

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DEBRA APPLEWHITE-SCALES,
Appellant,

DOCKET NUMBER
DE-3443-10-0071-I-1

v.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Agency.

DATE: June 23, 2010

Debra Applewhite-Scales, Denver, Colorado, pro se.

Kara Silverstein, Esquire, Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, 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. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in 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, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made

no error in law or regulation that affects the outcome. 5 C.F.R. § 1201.115(d). Therefore, we DENY the petition for review.* The initial decision of the administrative judge is final. This is the Board's final decision in this matter. 5 C.F.R. § 1201.113.

**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 your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. 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

* Some of the appellant's arguments on petition for review appear to relate to a prior individual right of action appeal, *Applewhite v. Equal Employment Opportunity Commission*, MSPB Docket No. DE-1221-02-0042-W-3. In an Opinion and Order issued on June 27, 2003, the Board dismissed that appeal for lack of jurisdiction. *Applewhite v. Equal Employment Opportunity Commission*, 94 M.S.P.R. 300 (2003). The Board's decision stated that it was the final order of the Board in that appeal. *Id.*, ¶ 25. It also included notice to the appellant of her further review rights. *Id.* at 311. The Board's regulations do not provide for a request for reconsideration of the Board's final decision. There is, therefore, no further right to review of that appeal by the Board.

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). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. 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.