UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SANDRA L. MOCK JUNDT, Appellant, v. DEPARTMENT OF VETERANS AFFAIRS, Agency.	DOCKET NUMBER DA-1221-10-0482-W-3 DATE: February 12, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL[1]

Sandra L. Mock Jundt, Tucson, Arizona, pro se.

Joan M. Green, Esquire, Oklahoma City, Oklahoma, 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 request for corrective action in her individual right of action

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[1] A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

appeal. For the reasons set forth below, we DISMISS the petition for review as untimely filed without a showing of good cause for the delay. The regulation that establishes the timeliness standard is found in Title 5 of the Code of Federal Regulations, section 1201.114(e) (5 C.F.R. § 1201.114(e)).[2]

A petition for review must be filed within 35 days after the initial decision is issued, or, if the appellant shows that she received the initial decision more than 5 days after it was issued, within 30 days after the date of receipt. *Williams v. Office of Personnel Management*, 109 M.S.P.R. 237, ¶ 7 (2008); 5 C.F.R. § 1201.114(e). The Board will waive the filing deadline for a petition for review only upon a showing of good cause for the filing delay. *Lawson v. Department of Homeland Security*, 102 M.S.P.R. 185, ¶ 5 (2006); 5 C.F.R. §§ 1201.12, 1201.114(g).

On January 26, 2012, the administrative judge issued an initial decision denying the appellant's request for corrective action under the Whistleblower Protection Act. Initial Appeal File, Tab 27, Initial Decision (ID). The certificate of service indicates that the initial decision was served electronically on the appellant the same day. ID at 10. The administrative judge informed the appellant that the deadline for filing a petition for review was March 1, 2012, and that the initial decision would become final unless she filed a petition for review by that date. ID at 7. The appellant e-filed a petition for review on June 20, 2012. Petition for Review (PFR) File, Tab 1. The e-filing system informed the appellant that her petition was filed beyond the deadline.[3] *Id.* at 3. It prompted

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[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.

[3] The e-appeal system gave November 9, 2010, as the finality date for the initial decision. PFR File, Tab 1 at 3. This information was incorrect; that date corresponds to the initial decision in the first iteration of this appeal, *Jundt v. Department of Veterans Affairs*, MSPB Docket No. DA-1221-10-0482-W-1. The e-appeal system gave the wrong finality date because the appellant (apparently by mistake) entered the

her to indicate whether she knew when she received her copy of the initial decision, and the appellant responded that she did not know. *Id*. Because the appellant has not alleged that she received the initial decision more than 5 days after it was issued, we find that the deadline for filing a petition for review was March 1, 2012 – 35 days after the date of issuance. *See Metallo v. Department of Defense*, 110 M.S.P.R. 229, ¶ 7 (2008); 5 C.F.R. § 1201.114(e). We therefore find that the appellant's June 20, 2012 petition for review was untimely by more than 3 months.

The appellant was informed through the Board's e-filing system of how to establish good cause for the filing delay. PFR File, Tab 1 at 3. To establish good cause for an untimely filing, a party must show that she exercised due diligence or ordinary prudence under the particular circumstances of her case. *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980). The discovery of new evidence may establish good cause for the untimely filing of a petition for review if the evidence was not readily available before the close of the record below, and if it is of sufficient weight to warrant an outcome different from that of the initial decision. *Satterfield v. U.S. Postal Service*, 80 M.S.P.R. 132, ¶ 5 (1998). Here, the appellant appears to allege that she filed her petition for review promptly after learning that she was being stalked by the administrative judge or other individuals associated with her. PFR File, Tab 1 at 3, Tab 5 at 3. We take this to mean that the appellant recently discovered facts that call into question the administrative judge's neutrality and that she therefore wishes to have a new adjudication by a different administrative judge. However, there is a strong presumption of honesty and integrity that accompanies administrative adjudicators, *see Madison v. Department of the Air Force*, 32 M.S.P.R. 465, 469

DA-1221-10-0482-**W-1** docket number into the system rather than the **W-3** docket number, which represents the current iteration of this appeal. In any event, considering the facts of this case, we have no reason to suspect that the appellant's rights were prejudiced by any confusion that this matter may have caused.

(1987), and we find that the appellant's improbable allegations, unsupported by any corroborating evidence, are of insufficient weight to overcome that presumption.

We have reviewed the rest of the appellant's arguments on petition for review, but we find that they do not pertain to the timeliness issue and therefore do not establish good cause for an untimely filing.

This is the final decision of the Merit Systems Protection Board regarding the timeliness of the petition for review. The initial decision will remain the final decision of the Board regarding the disposition of the merits of the appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

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.

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 want to request review of the Board's decision concerning your claims of prohibited personnel practices under 5 U.S.C. § 2302(b)(8), (b)(9)(A)(i), (b)(9)(B), (b)(9)(C), or (b)(9)(D), but you do not want to challenge the Board's disposition of any other claims of prohibited personnel practices, you may request the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction to review this final decision. The court of appeals must receive your petition for review within 60 days after the date of this order. *See* 5 U.S.C. § 7703(b)(1)(B) (as rev. eff. Dec. 27, 2012). If you

choose to file, be very careful to file on time. You may choose to request review of the Board's decision in the United States Court of Appeals for the Federal Circuit or any other court of appeals of competent jurisdiction, but not both. Once you choose to seek review in one court of appeals, you may be precluded from seeking review in any other court.

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 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. Additional information about other courts of appeals can be found at their respective websites, which can be accessed through http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

FOR THE BOARD:

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William D. Spencer
Clerk of the Board

Washington, D.C.