

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

JAMILA TAMESHA BOUNDS,
Appellant,

DOCKET NUMBER
AT-0752-10-0954-B-1

v.

DEPARTMENT OF THE TREASURY,
Agency.

DATE: September 13, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Jamila Tamesha Bounds, Dearborn, Michigan, pro se.

Andrew M. Greene, Esquire, Atlanta, Georgia, 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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions.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 agency proposed to remove the appellant from a GS-5 Tax Examining position. Initial Appeal File (IAF), Tab 6, Exhibit (Ex.) 1. The appellant grieved the proposal, and the parties resolved the grievance through a settlement agreement that provided that the appellant would resign from federal employment with a clean record and would seek no further recourse in the form of grievances, complaints, claims, or law suits against the agency in connection with the incidents leading to the proposed removal. *Id.*, Ex. 2. The appellant filed an appeal, alleging that the settlement agreement was coerced by the union and that she was incapacitated on the day that she signed the agreement. Thus, she asserts that her resignation was involuntary. IAF, Tab 1. The administrative judge found that the appellant failed to show that the settlement agreement was unlawful, involuntary, or the result of fraud or mutual mistake. Remand Appeal File (RAF), Tab 22.

On petition for review, the appellant contends that the administrative judge was biased in the way that he conducted the hearing. In making a claim of bias or prejudice against an administrative judge, a party must overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *Oliver v. Department of Transportation*, [1 M.S.P.R. 382](#), 386 (1980). Generally, a party claiming bias must show that the administrative judge engaged in extrajudicial conduct, rather than conduct arising in the administrative proceeding. *Benson v. Office of Personnel Management*, [83 M.S.P.R. 549](#), ¶ 7 (1999). The appellant here, however, has not alleged improper extrajudicial conduct, and instead merely disagrees with various findings and rulings. Petition for Review File, Tab 4. An administrative judge's conduct during the course of a Board proceeding warrants a new adjudication only if the administrative judge's comments or actions evidence "a deep-seated favoritism or antagonism that would make fair judgment

impossible." *Bieber v. Department of the Army*, [287 F.3d 1358](#), 1362-63 (Fed. Cir. 2002). The appellant's conclusory claims of bias do not evidence deep-seated favoritism by the administrative judge and do not overcome the presumption of honesty and integrity that accompanies an administrative judge. *See Wadley v. Department of the Army*, [90 M.S.P.R. 148](#), ¶ 6 (2001).

The appellant also reiterates the arguments that she made before the administrative judge. She asserts that the charges against her are untrue and that the agency did not want the facts underlying the charged misconduct to come out. However, the issue in this appeal is the voluntariness of the settlement agreement in which the appellant agreed to resign and waive her appeal rights. An appellant may demonstrate that a settlement agreement was coerced, and thus involuntary, by showing that the agency threatened to take a disciplinary action that it knew or should have known could not be substantiated. *See Schultz v. U.S. Navy*, [810 F.2d 1133](#), 1136 (Fed. Cir. 1987). The administrative judge properly examined the charges as a threatened disciplinary action to determine whether the agency knew or should have known that the charge could not be sustained. He properly did not determine whether the charge should actually be sustained. As the administrative judge found, the agency's Inspector General conducted two investigations, and the findings of those investigations support the agency's charges against the appellant. RAF, Tab 16. Thus, he properly found that the settlement agreement was not coerced by charges that could not be substantiated; the charges had a reasonable amount of factual support. RAF, Tab 22 at 3.

The appellant asserts, as she did below, that management conspired with the union to select union representatives other than those she preferred. Her contention appears to be that the union representatives who represented her in negotiating the settlement agreement were really representing the opposing party, the agency, and thus their actions were conspiratorily coercive. The record does not, however, support her assertion. The administrative judge found that the union representatives, National Treasury Employees Union, Chapter 284, vice

president, Mary Edwards, and chief negotiator, Michael Green, credibly testified that they decided who would represent the appellant, that they did their best to help the appellant, and that no management official tried to influence their work on the appellant's behalf. RAF, Tab 22 at 7-8. The Board must give deference to an administrative judge's credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing; the Board may overturn such determinations only when it has "sufficiently sound" reasons for doing so. *Haebe v. Department of Justice*, [288 F.3d 1288](#), 1301 (Fed. Cir. 2002). The appellant has not presented any reasons to disturb the administrative judge's credibility findings.

A party to a settlement agreement is presumed to have full legal capacity to contract, unless he is mentally disabled and the mental disability is so severe that he cannot form the necessary intent to enter into the agreement. *Brown v. Department of the Interior*, [86 M.S.P.R. 546](#), ¶ 13 (2000). The appellant reiterates her assertion that she did not have the mental capacity to enter into the agreement because she suffers from a psychiatric condition and was on a number of medications to treat it when she signed the agreement. The appellant, however, presented no medical evidence that she suffered side effects from these medications when she signed the agreement.

Further, as the administrative judge found, the most recent medical evidence from the appellant's psychiatrist cleared her to return to her normal work duties, and, on the strength of that statement, the agency returned the appellant to the duties of a Tax Examiner, duties that she performed successfully for a number of months prior to resigning pursuant to the agreement. Additionally, as the administrative judge found, the appellant's representatives, Edwards and Green, testified credibly that the appellant appeared fine during the mediation that led to the agreement, actively participated in the settlement discussions, and read the settlement agreement aloud to her representatives immediately before signing. Under these circumstances, the administrative judge

properly found that the appellant failed to show that her documented psychiatric condition and medications caused her to lack the requisite mental capacity to voluntarily sign the agreement. *See Bynum v. Department of Veterans Affairs*, [77 M.S.P.R. 662](#), 665-66 (1998) (the appellant's bare allegation of stress, the fact that her counsel participated in the settlement negotiations, and her failure to demonstrate that she was mentally impaired at the time she entered into the settlement agreement did not provide a sufficient basis on which to set aside the agreement); *McCullough v. U.S. Postal Service*, [40 M.S.P.R. 476](#), 480 (1989) (the appellant's claim that he was unable to understand the terms of the settlement agreement because of the effects of medication he was taking was not supported by any medical evidence), *aff'd*, 909 F.2d 1494 (Fed. Cir. 1990) (Table).

The appellant contends that her representatives interfered with her right to respond to the notice of proposed removal, depriving her of her constitutional rights. An agency's failure to provide a tenured public employee with an opportunity to present a response, either in person or in writing, to an appealable agency action that deprives him of his property right in his employment constitutes an abridgement of his constitutional right to minimum due process of law, i.e., prior notice and an opportunity to respond. *Cleveland Board of Education v. Loudermill*, [470 U.S. 532](#), 546 (1985). The agency's notice of proposed removal, received and signed by the appellant on May 4, 2010, informed her that she could answer the proposal personally and in writing. IAF, Tab 6, Ex. 1. The appellant scheduled a reply. However, the parties entered into the settlement agreement prior to the reply.

Although the administrative judge did not address the appellant's assertion that the union representatives interfered with her right to respond as a constitutional argument, he made findings relevant to this assertion. The administrative judge found that the appellant's union representatives credibly testified that they recommended that she settle the grievance, but also advised her that she had the right to go forward with the scheduled oral reply and that she

could also later request grievance arbitration or appeal to the Board. RAF, Tab 22 at 6, 7. The Board must give deference to an administrative judge's credibility determinations when, as here, they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing; the Board may overturn such determinations only when it has "sufficiently sound" reasons for doing so. *Haebe*, 288 F.3d at 1301. The appellant has not presented any reasons to disturb the administrative judge's credibility findings, and, based on those findings, the appellant has failed to establish her assertion that the union representatives interfered with her constitutional minimum right to reply to the charges against her. Rather, the appellant opted to enter into the settlement agreement through which she agreed to seek no further recourse regarding the incidents leading to the proposed removal. IAF, Tab 6, Ex. 2.

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 expressly modified by this Final Order, we AFFIRM the initial decision issued by the administrative judge.

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

The initial decision, as supplemented by this Final Order, constitute 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.