UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

WALTER E. BENJAMIN, Appellant, v. AMERICAN BATTLE MONUMENTS COMMISSION, Agency.	DOCKET NUMBER DC-315I-11-0874-A-1 DATE: November 13, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL*

Kenneth C. Wu, Esquire, Reston, Virginia, for the appellant.

William A. Aileo, Esquire, Springville, Pennsylvania, 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 that dismissed his attorney fee proceeding as settled. We grant petitions such as this one only

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* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

when significant new evidence is presented to us 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).

In his petition for review, the appellant seeks to set aside the settlement agreement that he entered into with the agency based upon the conduct of his attorney during the proceedings below. Petition for Review File, Tab 1 at 1-3. Specifically, the appellant appears to allege that his attorney either misled him or pressured him into signing the settlement agreement. *Id.* at 3.

An appellant may challenge the validity of a settlement agreement if he believes it was unlawful, involuntary, or the result of fraud or mutual mistake. *Wofford v. Department of Justice*, 115 M.S.P.R. 468, ¶ 6 (2010). The party challenging the validity of a settlement agreement bears a heavy burden of showing a basis for invalidation. *Id.* As described below, we find that the appellant fails to meet the heavy burden of establishing that the settlement agreement is invalid.

First, to the extent the appellant is arguing that his attorney provided him with inaccurate information regarding the legal ramifications of entering into the agreement, the Board has long held that an appellant is responsible for the acts of his chosen representative. *See De Luna v. Department of the Navy*, 58 M.S.P.R. 526, 530-31 (1993) (rejecting the appellant's argument that the settlement agreement should be declared void based on inadequate legal representation); *Sofio v. Internal Revenue Service*, 7 M.S.P.R. 667, 670 (1981). In addition, to the extent that the appellant is alleging that his representative pressured him into signing the agreement, the Board has long held that coercive acts by a party's own representative are not a basis for overturning an otherwise lawful settlement agreement. *Henson v. Department of the Treasury*, 86 M.S.P.R. 221, ¶ 11 (2000); *see Cook v. Government Printing Office*, 75 M.S.P.R. 8, 11, *aff'd*, 132 F.3d 51

(Fed. Cir. 1997) (Table). Here, the appellant does not claim that the settlement agreement was otherwise unlawful, and the administrative judge found, and we agree, that the settlement agreement was lawful on its face. Attorney Fee File, Tab 4, Initial Decision at 2. Accordingly, the appellant's complaints regarding his attorney's conduct during the proceedings below do not provide a basis for setting aside the settlement agreement. *See Henson*, 86 M.S.P.R. 221, ¶ 9.

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:

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William D. Spencer
Clerk of the Board

Washington, D.C.