

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

CARLA A. GLADMAN,
Appellant,

DOCKET NUMBER
SF-3443-11-0647-I-1

v.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
Agency.

DATE: September 18, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Carla A. Gladman, Costa Mesa, California, pro se.

Lana Choi, Esquire, San Francisco, 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant filed an appeal challenging what she characterized as her lack of conversion from a Paralegal Specialist position with STG International, a company that contracted with the federal Office of Medicare Hearings and Appeals (OMHA), to a federal Paralegal Specialist position with OMHA based on her application for the federal position. Initial Appeal File (IAF), Tab 1. The administrative judge dismissed the appeal for lack of jurisdiction. IAF, Tab 11.

The Board's jurisdiction is not plenary; it is limited to those matters over which it has been given jurisdiction by law, rule or regulation. *Maddox v. Merit Systems Protection Board*, [759 F.2d 9](#), 10 (Fed. Cir. 1985). The appellant has the burden to prove Board jurisdiction over her appeal by preponderant evidence. [5 C.F.R. § 1201.56\(a\)\(2\)\(i\)](#). Generally, an applicant for employment may submit an appeal to the Board of any action which is appealable to the Board under any law, rule, or regulation. [5 U.S.C. § 7701\(a\)](#). However, nonselections are not actions directly appealable to the Board. *Polen v. Department of Defense*, [72 M.S.P.R. 1](#), 4 (1996). Thus, an unsuccessful applicant for a federal civil service position has no right to appeal her nonselection under [5 U.S.C. § 7701\(a\)](#). *Tines v. Department of the Air Force*, [56 M.S.P.R. 90](#), 93 (1992). Further, as the administrative judge found and the appellant concedes in her petition for review, she is not a whistleblower or veteran and thus is not alleging jurisdiction under the Whistleblower Protection Act, the Veterans Employment Opportunities Act of 1998, or the Uniformed Services Employment and Reemployment Rights Act of 1994. Thus, the appellant has articulated no basis of Board jurisdiction over her appeal.

The appellant objects to the apparent fact that preference eligible applicants received preference over her in the hiring process for the Paralegal

Specialist position. The appellant's assertion does not constitute an allegation of error by t. An applicant's or employee's status as a preference eligible must be considered within the context of federal employment statutes regarding hiring and retention which make clear that Congress intended to provide preference eligible applicants with special consideration beyond that to which they might otherwise be entitled if the consideration was limited solely to their technical or formal qualifications for a position. *Azdell v. Office of Personnel Management*, [87 M.S.P.R. 133](#), ¶ 28 (2000), *aff'd on reconsideration* [89 M.S.P.R. 88](#) (2001), *rev'd sub nom. Meeker v. Merit Systems Protection Board*, [319 F.3d 1368](#) (Fed. Cir. 2003).

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.