

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

JAMES MONSOUR,
Appellant,

DOCKET NUMBER
CH-0752-12-0538-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: February 1, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL¹

James Monsour, LaCrosse, Wisconsin, pro se.

Scott A. Mayer, Esquire, Denver, Colorado, 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 of the initial decision in this appeal. For the reasons set forth below, we DISMISS the appeal as settled.

After the close of the record, *see* Petition for Review (PFR) File, Tab 2, the agency submitted a settlement agreement from the appellant's grievance. PFR

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

File, Tab 4 at 4. The document, which is dated September 20, 2012, and which is signed by both the appellant and the agency, provides that the appellant will withdraw this appeal. *Id.*

The Board can review a settlement where the agreement was reached outside of a Board proceeding. *See Swidecki v. U.S. Postal Service*, [101 M.S.P.R. 110](#), ¶ 7 (2006) (settlement of a grievance). A settlement agreement, such as the one here, that is not made a part of the Board's record and is reached free of Board intervention, is treated as a contract. *Perry v. U.S. Postal Service*, [78 M.S.P.R. 272](#), 276 (1997). The interpretation of the settlement agreement is therefore a matter of law based on the words in the agreement itself. *Id.*

A party may challenge the validity of a settlement agreement, regardless of whether it has been entered into the record for enforcement, if the party believes that the agreement is unlawful, involuntary, or the result of fraud or mutual mistake. *Owen v. U.S. Postal Service*, [87 M.S.P.R. 449](#), ¶ 3 (2000). However, the party challenging the validity of a settlement agreement bears a heavy burden of showing a basis for invalidation. *Black v. Department of Transportation*, [116 M.S.P.R. 87](#), ¶ 16 (2011). An appellant's post-settlement remorse or change of heart cannot serve as a basis for setting aside a valid settlement agreement. *Thompson v. Department of Veterans Affairs*, [52 M.S.P.R. 233](#), 237 (1992).

In this case, it is undisputed that the parties reached a settlement agreement during grievance proceedings in which the appellant agreed to withdraw this appeal. PFR File, Tab 4 at 4. The appellant has not challenged the validity of the settlement agreement. Given these circumstances, we dismiss the appeal as settled.

This is the final order of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulation, section 1201.113 ([5 C.F.R. § 1201.113](#)).²

**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 the date of this order. See [5 U.S.C. § 7703](#)(b)(1)(A) (as rev. eff. Dec. 27, 2012). 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](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the United States Code, at our website, <http://www.mspb.gov/appeals/uscode/htm>. Additional information is available at the court's website, www.cafc.uscourts.gov.

² Except as otherwise noted in this decision, we have applied the Board's regulations that became effective November 13, 2012. We note, however, that the petition for review in this case was filed before that date. Even if we considered the petition under the previous version of the Board's regulations, the outcome would be the same.

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.