

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

GEORGINA ROHENA,  
Appellant,

DOCKET NUMBER  
NY-0752-12-0122-I-1

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DATE: January 23, 2013

**THIS FINAL ORDER IS NONPRECEDENTIAL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

Ricardo Rivera, San Juan, Puerto Rico, for the appellant.

Anne M. Gallaudet, Esquire, New York, New York, 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 the appeal for lack of jurisdiction. Generally, we grant petitions such as this one only when: the initial decision contains erroneous findings of material

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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](#)). 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.<sup>2</sup> Except as expressly modified by this Final Order, we AFFIRM the initial decision issued by the administrative judge.

In the petition for review, the appellant, a former Lead Sales and Services Associate, challenges the initial decision dismissing for lack of jurisdiction her appeal of her removal. The appellant argues that the Board has jurisdiction over her appeal because she was serving in a supervisory position and had over 1 year of current, continuous service in that position. She has submitted three exhibits: bargaining unit qualifications standards concerning Level 5 Sales and Services Associate and Level 6 Lead Sales and Services Associate; a March 6, 2012 Arbitration Decision denying her grievance; and the Standard Form 50 documenting her March 6, 2012 removal. Petition for Review File, Tab 1.

The appellant has not met the standard for Board review of her petition for review. She has not shown that the information contained in her exhibits was unavailable, despite her due diligence, before the record closed below. *See*

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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.

[5 C.F.R. § 1201.115](#)(d). In that regard, she has not explained why she did not present the exhibits below. See [5 C.F.R. § 1201.114](#)(b). Thus, the Board does not need to consider the appellant's exhibits, or the arguments based upon them, on review. See *Banks v. Department of the Air Force*, [4 M.S.P.R. 268](#), 271 (1980).

In any event, the appellant has not shown that her exhibits or arguments warrant a different outcome in this appeal. Specifically, although the appellant has presented exhibits showing that she was a Lead Sales and Services Associate, she has not explained how the exhibits show that her position was supervisory. Likewise, our own review of the exhibits does not reveal that the position was supervisory. Thus, the appellant has failed to show that the administrative judge erred in dismissing her appeal for lack of jurisdiction. See, e.g., *Anderson v. U.S. Postal Service*, [109 M.S.P.R. 558](#), ¶ 6 (2008).

#### **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. See [5 U.S.C. § 7703](#)(b)(1)(A) (as rev. eff. Dec. 27, 2012). 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](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the United States Code, at our website, <http://www.mspb.gov/appeals/uscode/htm>. 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.