

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

ANGELA E. MARSHALL,
Appellant,

DOCKET NUMBER
DA-0752-10-0617-C-1

v.

DEPARTMENT OF VETERANS
AFFAIRS,
Agency.

DATE: November 26, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Angela E. Marshall, Little Rock, Arkansas, pro se.

Gayle B. Sipes, Esquire, North Little Rock, Arkansas, 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 compliance decision issued by the administrative judge. Generally, we grant petitions such as this one only when: the initial decision

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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

DISCUSSION OF ARGUMENTS ON REVIEW

In her petition for review, the appellant reiterates her argument that the agency did not provide her with the correct amount of back pay. Petition for Review File, MSPB Docket No. DA-0752-10-0617-C-1 (PFR File C-1), Tab 1 at 3. For the following reasons, the appellant has failed to provide a basis to disturb the administrative judge's compliance decision denying her petition for enforcement.

The administrative judge properly advised the agency of its burden of proving that it had complied with the Board's order and correctly informed the appellant that she could rebut the agency's evidence of compliance by making

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.

specific, nonconclusory, and supported allegations to the contrary. Compliance Appeal File (CAF), Tab 8 at 2; CAF, Tab 9, Compliance Decision (CD) at 2; *see Alford v. Department of Defense*, [113 M.S.P.R. 629](#), ¶ 6 (2010). We agree with the administrative judge's finding that the agency met its burden of proof by submitting documentary evidence indicating that it had complied with the Board's order and paid the appellant the appropriate amount of back pay. CD at 2-3; *Marshall v. Department of Veterans Affairs*, MSPB Docket No. DA-0752-10-0617-I-1, Initial Decision (Mar. 2, 2011). Specifically, the agency submitted a copy of the appellant's bank statement showing that the agency had deposited \$5,473.19 in back pay into the appellant's account and documents containing back pay calculations. CAF, Tab 6 at 40-47.

The appellant, however, failed to file any responses below to rebut the agency's showing of compliance. Moreover, in a summary of conference call, the administrative judge advised the appellant that she had failed to explain why she disagreed with the amount of back pay the agency had provided her. CAF, Tab 8 at 1-2. The administrative judge stated that, accordingly, she planned on dismissing the appellant's petition for enforcement. *Id.* at 2. Although the administrative judge provided the parties with the opportunity to object to her summary, *id.*, the appellant did not respond.

Furthermore, the appellant has failed to clarify on review why she believes the agency did not provide her with the correct amount of back pay. PFR File C-1, Tab 1. Because the appellant has failed to make specific, nonconclusory, and supported allegations in support of her claim of noncompliance, she fails to provide a basis to disturb the administrative judge's compliance decision. *See Alford*, [113 M.S.P.R. 629](#), ¶ 10.

**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.