

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

KAREN BENNETT,
Appellant,

DOCKET NUMBER
DC-0843-24-0504-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: February 17, 2026

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Karen Bennett, Dulles, Virginia, pro se.

Jo Bell and Karen Silveira, Washington, D.C., for the agency.

BEFORE

Henry J. Kerner, Vice Chairman
James J. Woodruff II, Member

FINAL ORDER

The appellant has filed a petition for review of the initial decision, which dismissed her appeal for lack of jurisdiction because the Office of Personnel Management (OPM) had rescinded its final decision denying her application for payment of her stepmother's lump sum death benefit under the Civil Service Retirement System (CSRS). Generally, we grant petitions such as this one only

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

in the following circumstances: 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 administrative 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. 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 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, which is now the Board's final decision. 5 C.F.R. § 1201.113(b).

Generally, the Board has jurisdiction over OPM's determinations affecting an individual's rights or interests under CSRS only after OPM has issued a reconsideration decision. *Miller v. Office of Personnel Management*, 123 M.S.P.R. 68, ¶ 7 (2015). If, during a Board appeal of such a decision, OPM completely rescinds its reconsideration decision with the intent of issuing a new decision, the rescission divests the Board of jurisdiction over the appeal, and the appeal must be dismissed. *Id.* Here, OPM rescinded the reconsideration decision at issue and represented that it will issue a new decision considering evidence that the appellant submitted during this appeal in support of her claim that a Designation of Beneficiary was submitted to OPM. Initial Appeal File (IAF), Tab 11 at 4. There is no indication that OPM will not promptly issue a new final decision on her claim after this appeal is dismissed, and the dismissal of this appeal will not prevent the appellant from adjudicating her claim for benefits. *Cf. McLaughlin v. Office of Personnel Management*, 62 M.S.P.R. 536, 546-47 (1994) (finding Board jurisdiction over a retirement matter when OPM had no intention of issuing a decision on the appellant's retirement application), *aff'd*, 47 F.3d

1181 (Fed. Cir. 1995) (Table). Upon receipt of a new final decision from OPM affecting her rights or interests under CSRS, the appellant may file another appeal with the appropriate regional office consistent with the Board's regulations. 5 U.S.C. § 8347(d)(1); 5 C.F.R. § 831.110.

We have considered the appellant's arguments on review but find that none warrant a different outcome. Petition for Review (PFR) File, Tab 3 at 7-34.² Many of her arguments concern the merits of her claim for the retirement benefits she seeks; however, neither the administrative judge nor the Board have jurisdiction to decide the merits of her claim at this time. The appellant has not shown that the administrative judge abused her discretion by not imposing sanctions against OPM for not responding to her orders. *Id.* at 19-21; *see Smets v. Department of the Navy*, 117 M.S.P.R. 164, ¶ 11 (2011) (stating that the imposition of sanctions is a matter within the administrative judge's sound discretion and, absent a showing that such discretion has been abused, the administrative judge's determination will not be found to constitute reversible error), *aff'd*, 498 F. App'x 1 (Fed. Cir. 2012). To the extent that the appellant claims that she is being denied due process, we disagree. *E.g.*, PFR File, Tab 3 at 11-12, 21-22, 33. If the appellant is not satisfied with OPM's new final decision, she will have the right to file a new appeal with the Board.

² To the extent that the administrative judge erred by issuing the initial decision without affording the appellant 10 days to respond to the agency's motion to dismiss, we find that the appellant's substantive rights have not been prejudiced. IAF, Tabs 11-12; *see* 5 C.F.R. § 1201.55(b); *see also Panter v. Department of the Air Force*, 22 M.S.P.R. 281, 282 (1984) (holding that an adjudicatory error that is not prejudicial to a party's substantive rights provides no basis for reversal of an initial decision). The appellant had the opportunity to file the instant petition for review disputing both the initial decision and the agency's motion to dismiss, and we have fully considered all her arguments and evidence on review.

NOTICE OF APPEAL RIGHTS³

You may obtain review of this final decision. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this final decision, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(A).

³ Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. 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, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (*not* the U.S. Court of Appeals for the Federal Circuit), within **30 calendar days** after you receive this decision. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the district court no later than **30 calendar days** after your representative receives this decision. If the action involves a claim of discrimination based on

race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within **30 calendar days after you receive** this decision. 5 U.S.C. § 7702(b)(1). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the EEOC no later than **30 calendar days after your representative receives** this decision.

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, N.E.
Suite 5SW12G
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or

other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and your judicial petition for review “raises no challenge to the Board’s disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D),” then you may file a petition for judicial review either with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction.⁴ The court of appeals must receive your petition for review within **60 days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

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Washington, D.C. 20439

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⁴ The original statutory provision that provided for judicial review of certain whistleblower claims by any court of appeals of competent jurisdiction expired on December 27, 2017. The All Circuit Review Act, signed into law by the President on July 7, 2018, permanently allows appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any other circuit court of appeals of competent jurisdiction. The All Circuit Review Act is retroactive to November 26, 2017. Pub. L. No. 115-195, 132 Stat. 1510.

Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

FOR THE BOARD:

Washington, D.C.

Gina K. Grippando

Gina K. Grippando
Clerk of the Board