

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

TERESA K. DAY,  
Appellant,

DOCKET NUMBER  
DA-0841-16-0297-R-1

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
Agency.

DATE: December 7, 2016

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

James R. Hefflin, Newport Beach, California, for the appellant.

Sarah Murray, Washington, D.C., for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Mark A. Robbins, Member

**FINAL ORDER**

¶1 On November 21, 2016, the Board issued a final order in *Teresa K. Day v. Office of Personnel Management*, MSPB Docket No. DA-0841-16-0297-I-1, dismissing the appellant's petition for review as withdrawn. We REOPEN this appeal pursuant to [5 C.F.R. § 1201.118](#) for the purpose of clarifying the basis for

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

the appellant's request to withdraw her petition for review, still DISMISSING the petition for review as withdrawn with prejudice to refiling.

¶2 The appellant filed a petition for review of the May 27, 2016 initial decision in this case, which dismissed her appeal for lack of jurisdiction. Initial Appeal File, Tab 8, Initial Decision; Petition for Review (PFR) File, Tab 1. On August 29, 2016, the appellant, through her designated representative, submitted a pleading seeking to withdraw her petition for review based on two pending appeals in the Board's Dallas Regional Office. PFR File, Tab 5. The agency has not objected to the appellant's request to withdraw the petition for review.

¶3 Finding that withdrawal is appropriate under these circumstances, we DISMISS the petition for review as withdrawn with prejudice to refiling.

¶4 The initial decision of the administrative judge is final. Title 5 of the Code of Federal Regulations, section 1201.113 ([5 C.F.R. § 1201.113](#)).

#### **NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS**

You have the right to request review of this final decision by the U.S. Court of Appeals for the Federal Circuit. 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 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 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 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.

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

FOR THE BOARD:

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Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.