

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

THOMAS M. ROYSTON,
Appellant,

DOCKET NUMBER
DC-315H-11-0613-R-1

v.

DEPARTMENT OF DEFENSE,
Agency.

DATE: January 9, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Thomas M. Royston, Winchester, Virginia, pro se.

Maribeth Spellman, Esquire, Washington, D.C., for the agency.

BEFORE

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

FINAL ORDER

The parties reached a fully executed settlement agreement following issuance of the Board's January 26, 2012 final decision in this matter.

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

Reopening Appeal File (RAF), Tab 1.² The parties have now filed a joint stipulation requesting that the Board exercise its reopening authority and dismiss the petition for review as settled. *See* RAF, Tabs 2-3. For the reasons set forth below, we REOPEN the appeal under [5 C.F.R. § 1201.118](#), and DISMISS the petition for review as settled.³

After issuance of the Board's final decision in the referenced matter, the parties submitted a document entitled "NEGOTIATED SETTLEMENT AGREEMENT" signed and dated by the appellant on July 13, 2012, and by the agency on July 16, 2012. RAF, Tab 1. The document provides, among other things, for the dismissal of the appeal filed with the United States Court of Appeals for the Federal Circuit seeking review of the Board's final decision. *Id.*, para. 5(a).

Before dismissing a matter as settled, the Board must decide whether the parties have entered into a settlement agreement, understand its terms, and intend to have the agreement entered into the record for enforcement by the Board. *See Mahoney v. U.S. Postal Service*, [37 M.S.P.R. 146](#), 149 (1988). We find here that the parties have, in fact, entered into a settlement agreement, that they understand the terms, and that they agree that the agreement will not be entered into the record for enforcement by the Board. *See* RAF, Tab 1, para. 8.

² The appellant filed a petition for review of the Board's final decision before the U.S. Court of Appeals for the Federal Circuit, and the court later issued a mandate dismissing the petition for review based on the settlement agreement referenced herein. Litigation Appeal File, Tabs 4, 8.

³ 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 and the parties' request to dismiss the petition for review as settled were filed before that date. Even if we considered the parties' request under the previous version of the Board's regulations, the outcome would be the same.

Accordingly, we reopen the appeal in this matter and find that dismissal of the petition for review “with prejudice to refiling” (i.e., the parties normally may not refile this appeal) is appropriate under these circumstances.

This is the final order of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulation, section 1201.113 ([5 C.F.R. § 1201.113](#)).

**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 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. *See* 5 U.S.C. § 7703(b)(1)(B), as revised effective December 27, 2012, Pub. L. No. 112-199, § 108, [126 Stat. 1465](#), 1469. Additional information about the United States Court of Appeals for the Federal Circuit 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.