

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

KIMCAROLYN N. OLDS,
Appellant,

DOCKET NUMBER
DC-0752-12-0022-I-1

v.

DEPARTMENT OF HOMELAND
SECURITY,
Agency.

DATE: September 26, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

KimCarolyn N. Olds, Suitland, Maryland, pro se.

Stephanie E. Sawyer, 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

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

that was not available for consideration earlier or when the administrative judge 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](#)).

On review, the appellant reasserts her version of the events and she reiterates her claim that Mr. Townsend forced her to prepare and sign a handwritten resignation. Petition for Review (PFR) File, Tab 1. In arguing her version, the appellant contends that the administrative judge made factual and credibility errors in determining that her resignation was voluntary. *Id.* The appellant also contends that she had no reason to fabricate her resignation or to resign from her position. *Id.*

Although the appellant disagrees with the administrative judge's credibility findings and determinations and she reasserts her version of the October 7, 2009 meeting, she has shown no error by the administrative judge in this regard. PFR File, Tab 1. 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). Here, the administrative judge thoroughly reviewed the evidence and the hearing testimony and specifically cited to *Hillen v. Department of the Army*, [35 M.S.P.R. 453](#), 458 (1987)² in setting forth his credibility determinations. Initial Decision

² To resolve credibility issues, an administrative judge must identify the factual questions in dispute, summarize the evidence on each disputed question, state which version he believes, and explain in detail why he found the chosen version more credible, considering such factors as: (1) the witness's opportunity and capacity to observe the event or act in question; (2) the witness's character; (3) any prior inconsistent statement by the witness; (4) a witness's bias, or lack of bias; (5) the contradiction of the witness's version of events by other evidence or its consistency with other evidence; (6) the inherent improbability of the witness's version of events; and (7) the witness's demeanor. *Hillen*, 35 M.S.P.R. at 458.

at 13-18. Thus, the administrative judge thoroughly addressed his credibility determinations in the initial decision and we discern no reason to disturb those well-reasoned findings. *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).

The appellant also appears to argue that she was subjected to a hostile work environment because the workplace environment was characterized by racially-charged name calling (Mr. Townsend called her “Gertrude” as a nickname) and the agency failed to accommodate her medical condition. PFR File, Tab 1; Initial Appeal File, Tab 6 at 4-5. Intolerable working conditions may render an action involuntary when, under all the circumstances, the working conditions were made so difficult by the agency that a reasonable person in the employee’s position would have felt compelled to absent himself from the workplace. *Wright v. Department of Veterans Affairs*, [85 M.S.P.R. 358](#), ¶ 25 (2000). Thus, the appellant had to show that a reasonable person would have felt that there was a causal connection between all of the circumstances, including those incidents that were remote in time, and her resignation. *See Miller v. Department of Defense*, [85 M.S.P.R. 310](#), ¶ 26 (2000).

Here, the administrative judge found that, based on the testimony and the record evidence, the conditions were not so severe or pervasive that a reasonable person in the appellant’s position would have felt compelled to resign. We agree. The appellant has made no showing that the agency effectively imposed the terms of her resignation, that she had no realistic alternative to resign, and that her resignation was the result of improper agency actions. Thus, the appellant has not shown that the employer or agency engaged in a course of action that made working conditions so difficult or unpleasant that a reasonable person in the

appellant's position would have felt compelled to resign or retire. *Markon v. Department of State*, [71 M.S.P.R. 574](#), 577-78 (1996).

Finally, the appellant has attached a news article and email communications to her petition for review which are dated prior to the close of the record below. However, she does not explain the significance of these attachments. PFR File, Tab 1. Moreover, because the appellant has made no showing that these documents were unavailable before the record closed despite her due diligence, we have not considered them. *Avansino v. U.S. Postal Service*, [3 M.S.P.R. 211](#), 214 (1980).

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 issued by the administrative judge, which is now the Board's final decision. [5 C.F.R. § 1201.113](#)(b).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

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.