

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DAVID F. FURTADO,
Appellant,

DOCKET NUMBER
SF-0752-11-0541-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: February 2, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

David F. Furtado, Fairfield, California, pro se.

Kris Ashman, Esquire, Long Beach, California, 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

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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](#)).

The appellant has filed a petition for review of the administrative judge's July 25, 2011 initial decision dismissing this appeal as settled. The appellant does not assert that the administrative judge committed any error within his initial decision, nor does he seek to set aside the settlement agreement. Indeed, within his September 5, 2011 submission, the appellant stated that he does not "have a problem with the settlement" and instead expressed concerns about the agency's efforts to comply with the terms of the agreement. Petition for Review File, Tab 4 at 2. Based upon our review of the record, we discern no error within the initial decision and find no basis for setting aside the agreement.

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.² Except as modified by this Final Order, the initial decision of the administrative judge is final.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

This is the Board's final decision in this matter. [5 C.F.R. § 1201.113](#). 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:

² Although the appellant's petition for review must be denied, it appears that the appellant, who was unrepresented, may have intended to pursue a compliance action to enforce the terms of the settlement agreement. Under [5 C.F.R. § 1201.182\(a\)](#), such a compliance action is appropriately resolved by the regional office that issued the initial decision. Thus, we are forwarding the appeal file to the Western Regional Office with instructions to open a compliance matter on the appellant's behalf.

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 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.