

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

TINA C. JONES,  
Appellant,

DOCKET NUMBER  
AT-315H-12-0147-I-1

v.

DEPARTMENT OF THE TREASURY,  
Agency.

DATE: November 26, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL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

Tina C. Jones, Rockville, Maryland, pro se.

Ashlyann L. Harrison, Atlanta, Georgia, 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 of the 2004 termination of her probationary appointment under the doctrine of collateral estoppel. Generally, we grant petitions such as

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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](#)).<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\(b\)](#).

### **DISCUSSION OF ARGUMENTS ON REVIEW**

As discussed in the initial decision, whether the appellant had completed her probationary period and was therefore an "employee" within the meaning of [5 U.S.C. § 7511](#) with adverse action appeal rights under [5 U.S.C. §§ 7512-13](#) was fully litigated in a previous Board appeal, which resolved the issue in the negative and dismissed the appeal for lack of jurisdiction. *Jones v. Department of the Treasury*, [99 M.S.P.R. 479](#), ¶¶ 9-11 (2005). This is the same issue that the appellant seeks to litigate in the present appeal. Under the doctrine of collateral estoppel (issue preclusion), an appellant is precluded from relitigating an issue that was actually litigated in a prior appeal and was necessary to the resulting

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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.

judgment. *Peartree v. U.S. Postal Service*, [66 M.S.P.R. 332](#), 337 (1995). A dismissal for lack of jurisdiction generally precludes a second action in the same forum that involves the same jurisdictional issues as the first action. *Coats v. U.S. Postal Service*, [111 M.S.P.R. 268](#), ¶ 8 (2009). Accordingly, the initial decision correctly dismissed the present appeal on that basis.

Nonetheless, the appellant continues to contend that the Board should review her claims that she was denied due process when the agency terminated her. *See* Petition for Review, Tab 1 at 2-3. However, as the administrative judge correctly noted, the regulatory provision establishing a right to notice and opportunity to respond extends only to probationary employees terminated for pre-appointment reasons. Initial Appeal File, Tab 11, Initial Decision at 4; *see* [5 C.F.R. 315.805](#). This provision is therefore inapplicable to the appellant who was terminated solely for post-appointment reasons. Initial Decision at 4.

#### **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.