UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DELILAH A. STEVENSON, Appellant,	DOCKET NUMBER DA-0845-12-0104-I-1
v.	
OFFICE OF PERSONNEL MANAGEMENT, Agency.	DATE: November 20, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL[1]

Delilah A. Stevenson, Corpus Christi, Texas, pro se.

Roberta Austin Thomas, 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, which dismissed her appeal as untimely filed without a showing of good cause.

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[1] A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

Generally, we grant petitions such as this one only when: the initial decision contains erroneous findings of material fact; the initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case; the judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case; or new and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. *See* Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115).[2] After fully considering the filings in this appeal, and based on the following points and authorities, we conclude that the petitioner has not established any basis under section 1201.115 for granting the petition for review. Therefore, we DENY the petition for review. Except as expressly modified by this Final Order, we AFFIRM the initial decision issued by the administrative judge.

In her petition for review, the appellant challenges the initial decision dismissing her appeal as untimely. The appellant argues that her November 28, 2011 appeal of the agency's August 10, 2011 reconsideration decision was timely because she did not receive the reconsideration decision until October 28, 2011. Petition for Review (PFR) File, Tab 1 at 4-5. She asserts that the reconsideration decision that she received "was hand marked in the upper right corner with the following information: Resent 9/22/11, Resent 10/6/11." *Id.* at 5. In her petition

[2] Except as otherwise noted in this decision, we have applied the Board's regulations that became effective November 13, 2012. We note, however, that the petition for review in this case was filed before that date. Even if we considered the petition under the previous version of the Board's regulations, the outcome would be the same.

for review supplement, she asserts that she wrote "Rec'd 28/Oct/11" on the reconsideration letter.[3] PFR File, Tab 2 at 3-4.

The administrative judge sent the appellant a December 6, 2011 Acknowledgment Order in which he informed the appellant that her appeal appeared to be untimely and notified her that she had the burden of proving by preponderant evidence that it was timely or that good cause existed for its untimeliness. Initial Appeal File (IAF), Tab 2 at 1-2. The Certificate of Service for the Order reflects that the regional office sent the Order to the address the appellant listed in her appeal. *Id.*, Certificate of Service; IAF, Tab 1 at 1. The appellant did not respond to the Order. The administrative judge then sent the appellant a January 6, 2012 Order on Timeliness in which he set forth in detail the appellant's burden of proving that her appeal was timely or that good cause existed for the untimeliness. He specifically told the appellant what she must submit to meet this burden. IAF, Tab 5 at 1-4. Again, the Certificate of Service for the Order reflects that the regional office sent the Order to the address the appellant listed in her appeal. *Id.*, Certificate of Service; IAF, Tab 1 at 1. Again, the appellant did not respond to the Order.

Given these circumstances, the appellant has failed to show that the Board should consider her argument on review. The administrative judge issued two orders -- one specifically directing the appellant to prove that her appeal was timely or that good cause existed for the untimeliness -- and the appellant did not respond. The appellant has not asserted that she did not receive the Orders and has not explained why she did not respond to them. Our reviewing court has found that an appellant who ignores an order of the administrative judge does so

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[3] The initial decision incorrectly identified the deadline for filing the appeal as "September 14, 2010," instead of September 14, 2011, and the date of filing as "November 28, 2010," instead of November 28, 2011. Initial Appeal File (IAF), Tab 6 at 2. The error, however, did not prejudice the appellant's substantive rights. Thus, it provides no basis for reversing the initial decision. *See Panter v. Department of the Air Force*, 22 M.S.P.R. 281, 282 (1984).

at his peril and that all litigants before the Board are obligated to respect the Board, its procedures, and the orders of the Board's judges. *See Mendoza v. Merit Systems Protection Board*, 966 F.2d 650, 653 (Fed. Cir. 1992) (en banc); *see also Cheguina v. Merit Systems Protection Board*, 69 F.3d. 1143, 1146 (Fed. Cir. (1995). Similarly, the Board has found that it will not consider such timeliness arguments on review when the administrative judges have issued orders to show cause for the apparent untimeliness of the appeals and the appellants have inexplicably failed to respond to the orders. *See, e.g., Brown v. U.S. Postal Service*, 52 M.S.P.R. 118, 121-22 (1992); *Sledge v. Department of Justice*, 44 M.S.P.R. 455, 459, *aff'd*, 923 F.2d 870 (Fed. Cir. 1990) (Table).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

The initial decision, as supplemented by this Final Order, constitutes 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:

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William D. Spencer
Clerk of the Board

Washington, D.C.