrative judge then adjudicated the appeal, and in his remand initial decision found that the appellant established Board jurisdiction over her individual right of action (IRA) appeal but that the agency established by clear and convincing evidence that it would have terminated the appellant at the end of her term appointment in the absence of the appellant's whistleblowing activity. ID at 19-26. Thus, the administrative judge denied the appellant's request for corrective action. ID at 26.

In a March 27, 2012 pleading, which the Board has treated as a petition for review,<sup>2</sup> the appellant notes that, because the settlement agreement was set aside,

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<sup>2</sup> The appellant filed her March 27, 2012 pleading, captioned as a "Supplemental Petition for Review," with the Board's Western Regional Office, which forwarded the submission to the Clerk of the Board. Petition for Review File, Tab 1. The Clerk docketed the pleading as a petition for review and issued an acknowledgment order. *Id.*, Tab 2. Because of the caption placed on the pleading by the appellant and her failure to object to the Clerk of the Board's acknowledgment order, we are treating the appellant's submission as a petition for review of the March 8, 2012 initial decision even though the submission does not raise objections to the content of the initial decision.

the parties have been restored to the status quo ante. Petition for Review File, Tab 1 at 2. The appellant requests “a stay of the personnel action allegedly based on whistleblowing in accordance with [5 C.F.R. § 1209.8\(a\)](#),” and requests that she “be immediately reinstated into a pay status with back pay and back benefits.” *Id.* at 3.

While the appellant is correct that the administrative judge set aside the settlement agreement, after reinstating the appellant’s IRA appeal the administrative judge denied the appellant’s request for corrective action, finding, among other things, that the agency properly terminated the appellant’s appointment upon the expiration of her time-limited appointment. *ID* at 23. Thus, because this matter has been adjudicated and the appellant was denied corrective action, there is no entitlement to a stay or back pay. Accordingly, we deny the appellant’s petition for review.<sup>3</sup>

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

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<sup>3</sup> We note that the appellant also filed a separate petition for review of the initial decision that dismissed, for lack of jurisdiction, her appeal of the agency’s failure to renew her time-limited appointment as a Hindi language instructor. *See* MSPB Docket No. SF-0752-12-0238-I-1. The Board issued a nonprecedential final order on August 1, 2012, denying her petition for review in that appeal.

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.