

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

JOAQUIN GARCIA, JR.,
Appellant,

DOCKET NUMBER
DE-0432-11-0414-I-1

v.

DEPARTMENT OF DEFENSE,
Agency.

DATE: April 30, 2012

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Joaquin Garcia, Jr., Aurora, Colorado, pro se.

Keith L. Williams, Esquire and Michael J. Buxton, Esquire, Arlington,
Virginia, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman

FINAL ORDER

The appellant has filed a petition for review asking us to reconsider the initial decision dismissing the appeal pursuant to the parties' execution of a valid

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future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

settlement agreement.² Petition for Review (PFR) File, Tabs 1, 3; Initial Appeal File (IAF), Tab 32, Initial Decision (ID).

A settlement agreement is a contract between the parties and its terms are to be interpreted as a question of contract law. *Wofford v. Department of Justice*, [115 M.S.P.R. 468](#), ¶ 6 (2010). 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. *Id.* Even if invalidity was not apparent at the time of settlement, the agreement must be set aside if it is subsequently shown by new evidence that the agreement was tainted with invalidity by fraud or misrepresentation. *Id.* However, the party challenging the validity of a settlement agreement bears a heavy burden of showing a basis for invalidation. *Id.* To establish that a settlement was fraudulent as a result of coercion or duress, a party must prove that he involuntarily accepted the other party's terms, that circumstances permitted no alternative, and that such circumstances were the result of the other party's coercive acts. *Potter v. Department of Veterans Affairs*, [111 M.S.P.R. 374](#), ¶ 6 (2009). An appellant's mere post-settlement remorse or change of heart cannot serve as a basis for setting aside a valid settlement agreement. *Id.*

Here, the appellant alleges that he was coerced to enter the October 19, 2011 oral settlement agreement, fearing retaliation for his prior equal employment opportunity activity, reprisal for his whistleblowing activity, and "re-living" issues with his supervisors, who he alleges dislike him or suffer from mental illness and eating disorders. PFR File, Tab 3 at 1-7. However, he submits

² The record on review closed on January 13, 2012. Petition for Review (PFR) File, Tab 2; [5 C.F.R. § 1201.114\(i\)](#). The appellant requested an extension of time to provide medical documentation from his psychiatrist, PFR File, Tab 6, which the Office of the Clerk of the Board denied pursuant to [5 C.F.R. § 1201.114\(i\)](#), PFR File, Tab 7. Subsequently on February 17, 2012, the appellant replied to the agency's response to his petition for review. PFR File, Tab 8. However, the Board need not consider this

no evidence to support these bare assertions, which he raises for the first time on review. Based upon our review of the record evidence, the administrative judge properly found that the parties freely and voluntarily entered into a lawful settlement agreement with an understanding of the terms, the agreement was entered into the record for enforcement by the Board, and that the subject matter of the appeal was within the Board's jurisdiction. *See Smith v. Social Security Administration*, [102 M.S.P.R. 167](#), ¶¶ 4-5 (2006); ID at 2; Transcript of the October 19, 2011 Hearing (Transcript) at 5-6. To the extent the appellant alleges that, after considering the agency's proposed written memorialization of the oral settlement agreement, he decided that he no longer desired settlement and preferred to withdraw his Board appeal, this merely reflects his post-settlement remorse and change of heart, which cannot serve as a basis for setting aside a valid settlement agreement.³ *See* Initial Appeal File, Tabs 28, 31; *Potter*, [111 M.S.P.R. 374](#), ¶ 6.

On review, the appellant appears to allege that he suffers from attention deficit hyperactivity disorder (ADHD) and that this medical condition rendered him mentally incapable of entering the settlement agreement on October 19. PFR File, Tabs 1, 3. He asserts that “[d]uring the final phase of the Hearing, I was not only under duress, but it exacerbated my disability to the point that I could not effectively focus on the details provided during discussions of available options.” PFR File, Tab 3 at 1, 6.

However, 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.

submission because the appellant has not submitted evidence that was not readily available before the record on review closed. *See* 5 C.F.R. § 1201.114(i).

³ Even if the appellant disagrees with the agency's proposed written memorialization of the oral agreement, it is merely a memorialization of the oral agreement that was executed and read into the record on October 19. *See* IAF, Tabs 28, 31.

Swidecki v. U.S. Postal Service, [101 M.S.P.R. 110](#), ¶ 19 (2006). In deciding whether the appellant freely and voluntarily entered into the settlement agreement, the Board will consider: whether the appellant was represented below; whether he has demonstrated that he was mentally impaired at the time of the settlement agreement; and whether he has otherwise shown that he was unable to understand the nature of the settlement agreement fully or to assist his representative in the appeal. *Id.*, ¶ 17. The Board also will review any medical evidence submitted by the appellant to determine whether it is sufficient to show mental incapacity at the time the agreement was signed. *Id.* It is significant if neither the appellant nor his representative below ever indicated that the appellant was mentally incapable of entering into the settlement agreement. *See id.*; *Wallace v. Department of Veterans Affairs*, [50 M.S.P.R. 676](#), 678 (1991).

Here, the appellant submits no medical evidence showing that he suffers from ADHD or that his ADHD affected his ability to comprehend the terms of the agreement and thereby rendered him mentally incapable of entering into the settlement agreement on October 19. *See Swidecki*, [101 M.S.P.R. 110](#), ¶ 19 (the appellant provided no evidence to support his bare allegation that he has diabetes or that a high blood sugar level rendered him mentally incapable of entering into the settlement agreement and, thus, failed to show that he involuntarily entered the settlement agreement based on mental incapacity). Moreover, nothing in the transcript of the October 19 “hearing” shows that the appellant informed the administrative judge or the agency representative that he lacked the requisite mental capacity to enter into the settlement agreement or that he needed additional time to contemplate the proposed terms prior to executing the settlement agreement and entering the agreement into the record. *See Pugh v. U.S. Postal Service*, [91 M.S.P.R. 578](#), ¶ 7 (2002) (finding that the appellant’s mental condition was not a sufficient reason for invalidating the agreement where he did not assert that he lacked full legal capacity to enter into the settlement agreement, submitted no evidence to show that he was unable to understand it,

specifically informed the administrative judge that he understood the agreement when asked, and submitted no evidence documenting his difficulty comprehending the agreement); *Merriweather v. Department of Transportation*, [64 M.S.P.R. 365](#), 372-74 (1994) (the appellant provided no medical evidence to support a finding that he was unable because of mental stress to understand the nature of the settlement agreement, he was represented, and neither he nor his representative informed the agency of any possibility that the appellant may have been mentally incompetent to enter into the agreement), *aff'd*, 56 F.3d 83 (Fed. Cir. 1995) (Table). Thus, the appellant failed to prove that he lacked the requisite mental capacity to enter the settlement agreement on October 19.

Because the appellant failed to meet his heavy burden of alleging facts that, if proven, would compel the Board to set aside the settlement agreement, we discern no basis to set aside the settlement agreement or to disturb the initial decision dismissing the appeal.

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.