

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

KEVIN J. HAWKINS,
Appellant,

DOCKET NUMBERS
DC-3443-12-0048-I-1
DC-1221-12-0049-W-1

v.

DEPARTMENT OF LABOR,
Agency.

DATE: December 21, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Mortimer Coward, Esquire, Olney, Maryland, for the appellant.

Benjamin D. Chaykin, Esquire, Arlington, Virginia, for the agency.

BEFORE

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

FINAL ORDER

The appellant has filed petitions for review in these cases asking us to reconsider the initial decisions issued by the administrative judge. Generally, we grant petitions such as these only when: the initial decision contains erroneous findings of material fact; the initial decision is based on an erroneous

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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 these appeals, and based on the following points and authorities, we JOIN these appeals under [5 C.F.R. § 1201.36\(a\)\(2\)](#) because doing so will expedite processing and not adversely affect the interests of the parties, and conclude that the petitioner has not established any basis under section 1201.115 for granting the petitions for review. Therefore, we DENY the petitions for review. Except as expressly modified by this Final Order, we AFFIRM the initial decisions issued by the administrative judge.

The appellant challenges the initial decisions in these cases, which dismissed his illegal employment practices and individual right of action appeals as withdrawn. He requests that the cases be reopened. The appellant contends that the administrative judge did not assign a settlement judge in accordance with his request and required him to address a jurisdictional and/or discovery matter 1 day before the scheduled hearing, and that the agency did not respond to his discovery request. The appellant claims that the Office of Special Counsel refused to investigate his complaints, the administrative judge did not read all of the documentation provided, and the appellant felt he had no choice but to withdraw his appeal given the alleged bias by the administrative judge. The

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.

appellant submits documentation relating to his claim that the agency created a hostile working environment and his request for reasonable accommodation.

In each of these appeals, the appellant filed a written document below indicating his desire to withdraw the appeals for personal reasons. *See, e.g., Hawkins v. Department of Labor*, MSPB Docket No. DC-3443-12-0048-I-1, Initial Appeal File, Tab 25. During a recorded telephonic conference, the appellant's representative confirmed the appellant's intent to withdraw the appeals. *Id.*, Tab 26. Ordinarily, an appellant's withdrawal of an appeal is an act of finality, and in the absence of unusual circumstances such as misinformation or new and material evidence, the Board will not reinstate an appeal once it has been withdrawn merely because the appellant wishes to proceed before the Board. *See, e.g., Potter v. Department of Veterans Affairs*, [116 M.S.P.R. 256](#), ¶ 7 (2011). Here, the appellant has shown no misinformation, new and material evidence, or any other basis upon which to reinstate or reopen his appeal.

In making a claim of bias against an administrative judge, a party must overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *Smets v. Department of the Navy*, [117 M.S.P.R. 164](#), ¶ 15 (2011). An administrative judge's conduct during the course of a Board proceeding warrants a new adjudication only if the administrative judge's comments or actions evidence a deep-seated favoritism or antagonism that would make fair judgment impossible. *Id.* The appellant's conclusory claims of bias in this case, none of which involve extrajudicial conduct, do not overcome the presumption of honesty and integrity that accompanies the administrative judge. *See Simpkins v. Office of Personnel Management*, [113 M.S.P.R. 411](#), ¶ 5 (2010).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

The initial decisions, as supplemented by this Final Order, constitute the Board's final decisions in these matters. [5 C.F.R. § 1201.113](#). You have the right to request the United States Court of Appeals for the Federal Circuit to

review these final decisions. 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 these decisions 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.