

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

SHARLEEN THOMAS,  
Appellant,

DOCKET NUMBER  
DC-0752-12-0108-I-1

v.

DEPARTMENT OF DEFENSE,  
Agency.

DATE: July 31, 2012

**THIS FINAL ORDER IS NONPRECEDENTIAL\***

Sharleen Thomas, Midway Park, North Carolina, pro se.

Rachael L. Orejana, Esquire, Fort Lee, Virginia, for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Anne M. Wagner, Vice Chairman  
Mark A. Robbins, 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

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\* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

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](#)).

In her petition, the appellant questions the “legality” of the agreement. Specifically, she asserts that the signing authority for the agency in the agreement she originally executed differed from the agency signing authority in the final agreement entered into the record. Petition for Review File, Tab 1 at 2. Additionally, the appellant contends that she was not informed of the change and not “given the benefit of re-signing the changed document.” *Id.* Finally, the appellant specifically objects to subsections 2b and 2c of the executed agreement, stating that she does not wish to drop her pending Equal Employment Opportunity Commission (EEOC) cases against the agency, claiming a “breach” in the agreement. *Id.*

As the Board and the Federal Circuit have previously determined, oral settlements are as valid and enforceable as written ones. *See Tiburzi v. Department of Justice*, [269 F.3d 1346](#), 1353 (Fed. Cir. 2001); *Martin v. Department of the Air Force*, [91 M.S.P.R. 36](#), ¶ 7 (2002). Even if there is language suggesting that the oral agreement will be reduced to writing, that alone is insufficient to invalidate an otherwise valid oral agreement. *Haefele v. Department of the Air Force*, [108 M.S.P.R. 630](#), ¶ 9 (2008).

The agency and the appellant discussed the terms of the agreement, and the agency representative reduced the mutually agreed-upon terms to writing. The agency representative sent the written agreement to the appellant, and the appellant reviewed and signed the agreement. Initial Appeal File (IAF), Tab 9. The only language that the appellant claims has been altered (the agency signing party) is immaterial to the terms of the settlement. In a case such as this, where the material terms of the agreement have been fully considered and agreed upon by both parties and all that remains for the agreement to be finalized is for it to be executed by one of the parties, a valid oral agreement exists. *Parks v. U.S. Postal*

*Service*, [113 M.S.P.R. 60](#), ¶¶ 12-13 (2010) (finding an unsigned written agreement was valid when the parties did not contest that the agreement reflected the terms of the oral settlement, and the parties intended that the agreement be entered into the record). The agreement signed by the appellant clearly indicated that the parties intended for the agreement to be included in the Board's record for enforcement purposes, and the administrative judge properly entered the written agreement into the record. IAF, Tab 9, Tab 10. Therefore, the oral agreement reduced to writing and entered into the record by the administrative judge represents the final valid agreement of the parties even if the agency signer changed.

A party may challenge the validity of a settlement agreement resulting in the withdrawal of an appeal if the party believes that the agreement is unlawful, was involuntary, or was the result of fraud or mutual mistake. *See Wofford v. Department of Justice*, [115 M.S.P.R. 468](#), ¶ 6 (2010). However, the Board places a heavy burden on a party attempting to show that the agreement should be set aside because it is invalid due to fraud or mutual mistake. *See Clark v. Department of the Treasury*, [48 M.S.P.R. 330](#), 333 (1991). In the instant case, the administrative judge properly considered the terms of the settlement agreement, explicitly finding that the agreement was "lawful on its face, that it was freely reached by the parties, and that the parties underst[ood] the terms of the agreement." Initial Decision at 1. The appellant's conclusory statement "that there is a breach in this agreement" without more is not a basis to set aside the agreement. *See Wofford*, [115 M.S.P.R. 468](#), ¶ 6.

A settlement agreement is a contract between the parties and its terms are to be interpreted as a question of contract law. *Greco v. Department of the Army*, [852 F.2d 558](#), 560 (Fed. Cir. 1988). If the terms of the agreement are not ambiguous, the Board will rely on the wording within the four corners of the agreement to determine the parties' intent. *Id.* The Board has no authority to unilaterally modify the terms of the parties' settlement agreement. *Hamilton v.*

*Department of Veterans Affairs*, [92 M.S.P.R. 467](#), ¶ 6 (2002). Here, the appellant does not contest that she had an opportunity to review the terms of the settlement agreement prior to signing it, including the terms relating to the withdrawal of any EEOC complaints. The appellant's apparent post-settlement remorse or change of heart does not provide a basis for invalidating a validly executed settlement agreement. *Franklin v. U.S. Postal Service*, [81 M.S.P.R. 294](#), ¶ 9 (1999). Accordingly, the appellant has not provided a basis to set aside the agreement or otherwise alter the terms of 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 and AFFIRM the initial decision dismissing the appeal as settled.

**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.