

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

ROBERT LEE MINOR, JR.,
Appellant,

DOCKET NUMBER
DC-0752-12-0168-I-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: September 28, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Robert Lee Minor, Jr., Hampton, Virginia, pro se.

Anthony A. Cochet, Esquire, Fort Eustis, Virginia, 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant has filed a petition for review of the initial decision that dismissed his appeal as a result of his failure to assert nonfrivolous allegations of fact that, if proven, could establish the Board's jurisdiction over this appeal. The appellant asserts that the agency failed to reply to his requests for discovery and that the agency did not timely respond to the administrative judge's orders below, thereby depriving him of the ability to show the Board that the agency had committed prohibited personnel practices and discriminated against him. Petition for Review File, Tab 1 at 3-7. However, the appellant's assertions fail to show the administrative judge erred in finding that he had not asserted nonfrivolous allegations of fact that, if proven, could establish the Board's jurisdiction over his appeal, nor has he asserted such facts on review. Thus, the appellant's assertions are not relevant to the jurisdictional issue on review. *See Saunders v. Department of Justice*, [95 M.S.P.R. 38](#), ¶ 10 (2003); *Kennedy v. National Aeronautics and Space Administration*, [84 M.S.P.R. 103](#), ¶ 3 n.1 (1999).

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.