

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

GARY THOMAS FORD,
Appellant,

DOCKET NUMBER
AT-0845-12-0120-C-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: February 5, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Gary Thomas Ford, Jackson, Mississippi, pro se.

Roberta Austin Thomas, Washington, D.C., 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 denied the appellant's petition for enforcement. Generally, we grant petitions such as

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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](#)²). 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 and AFFIRM the initial decision issued by the administrative judge, which is now the Board's final decision. [5 C.F.R. § 1201.113\(b\)](#).

The appellant and the Office of Personnel Management (OPM) entered into a settlement agreement to resolve an annuity overpayment appeal. *Ford v. Office of Personnel Management*, MSPB Docket No. AT-0845-12-0120-I-1 (Initial Appeal File (IAF), Tab 11). In pertinent part, the agreement stated that OPM would accept repayment of the \$300.00 overpayment amount in \$5.00 monthly installments, starting March 1, 2012. *Id.* The administrative judge entered the agreement into the record and dismissed the appeal. IAF, Tab 12.

The appellant filed a petition for enforcement because he received a letter from OPM, which stated its intent to collect from him monthly payments of \$23.85. *Ford v. Office of Personnel Management*, MSPB Docket No. AT-0845-12-0120-C-1, Compliance File (CF), Tab 1. In response, OPM stated that its

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.

earlier letter was sent to the appellant in error, it had already refunded to the appellant \$23.85 that it had erroneously deducted from him, and it would start collecting the proper amount in April 2012. CF, Tab 3. Because the appellant did not dispute OPM's statement, the administrative judge denied the petition for enforcement. CF, Tab 4. The appellant filed a petition for review. Petition for Review (PFR) File, Tab 1. In his May 30, 2012 petition for review, the appellant states that he received "[t]his month" a notice of a change in benefits,³ which he understood to mean that OPM would begin withholding \$10.00 per month. PFR File, Tab 1 at 3. OPM did not file a response to the appellant's petition for review. We construe the appellant's allegation as a claim of agency noncompliance, and we forward this claim to the Atlanta Regional Office for docketing as a petition for enforcement. *See Tat v. U.S. Postal Service*, [111 M.S.P.R. 266](#), ¶ 4 (2009) ("It is well settled that allegations of noncompliance should be heard in the first instance by the administrative judge.") (citations omitted).

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

³ The appellant does not include a copy of the notice with his petition.

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. 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.