

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

WILLIAM C. HUGENBERG, JR.,
Petitioner,

DOCKET NUMBER
CB-1205-12-0012-U-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: September 26, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

William C. Hugenberg, Jr., Grand Junction, Colorado, pro se.

Robert J. Girouard, Esquire, Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mark A. Robbins, Member

FINAL ORDER

The petitioner requests that the Board review his termination from his one-year term appointment with the U.S. Census Bureau, alleging that the agency violated its internal operating manual. MSPB Docket No. CB-1205-12-0012-U-1,

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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\(c\)](#).

Request File (RF), Tab 1 at 3, 8-10. For the reasons discussed below, we DENY the petitioner's request.

BACKGROUND

In September 2009, the Census Bureau appointed the petitioner to an excepted service, temporary position with a not-to-exceed date of one year (September 25, 2010). *See Hugenberg v. Department of Commerce*, MSPB Docket No. DE-1221-10-0530-W-3 (Initial Decision at 2, Mar. 6, 2012).² The agency terminated him on February 23, 2010, before the expiration of his one-year term. *Id.*; *see also* RF, Tab 1 at 12. The petitioner contends that his termination violated the agency's internal operating manual, D-520, because the agency did not afford him due process as required by the "the multiple and specific 'Recordkeeping' requirements mandated" in the manual.³ *Id.* at 4, 8-11. He contends that his termination was a prohibited personnel practice under [5 U.S.C. § 2302\(b\)\(12\)](#). *Id.* at 3.

The Office of Personnel Management (OPM) responds that the Census Bureau operating manual challenged by the petitioner is not a "rule or regulation issued by the Director of the Office of Personnel Management," and thus is not a

² The petitioner filed a whistleblower appeal based on the same allegations asserted in his regulation review request. The administrative judge denied the appeal, and a petition for review is pending before the full Board. *See Hugenberg v. Department of Commerce*, MSPB Docket No. DE-1221-10-0530-W-3.

³ The petitioner also claims that the Office of Special Counsel (OSC), with which he filed a whistleblower complaint, misconstrued or violated various statutes, and he requests that the Board "direct the OSC to bring" a prohibited personnel practices action. RF, Tab 1 at 6-8. The Board refers matters to OSC for investigation if it determines that "there is reason to believe that a current employee may have committed a prohibited personnel practice." [5 U.S.C. § 1221\(f\)\(3\)](#). We make no such determination here; and in any event, the petitioner filed a complaint with OSC himself. The petitioner also claims that the Census Bureau violated the Privacy Act, [5 U.S.C. § 552a](#). RF, Tab 1 at 10-11. The Board lacks jurisdiction over this claim. *See* 5 U.S.C. § 552a(g)(1).

proper subject for regulation review. RF, Tab 7 at 5. In addition, the agency contends that the petitioner has failed to identify any OPM regulation being challenged. *Id.*

ANALYSIS

The Board has original jurisdiction to review rules and regulations promulgated by OPM. [5 U.S.C. § 1204\(f\)](#). The Board is authorized to declare an OPM rule or regulation invalid on its face if the Board determines that the provision would, if implemented by an agency, on its face, require any employee to violate a prohibited personnel practice as defined by [5 U.S.C. § 2302\(b\)](#). *See also* [5 U.S.C. § 1204\(f\)\(2\)\(A\)](#). Similarly, the Board has authority to determine that an OPM regulation has been invalidly implemented by an agency, if the Board determines that the provision, as implemented, has required any employee to violate a prohibited personnel practice. 5 U.S.C. § 1204(f)(2)(B).

The Board's regulations direct the individual requesting review to provide the following information: the requester's name, address, and signature; a citation identifying the challenged regulation; a statement (along with any relevant documents) describing in detail the reasons why the regulation would require or has required an employee to commit a prohibited personnel practice; specific identification of the prohibited personnel practice at issue; and a description of the action the requester desires the Board to take. [5 C.F.R. § 1203.11\(b\)](#); *see DiJorio v. Office of Personnel Management*, [54 M.S.P.R. 498](#), 500 (1992).

Here, the petitioner has failed to identify any OPM regulation that he contends has required or would require an employee to commit a prohibited personnel practice. As OPM notes, the internal operating manuals of the Census Bureau are not OPM rules or regulations. RF, Tab 7 at 5. The petitioner's speculation that the D-520 manual might have been "issued pursuant to and/or intended to implement 'regulations issued by the OPM,'" RF, Tab 8 at 2, does not

satisfy the requirement that he specifically identify the OPM regulation he challenges. Even if he had identified such a regulation, he has not explained how its application has required or would require any employee to commit a prohibited personnel practice. Therefore, the petitioner has not articulated a regulation review claim that is within the Board's jurisdiction under [5 U.S.C. § 1204](#)(f). *DiJorio*, 54 M.S.P.R. at 500.

Accordingly, we DENY the petitioner's request for regulation review. This is the final decision of the Merit Systems Protection Board in this proceeding. Title 5 of the Code of Federal Regulations, section 1203.12(b) ([5 C.F.R. § 1203.12](#)(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.