

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

JEFFREY T. FOSTER,
Appellant,

DOCKET NUMBER
PH-1221-08-0386-C-2

v.

DEPARTMENT OF JUSTICE,
Agency.

DATE: September 10, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Dennis L. Friedman, Esquire, Philadelphia, Pennsylvania, for the appellant.

Andrea Geiger, Esquire, Washington, D.C., 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

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

The appellant challenges the initial decision and reiterates his argument that the settlement authority agreed to restore five months of his extended sick leave rather than the 213 hours that the agency reccredited for documented treatment sessions. Compliance Petition for Review File, Tab 1. The appellant contends that the written agreement did not clearly capture the understanding that had been agreed upon during the in-person settlement conference. *Id.* The appellant contends that the agency drafted the settlement agreement and that any ambiguity should be construed against the agency. *Id.*

A settlement agreement is a contract, and, as such, it will be enforced in accordance with contract law. *Flores v. U.S. Postal Service*, [115 M.S.P.R. 189](#), ¶ 10 (2010). In construing the terms of a settlement agreement, the words of the agreement are of paramount importance. *Id.*; see *Greco v. Department of the Army*, [852 F.2d 558](#), 560 (Fed. Cir. 1988). The Board has no authority to unilaterally modify the terms of the parties' settlement agreement or to read a nonexistent term into an agreement that is unambiguous. *Galatis v. U.S. Postal Service*, [109 M.S.P.R. 651](#), ¶ 10 (2008); *Hamilton v. Department of Veterans Affairs*, [92 M.S.P.R. 467](#), ¶ 6 (2002). The Board will consider parol evidence only if the agreement is ambiguous. *Flores*, [115 M.S.P.R. 189](#), ¶ 10. The terms of an agreement are ambiguous as a result of differing interpretations as to the meanings or intent given to those terms by the parties only when the respective interpretations are both reasonable. See *Alexander v. U.S. Postal Service*, [94 M.S.P.R. 237](#), ¶ 7 (2003). When an agreement's words and meanings are unambiguous, its terms are not subject to variation. *Flores*, [115 M.S.P.R. 189](#), ¶ 10; see *Slattery v. Department of Justice*, [590 F.3d 1345](#), 1347 (Fed. Cir. 2010).

Here, the agreement is unambiguous as there is no other interpretation that can be provided to the restoration of sick leave provision. The settlement agreement explicitly states the following:

The agency agrees to restore any sick leave used by the appellant for psychological treatments, rendered up to and including the date of the final signature on this settlement agreement, and that is supported by medical documentation. The agency will also provide Appellant copies of his Time and Attendance records for his assistance in determining the amount of sick leave that should be restored.

Initial Appeal File, Tab 3 at 19. Because the restoration of sick leave provision is unambiguous, the terms of the agreement are not subject to variation.

Moreover, the administrative judge thoroughly discussed these issues in the initial decision, and we discern no reason to disturb those well-reasoned findings. *See Crosby v. U.S. Postal Service*, [74 M.S.P.R. 98](#), 106 (1997) (stating that there is no reason to disturb the initial decision where the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions); *Broughton v. Department of Health & Human Services*, [33 M.S.P.R. 357](#), 359 (1987) (same).

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

**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. 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.