

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

MICHELLE L. RAMSEY-MOODY,  
Appellant,

DOCKET NUMBER  
CH-0330-12-0204-I-1

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: February 4, 2013

**THIS FINAL ORDER IS NONPRECEDENTIAL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

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

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The agency separated the appellant from her position as a GS-2010-11 Inventory Management Specialist effective September 14, 2011, pursuant to a reduction in force. Initial Appeal File (IAF), Tab 4, Subtab 4b. The appellant filed an appeal alleging that the agency violated her reemployment rights by not selecting her for a position as a GS-1102-07 Contract Specialist. *Id.*, Tab 1. She challenges the initial decision dismissing her appeal for lack of jurisdiction. The appellant argues, among other things, that the agency was required to consider her for vacancies in the GS-1102 job series that it filled after her September 14, 2011 registration on the Reemployment Priority List (RPL) for that job series, even though it cleared that RPL effective August 9, 2011, within 3 days of when the certificate of eligibles for the vacancies was issued. Petition For Review (PFR) File, Tab 1 at 1-2, 4. Specifically, she cites [5 C.F.R. § 330.210\(b\)](#), which

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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.

states that an agency must not effect a permanent or time-limited competitive service appointment of another individual if there is an RPL placement priority candidate registered for the vacancy, unless the action is listed as an exception in [5 C.F.R. § 330.211](#). She asserts that it was undisputed that she was registered on the RPL when the agency was hiring individuals off of a competitive list, and that the agency violated her RPL rights when it made commitments to those individuals after her September 14, 2011 registration. PFR File, Tab 1 at 2-4.

An agency must document that there are no RPL placement priority candidates for the vacancy “when requesting a competitive certificate of eligibles under part 332 of this chapter.” [5 C.F.R. § 330.210\(c\)](#). The agency’s March 2011 RPL Guide provides that the RPL “must be cleared within 3 days of issuing any initial or subsequent referral certificate.” IAF, Tab 4, Subtab 4g, Guide at 11. The agency’s Standard Operation Procedure (SOP) prescribes the responsibilities and procedures for administering the RPL, including the requirements for clearing the automated RPL program. IAF, Tab 4, Subtab 4c at 1. It provides that, at a minimum, “the RPL must be cleared **within 3 days of issuing any initial or subsequent referral certificate.**” *Id.* at 3. The SOP further provides that, if the agency later determines that a position was not properly cleared as required, the RPL will be reconstructed as of the registration dates to determine if registrants would have matched during the reconstruction period. *Id.* at 5.

Thus, the appellant has failed to make a non-frivolous allegation that the agency violated her reemployment rights by employing another person who otherwise could not have been appointed properly. Under the regulations, its RPL Guide, and its SOP, the agency properly cleared the RPL for the series 1102 positions as of August 9, 2011, i.e., within 3 days of the certificate, when the appellant admittedly was not on the RPL for that series. The appellant has not contested the agency’s representation that it has not issued another certificate for the series 1102 positions. IAF, Tab 4, Subtab 1, Encl.; Tab 7 at 1-2. Therefore,

the appellant has failed to show that the administrative judge erred in dismissing her appeal for lack of jurisdiction. [5 C.F.R. § 330.214](#).

**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. 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.