

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

JOEL R. MUELLER,  
Appellant,

DOCKET NUMBER  
DE-831E-12-0135-I-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: September 21, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

Mary J. Mueller, Erie, Colorado, for the appellant.

Roxann Johnson, 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

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 the initial decision, the administrative judge dismissed the appeal for lack of jurisdiction because the Office of Personnel Management (OPM) had not issued a reconsideration decision regarding the appellant's length of service and separation date. On petition for review, the appellant states that OPM has not responded to his April 12, 2012 reconsideration request and he continues to argue that OPM has the wrong separation date. OPM stated below, and in its response to the appellant's petition for review, that it intends to issue a reconsideration decision on these issues. Under these circumstances, the administrative judge correctly determined that the Board lacks jurisdiction over the appeal. *See, e.g., Ramirez v. Office of Personnel Management*, [114 M.S.P.R. 511](#), ¶ 7 (2010) ("The Board generally lacks jurisdiction to hear an appeal of a retirement matter when OPM has not issued a reconsideration decision on the matter, and, accordingly, will dismiss the appeal."); *McNeese v. Office of Personnel Management*, [61 M.S.P.R. 70](#), 73-74 (1994) ("In general, the Board has jurisdiction over OPM determinations, affecting an appellant's rights or interests under the retirement system only after OPM has issued a final decision, that is, a reconsideration decision."), *aff'd*, 40 F.3d 1250 (Fed. Cir. 1994) (Table). Our disposition does not preclude the appellant from filing a new Board appeal if OPM issues a reconsideration decision that is adverse to his interests.

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](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.