

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

MANUEL LAZARO,
Appellant,

DOCKET NUMBER
AT-3330-10-1005-M-1

v.

DEPARTMENT OF VETERANS
AFFAIRS,
Agency.

DATE: November 15, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Manuel Lazaro, Homestead, Florida, pro se.

Karen L. Mulcahy, Esquire, Bay Pines, Florida, for the agency.

BEFORE

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

FINAL ORDER

This case is before the Board following the United States Court of Appeals for the Federal Circuit's remand in *Lazaro v. Department of Veterans Affairs*, [666 F.3d 1316](#) (Fed. Cir. 2012). The court instructed the Board to

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

determine whether the agency properly considered the appellant's veterans' preference rights under the Veterans Employment Opportunities Act of 1998 (VEOA) when the agency failed to select the preference-eligible appellant for a GS-2210-11 Information Technology (IT) Specialist position in its Miami, Florida office. *Id.* at 1320-21. In order to make that determination, the Board was instructed to examine whether the Department of Veterans Affairs properly considered all of the appellant's experience under [5 C.F.R. § 302.302\(d\)](#), which provides that:

When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the military service of the United States if the position for which he/she is applying is similar to the position which he/she held immediately before his/her entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

[5 C.F.R. § 302.302\(d\)](#).

On remand from the court, the Clerk of the Board afforded the parties an opportunity to submit additional argument and evidence regarding whether the agency properly determined that the appellant was not qualified for the GS-11 IT Specialist position and, specifically, whether he possessed the 1 year of specialized IT experience equivalent to at least the GS-9 level. Court Remand File (CRF), Tab 3. The parties have responded to the notice issued by the Clerk of the Board, and we have considered those responses. CRF, Tabs 4-5.

The Office of Personnel Management's "Individual Qualification Standard for Information Technology (IT) Management Series, 2210 (Alternative A)," provides the following information regarding the specialized experience required for IT positions in grades GS-7 and above:

Specialized Experience for GS-7 (or equivalent) and Above: Positions at GS-7 (or equivalent) and above require one year of specialized experience at the next lower GS-grade (or equivalent). Specialized experience is experience that has equipped the applicant

with the particular competencies/knowledge, skills, and abilities to successfully perform the duties of the position and is typically in or related to the work of the position to be filled. Such experience is typically gained in the IT field or through performance of work where the primary concern is IT. The employing agency is responsible for defining the specialized experience based on the requirements of the position being filled.

Initial Appeal File (IAF), Tab 5, Subtab 2g at 3. The agency's vacancy announcement listed the following specialized experience requirement for the GS-2210-11 position:

A. Specialized Experience: One (1) year specialized experience equivalent to at least the GS-9 level in Federal Service is required. Specialized experience is experience that demonstrates accomplishment of computer project assignments that required a range of knowledge of computer requirements and techniques. For example, *Knowledge of the customary approaches, techniques, and requirements appropriate to an assigned computer applications area or computer specialty area in an organization; *Planning the sequence of actions necessary to accomplish the assignment where this entailed coordination with others outside the organizational unit and development of project controls; and *Adaptation of guidelines or precedents to the needs of the assignment.

IAF, Tab 5, Subtab 2f at 3. The vacancy announcement instructed applicants to address in writing the specified knowledge, skills, and abilities (KSAs) the applicant would need to possess to be able to successfully perform the duties of the position. *Id.* at 3, 6-7.

The agency submitted evidence and argument showing that, when it initially considered the appellant's application, it credited and considered all of the valuable experience reflected in the appellant's application for the position, yet determined that the information he submitted did not satisfy the 1-year-of-specialized-experience requirement through education or experience. IAF, Tab 5, Subtabs 2c, 2e-2g; Tab 11 at 7-8; CRF, Tab 5, Exhibits (Exs.) 1-2. In particular, the agency provided a declaration from the Human Resources Specialist who reviewed the appellant's application. The Human Resources Specialist provided a detailed and persuasive explanation as to why he found the

appellant not qualified for the position. CRF, Tab 5, Ex. 2. Based on all of the evidence in the record, we find that the agency properly afforded the appellant the right to compete for the IT Specialist position and properly determined, in accordance with [5 C.F.R. § 302.302\(d\)](#), that he was not qualified for the position. *See Lazaro*, 666 F.3d at 1319, 1321 (VEOA does not enable veterans to be considered for positions for which they are not qualified); *Ramsey v. Office of Personnel Management*, [87 M.S.P.R. 98](#), ¶ 9 (2000) (VEOA does not exempt veterans from meeting the minimum qualification standards for a position).

Regarding any asserted prior experience that the appellant raised for the first time on appeal, *see* IAF, Tab 9 at 2-4, we find that this experience is irrelevant because the appellant did not include it in his application for the position, *see* IAF, Tab 5, Subtab 2e; Tab 6, Subtabs 14-15. In any event, the court has directed us to determine “whether the VA properly afforded Mr. Lazaro the right to compete for the IT specialist job and properly determined, in accordance with [5 C.F.R. § 302.302\(d\)](#), that Mr. Lazaro was not qualified for the position.” *Lazaro*, 666 F.3d at 1321. The appellant’s apparent suggestion that the Board should consider experience raised for the first time on appeal goes beyond the scope of the court’s remand instructions in this case.

Accordingly, we find on the merits that the appellant is not entitled to remedial action under VEOA. Therefore, we DENY the petition for review.

**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 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.