

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

CHRISTOPHER J. DECOCK,<sup>1</sup>  
Appellant,

DOCKET NUMBER  
CH-0752-12-0106-I-1

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: December 31, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL<sup>2</sup>**

Thomas Esparza, Rock Island, Illinois, for the appellant.

Teresa J. Watmore, Esquire, Warren, Michigan, 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. Generally, we

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<sup>1</sup> The initial decision appears to incorrectly identify the appellant's last name as DeCook.

<sup>2</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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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\(c\)](#).

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](#)).<sup>3</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. Except as expressly modified by this Final Order, we AFFIRM the initial decision issued by the administrative judge.

In his petition for review, the appellant challenges the initial decision dismissing, as untimely filed with no showing of good cause for the delay, his November 22, 2011 appeal of the agency's September 14, 2011 removal action for failure to accept a management-directed reassignment. The appellant argues that the agency provided him with misinformation regarding his eligibility for the reemployment priority list (RPL), that he learned about this alleged misinformation after the deadline for filing a Board appeal, and that the agency led him to believe that there "might be some hope" to resolve the issue. The appellant contends that "[h]ad the agency been forthcoming with its discovery then the appellant and his representative would have filed the appeal several days

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<sup>3</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.

late not 47 days,” and asserts that equitable tolling should apply because he was induced by his adversary’s misconduct into allowing the filing deadline to pass.

The administrative judge thoroughly addressed these issues in the initial decision, and we discern no reason to disturb those findings. *See Crosby v. U.S. Postal Service*, [74 M.S.P.R. 98](#), 106 (1997) (stating that there is no reason to disturb the initial decision when the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions); *Broughton v. Department of Health & Human Services*, [33 M.S.P.R. 357](#), 359 (1987) (same). The administrative judge correctly found, among other things, that the filing delay was not minimal, the appellant did not allege misinformation regarding the time limit for filing a Board appeal, and the appellant’s allegations regarding misinformation involving the RPL addressed the merits of the directed reassignment and did not establish good cause for the filing delay.

We note that good cause for an untimely filing may exist when, despite timely notification of Board appeal rights, an agency misrepresents the facts on which an employee might base an appeal. *See Shubinsky v. United States*, [488 F.2d 1003](#), 1006 (1973); *Kissel v. U.S. Postal Service*, [42 M.S.P.R. 154](#), 158 (1989); *Cohen v. Department of Labor*, [20 M.S.P.R. 232](#), 233-34 (1984). Here, however, the appellant has not alleged that the agency misrepresented facts on which he would have based an appeal of his removal for failing to accept a directed reassignment. Although the appellant asserts that the agency provided incorrect or incomplete information regarding RPL rights, he has not shown how alleged misinformation regarding such rights, which relate to employees who have been separated by reduction in force or who have received a certification of expected separation by reduction in force, *see Sturdy v. Department of the Army*, [88 M.S.P.R. 502](#), ¶¶ 12-19 (2001), caused him to delay his appeal of his removal for failure to accept a directed reassignment.

**NOTICE TO THE APPELLANT REGARDING  
YOUR FURTHER REVIEW RIGHTS**

The initial decision, as supplemented by this Final Order, constitute 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 the date of this order. 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 about the United States Court of Appeals for the Federal Circuit 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.