

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

CHRISTOPHER A. FINGER,  
Appellant,

DOCKET NUMBER  
AT-3330-11-0522-I-1

v.

DEPARTMENT OF THE INTERIOR,  
Agency.

DATE: April 2, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL<sup>1</sup>**

Christopher A. Finger, Key Largo, Florida, pro se.

Isaiah D. Delemar, Esquire, Atlanta, Georgia, for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Anne M. Wagner, Vice Chairman

**FINAL ORDER**

The appellant has filed a petition for review of the July 5, 2011 initial decision that denied his request for corrective action under the Veterans Employment Opportunities Act of 1998 (VEOA). For the reasons set forth below,

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 A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

we DISMISS the petition as untimely filed without a showing of good cause for the delay.

The appellant filed an appeal seeking corrective action under VEOA, alleging that the agency violated his veterans' preference rights when it did not select him for the position of Maintenance Mechanic Leader with the agency's National Park Service, Everglades National Park. Initial Appeal File (IAF), Tabs 1, 4. In an initial decision dated July 5, 2011, the administrative judge found that the appellant had failed to show that the agency violated his veterans' preference rights. IAF, Tab 20, Initial Decision (ID) at 2-3. Accordingly, the administrative judge denied the appellant's request for corrective action. *Id.* at 1, 3. The initial decision indicated that it would become final on August 9, 2011, unless a petition for review was filed by that date. *Id.* at 3.

The appellant filed a petition for review on August 23, 2011. Petition for Review (PFR) File, Tab 1. By letter dated August 30, 2011, the Clerk of the Board informed the appellant that his petition for review did not meet the filing deadline and afforded him an opportunity to show good cause for his late filing. PFR File, Tab 2. The Clerk enclosed a copy of the Board's "Motion to Accept Filing as Timely or to Waive Time Limit" form, which informed the appellant of what he needed to show to establish good cause. *Id.*

In response, the appellant submitted a motion for waiver in which he asserts that he was out of town when the initial decision was issued and he did not return home until July 14, 2011. PFR File, Tab 3 at 1. He also claims that he was confused by the process for filing a petition for review. *Id.* at 1-2. In particular, he claims that the instructions in the initial decision left him with the impression that he needed to wait until the initial decision became final before filing a petition for review. *Id.* at 1. He states that he would have requested an extension of time to file his petition for review had it not been for the paragraph in the initial decision which states that the case needed to be closed prior to filing a petition for review. *Id.* at 2. He also asserts that, if he had not been out of

town, he would have been able to read the initial decision, and he would have either filed for an extension if he had been unable to locate the applicable laws, or he would have filed on time. *Id.* The agency has not filed a response to the appellant's petition for review.

A petition for review must be filed within 35 days after the date of issuance of the initial decision, or if the party shows he received the initial decision more than 5 days after it was issued, within 30 days of his receipt. *See Williams v. Office of Personnel Management*, [109 M.S.P.R. 237](#), ¶ 7 (2008); [5 C.F.R. § 1201.114](#)(d). The Board will waive the filing deadline for a petition for review only upon a showing of good cause for the delay in filing. *Lawson v. Department of Homeland Security*, [102 M.S.P.R. 185](#), ¶ 5 (2006); [5 C.F.R. §§ 1201.12, 1201.114](#)(f). To determine whether an appellant has shown good cause, the Board will consider the length of the delay, the reasonableness of his excuse and his showing of due diligence, whether he is proceeding pro se, and whether he has presented evidence of the existence of circumstances beyond his control that affected his ability to comply with the time limits or of unavoidable casualty or misfortune which similarly shows a causal relationship to his inability to timely file his petition. *Moorman v. Department of the Army*, [68 M.S.P.R. 60](#), 62-63 (1995), *aff'd*, 79 F.3d 1167 (Fed. Cir. 1996) (Table).

Based on our review of the evidence, we find that the appellant has failed to show good cause for the untimely filing of his petition for review. Although the appellant is pro se, his 14-day delay in filing is not minimal. *See, e.g., Allen v. Office of Personnel Management*, [97 M.S.P.R. 665](#), ¶ 8 (2004) (14-day delay in filing petition for review not minimal); *Beck v. General Services Administration*, [86 M.S.P.R. 489](#), ¶ 7 (2000) (15-day delay in filing petition for review not minimal). With respect to his claim that he was out of town when the initial decision was issued and he did not return home until July 14, 2011, the regional office sent a copy of the initial decision to the appellant's address of record and an appellant has a personal obligation to diligently monitor the

progress of his appeal at all times. *See Talas v. Department of the Interior*, [99 M.S.P.R. 325](#), ¶ 9 (2005). Additionally, the Board has held that being away from home during the entire filing period does not constitute good cause for an untimely filing and the appellant asserts that he was away from home for less than half of the filing period. *See id.* (citing *Smith v. Office of Personnel Management*, [57 M.S.P.R. 663](#), 666 (1993)).

Further, when the appellant returned home on July 14, 2011, he had almost one month before the August 9, 2011 filing deadline in which to file a petition for review. If the appellant felt that he did not have sufficient time to file a petition for review by the filing deadline, he could have requested an extension of time within which to file a petition, but he did not do so. *Tyler v. U.S. Postal Service*, [87 M.S.P.R. 460](#), ¶ 4 (2001) (an appellant must show good cause for not seeking an extension of time prior to the filing deadline); [5 C.F.R. § 1201.114](#)(e)-(f).

Turning to the appellant's claim that he was confused by the filing instructions in the initial decision and thought that he could not file the petition before the initial decision became final on August 9, 2011, PFR File, Tab 3 at 1-2, it appears that the appellant mistakenly believed that the instructions in the initial decision for filing a petition for judicial review with the U.S. Court of Appeals for the Federal Circuit also applied to filing a petition for review with the Board.<sup>2</sup> *See* ID at 4-5. The instructions in the initial decision regarding where and when to file with the Board or the Federal Circuit were clear on their face and self-explanatory. If the appellant had read and followed them, the untimely filing of the petition for review could have been avoided. It is clear from the appellant's motion, however, that he did not read the initial decision's filing instructions thoroughly. The appellant's error in reading the initial

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<sup>2</sup> The appellant also filed a petition for judicial review with the Federal Circuit. That petition was dismissed for failure to prosecute by order dated March 7, 2012.

decision does not establish good cause for the untimely filing. *See Colon v. U.S. Postal Service*, [71 M.S.P.R. 514](#), 517 (1996) (a party's hastiness in reading a Board notice containing filing instructions does not evidence the due diligence necessary to excuse an untimely filing), *review dismissed*, 132 F.3d 52 (Fed. Cir. 1998) (Table).

We find that the appellant has failed to show that he exercised the due diligence or ordinary prudence in this case that would justify waiving the filing deadline. Accordingly, we DISMISS the petition for review as untimely filed with no good cause shown for the filing delay.

This is the final decision of the Merit Systems Protection Board concerning the timeliness of the petition for review. The initial decision will remain the final decision of the Board with regard to the denial of the appellant's request for corrective action under VEOA. 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**

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:

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](http://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:

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William D. Spencer  
Clerk of the Board

Washington, D.C.