

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

INEZ MOSLEY,
Appellant,

DOCKET NUMBER
CH-0752-11-0052-I-1

v.

DEPARTMENT OF AGRICULTURE,
Agency.

DATE: July 18, 2011

THIS FINAL ORDER IS NONPRECEDENTIAL^{*}

Inez Mosley, Kansas City, Missouri, pro se.

Elizabeth Blackwood, Washington, D.C., for the agency.

Gary H. Shapiro, Riverdale, Maryland, for the agency.

BEFORE

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

^{*} This Order may not be cited or referred to except by a party asserting collateral estoppel (issue preclusion), res judicata (claim preclusion), or law of the case.

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).

Based on the written record below, the administrative judge found that the appellant raised insufficient allegations of fact that, if proven, would establish that the agency sought or coerced her retirement. Initial Appeal File (IAF), Tab 6, Initial Decision at 7. The appellant's petition for review briefly reiterates some of the allegations she made below but makes no specific assertion of error in the initial decision. Petition for Review (PFR) File, Tab 1 at 4. A petition for review must contain sufficient specificity to enable the Board to ascertain whether there is a serious evidentiary challenge justifying a complete review of the record. *Tines v. Department of the Air Force*, 56 M.S.P.R. 90, 92 (1992). Here, the appellant acknowledges that she has no new evidence or argument to offer on review. PFR File, Tab 1 at 2-3.

Moreover, our review of the initial decision reflects that the appellant is merely disagreeing with the administrative judge's conclusions, which are fully supported by the record below. *See Yang v. U.S. Postal Service*, 115 M.S.P.R. 112, ¶ 12 (2010) (mere disagreement with the administrative judge's findings is insufficient to disturb the initial decision); *see also Broughton v. Department of Health & Human Services*, 33 M.S.P.R. 357, 359 (1987) (there is no reason to disturb the conclusions of the administrative judge when the initial decision reflects that the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions). Specifically, it appears that her chief contention is that she was compelled to retire as the result of an incident that occurred on the morning of February 20, 2008, when her supervisor directed her to finish working on a set of assigned laboratory samples using a "mask or hood" due to the cold sores on her face. PFR File, Tab 1 at 4; *see* IAF, Tab 5, Subtab 3A at 3-4. Apparently, after informing her supervisor she felt uncomfortable working on the samples using one of these precautions, her

supervisor told her that she might be “fired” for insubordination if she did not comply with these instructions and perform her work. *Id.* The administrative judge correctly found that, in this and other allegations, the appellant failed to make a nonfrivolous allegation under an objective standard that her retirement was the result of improper acts by the agency and thus involuntary.

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.