

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

OTIS COVINGTON,
Appellant,

DOCKET NUMBER
DC-315H-12-0508-I-1

v.

SMITHSONIAN INSTITUTION,
Agency.

DATE: February 11, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Harvey Ceasar, Jr., Washington, D.C., for the appellant.

Amy Koontz, 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 dismissed his probationary termination appeal for lack of jurisdiction. After fully considering the filings in this appeal, we conclude that the appellant's petition for

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

review was untimely filed with no good cause shown for the late filing. [5 C.F.R. § 1201.114\(e\)](#).²

A petition for review must be filed within 35 days after the issuance date of the initial decision or within 30 days after the appellant's receipt of the decision, whichever is later. *Id.* A petition for review filed late must be accompanied by a motion for the Board to accept the filing as timely or to waive the time limit for good cause. [5 C.F.R. § 1201.114\(g\)](#). The appellant filed a petition for review, accompanied by a blank form motion to accept the late filed petition for review, 52 days after the initial decision was issued. Initial Appeal File, Tab 9, Initial Decision at 6; Petition for Review (PFR) File, Tab 1. The Clerk of the Board requested that the appellant submit a statement or other evidence demonstrating that the petition for review was timely filed or there was good cause for the late filing, PFR File, Tab 2 at 1, but the appellant failed to respond. The Board has denied a waiver of its filing deadline if a good reason for the delay is not shown, even when the delay is brief and the appellant is pro se. *See Harris v. Department of Defense*, [101 M.S.P.R. 123](#), ¶ 10 (2006). Because the appellant did not respond to the Clerk's notice regarding timeliness and has offered no explanation for the delay in filing his petition for review, he has not established good cause for the untimely filing. Therefore, we DISMISS the petition for review as untimely filed with no showing of good cause for the delay.

This is the final decision of the Board concerning the timeliness of the petition for review. The initial decision will remain the final decision of the Board with regard to the Board's jurisdiction over the underlying appeal. [5 C.F.R. § 1201.113 \(c\)](#).

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.

**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. 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:

Washington, D.C.

William D. Spencer
Clerk of the Board