

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

WENDY A. GHANNAM,
Appellant,

DOCKET NUMBER
DC-0841-12-0179-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: September 19, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Wendy A. Ghannam, Chantilly, Virginia, pro se.

Karla W. Yeakle, 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. 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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 contesting the amount of her Federal Employees' Retirement System retirement annuity. Initial Appeal File (IAF), Tab 1. The administrative judge informed the appellant that the Board generally only has jurisdiction over such appeals after the Office of Personnel Management (OPM) has issued a reconsideration decision, he afforded the appellant the opportunity to show that OPM had issued a reconsideration decision, and he cautioned the appellant that her appeal would have to be dismissed if she did not show that OPM had issued a reconsideration decision. IAF, Tab 2 at 2. The appellant's response failed to show that OPM had issued a reconsideration decision. IAF, Tab 3. Accordingly, the administrative judge issued an initial decision dismissing the appeal for lack of jurisdiction. IAF, Tab 8 at 1-2. The administrative judge informed the appellant that she retained the right to file a new appeal of an OPM reconsideration decision regarding her retirement benefits. *Id.* at 2.

The appellant has filed a petition for review regarding the administrative judge's jurisdictional determination and OPM has filed a response in opposition. Petition for Review File, Tabs 1, 4. As the administrative judge correctly informed the appellant, an OPM reconsideration decision is a prerequisite to Board jurisdiction in a retirement appeal. *DeGrant v. Office of Personnel Management*, [107 M.S.P.R. 414](#), ¶ 9 (2007); *McNeese v. Office of Personnel Management*, [61 M.S.P.R. 70](#), 73-74, *aff'd*, 40 F.3d 1250 (Fed. Cir. 1994) (Table). Because the record below and on review fails to show that OPM has issued a reconsideration decision, we see no error in the administrative judge's dismissal of this appeal for lack of jurisdiction. As the administrative judge

informed the appellant, she may file a new appeal after OPM has issued a reconsideration decision.

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.