

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

ANTHONY TYRONE WILLIAMS,
Appellant,

DOCKET NUMBER
CH-0432-11-0351-I-1

v.

DEPARTMENT OF DEFENSE,
Agency.

DATE: November 13, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

John E. Breen, Esquire, Columbus, Ohio, for the appellant.

Patrick J. Mehan, Esquire, Columbus, Ohio, 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

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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 a March 5, 2012 initial decision, the administrative judge affirmed the agency's performance-based removal action and found that the appellant failed to establish his affirmative defenses of race discrimination and a failure to accommodate his disabilities. Initial Appeal File (IAF), Tab 22, Initial Decision. In a brief petition for review, the appellant makes seven conclusory allegations of error: (1) the initial decision is not based on substantial evidence and does not give appropriate credence to the appellant's testimony; (2) the appellant was denied witnesses; (3) the appellant received unequal treatment because of his race and was unable to fully develop the record; (4) the appellant should have been afforded a different job or been allowed to work until his retirement benefits fully vested; (5) the agency did not accommodate the appellant for the heart attack he suffered; (6) the appellant was forced to perform two jobs because of a consolidation and was not offered the opportunity to retain his original job responsibilities; and (7) the initial decision is not in accordance with law. Petition for Review (PFR) File, Tab 1. The appellant provides no explanation or argument to support his conclusory claims. *Id.*

The Board's regulations provide that a "petition for review must state objections to the initial decision that are supported by references to applicable laws or regulations and by specific references to the record." [5 C.F.R. § 1201.115](#). A petition for review that fails to explain how or why the administrative judge erred does not meet this criteria for review. *Mulroy v. Office of Personnel Management*, [92 M.S.P.R. 404](#), ¶ 11 (2002). Here, the appellant's petition for review contains conclusory claims of error but does not explain the basis for the claims. For example, while the appellant asserts that the initial decision fails to give "appropriate credence to the testimony of appellant," he does not identify what specific portion of the appellant's testimony was not

properly considered or what erroneous factual findings the administrative judge made as a result of her failure to properly credit the appellant's testimony. *See Tines v. Department of the Air Force*, [56 M.S.P.R. 90](#), 92 (1992) (a petition for review must contain sufficient specificity to enable the Board to ascertain whether there is a serious evidentiary challenge justifying a complete review of the record). Similarly, while the appellant claims that the initial decision was not in accordance with law, he does not identify what statute was not followed.² *See Griffin v. Department of Agriculture*, [2 M.S.P.R. 168](#), 170 n.1 (1980) (declining to review an issue raised on petition for review where the appellant did not identify an erroneous interpretation of a statute or regulation).

In any event, based on our review of the initial decision, we find that the administrative judge thoroughly addressed the issues raised in this appeal, and we discern no reason to disturb those well-reasoned findings. *See Crosby v. U.S. Postal Service*, [74 M.S.P.R. 98](#), 106 (1997) (stating there is no reason to disturb the initial decision where the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions); *Broughton v. Department of Health & Human Services*, [33 M.S.P.R. 357](#), 359 (1987).

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. The initial decision of the administrative judge is final.

² Regarding the appellant's claim that he was denied the opportunity to call witnesses, he did not object to the administrative judge's rulings below concerning witnesses. The Board has held that an appellant's failure to timely object to rulings on witnesses precludes his doing so on petition for review. *Tarpley v. U.S. Postal Service*, [37 M.S.P.R. 579](#), 581 (1988).

**NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS**

This is the Board's final decision in this matter. [5 C.F.R. § 1201.113](#). You have the right to request further review of this final decision.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review this final decision on your discrimination claims. *See* Title 5 of the United States Code, section 7702(b)(1) ([5 U.S.C. § 7702\(b\)\(1\)](#)). If you submit your request by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit your request via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, NE
Suite 5SW12G
Washington, D.C. 20507

You should send your request to EEOC no later than 30 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 EEOC no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time.

Discrimination and Other Claims: Judicial Action

If you do not request EEOC to review this final decision on your discrimination claims, you may file a civil action against the agency on both your discrimination claims and your other claims in an appropriate United States

district court. See [5 U.S.C. § 7703\(b\)\(2\)](#). You must file your civil action with the district court no later than 30 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 district court no later than 30 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. See [42 U.S.C. § 2000e-5\(f\)](#) and [29 U.S.C. § 794a](#).

Other Claims: Judicial Review

If you do not want to request review of this final decision concerning your discrimination claims, but you do want to request review of the Board's decision without regard to your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review this final decision on the other issues in your appeal. 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.