

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

AYSE T. BRAVO,  
Appellant,

DOCKET NUMBER  
DA-0353-11-0687-I-1

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DATE: November 21, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL<sup>1</sup>**

Ayse T. Bravo, Willow Park, Texas, pro se.

Yvette K. Bradley, Esquire, Dallas, Texas, 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 for lack of jurisdiction. Generally, we grant petitions such as this one only when: the initial decision contains erroneous findings of material

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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](#)).<sup>2</sup> 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 and AFFIRM the initial decision issued by the administrative judge, which is now the Board's final decision. [5 C.F.R. § 1201.113\(b\)](#).

The appellant argues that the administrative judge erred by dismissing her appeal for lack of jurisdiction because the settlement agreement resolving her restoration claim only concerned the agency's failure to do a proper search to employ her whereas this appeal concerns an improper restoration. She further argues that the settlement agreement did not resolve her claims that the agency retaliated against her for protected equal employment opportunity (EEO) activity. We find the appellant's arguments unavailing.

With respect to her argument that this appeal concerns an improper restoration, we agree with the administrative judge's finding that the appellant's arguments concerning the position to which she was restored were resolved by the settlement agreement. Initial Appeal File, Tab 6 at 13-25. The settlement agreement clearly precludes her from arguing that her May 21, 2011 restoration

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<sup>2</sup> 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.

was improper, including her claims that the agency violated the collective bargaining agreement. *Id.* at 18-19; *see Coker v. Department of Commerce*, [111 M.S.P.R. 523](#), ¶¶ 7-9 (appellant may not collaterally attack the settlement agreement by filing a new appeal), *aff'd*, 355 F. App'x 421 (Fed. Cir. 2009). To the extent that she is arguing that the agency violated the terms of the settlement agreement, such a claim would be properly raised in a petition for enforcement of the settlement agreement. *See Rivera v. U.S. Postal Service*, [107 M.S.P.R. 542](#), ¶ 10 (2007). Finally, to the extent that the appellant believes that the Board should set aside the settlement agreement as invalid because she was misinformed or coerced into signing the settlement agreement, such an argument would be properly raised in a petition for review of the initial decision that dismissed her restoration appeal as settled. *See Wofford v. Department of Justice*, [115 M.S.P.R. 468](#), ¶¶ 6-7 (2010); *Williams v. Department of Health & Human Services*, [112 M.S.P.R. 628](#), ¶¶ 10-11 (2009); *Virgil v. U.S. Postal Service*, [75 M.S.P.R. 109](#), 112 (1997).

With respect to the appellant's retaliation claims, her complaints of retaliation based on protected EEO activity concerned the agency's actions prior to her restoration in May 2011, and such complaints were explicitly waived by the settlement agreement. Further, to the extent that the appellant is raising new claims of retaliation, the Board does not have jurisdiction over claims of retaliation based on EEO activity in the absence of an appealable action to the Board. *See Hicks v. U.S. Postal Service*, [114 M.S.P.R. 232](#), ¶ 13 (2010).

#### **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](http://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.