

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3088

NICHOLAS TROBOVIC,

Petitioner,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Petition for review of the Merit Systems Protection Board in consolidated case nos. NY0353080118-I-1, NY0353080130-I-1, NY0752080012-I-2, and PH3443080242-I-1.

ON MOTION

Before MICHEL, Chief Judge, LOURIE and BRYSON, Circuit Judges.

PER CURIAM.

ORDER

The General Services Administration moves to summarily affirm the September 19, 2008 decision of the Merit Systems Protection Board dismissing Nicholas Trobovic's appeals for lack of jurisdiction. Trobovic has not responded. Trobovic moves to reform the official caption to designate the Merit Systems Protection Board the respondent. GSA opposes.

In Trobovic I, Trobovic filed five appeals which the Board consolidated into one case. Trobovic alleged constructive suspension and failure to restore. Trobovic and GSA entered into a settlement agreement encompassing all the issues in the consolidated case. Pursuant to the agreement, Trobovic agreed to withdraw with prejudice all the pending appeals and waived the right to file any future claims involving

the same issues. Trobovic petitioned this court for review in Trobovic I and that case was docketed as Trobovic v. General Services Admin., 2008-3229. On April 16, 2009, this court affirmed the Board's decision in that case, determining that the Board correctly determined that Trobovic voluntarily withdrew his appeals and agreed not to seek reemployment with GSA.

Trobovic filed additional appeals and sought to rescind the agreement, arguing that the agreement was invalid. In Trobovic II, the Board consolidated those related appeals and determined that it did not have jurisdiction over certain refiled claims because the settlement agreement was valid and that the settlement agreement barred other claims. In this case, 2009-3088, Trobovic now petitions this court for review of the Board's decision dismissing the recently filed appeals in Trobovic II. GSA moves to summarily affirm the Board's decision in Trobovic II.

Summary affirmance of a case is appropriate "when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists.") Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994). For the reasons that we stated in our decision in Trobovic I, we agree that no substantial question regarding the outcome of this petition for review exists. The prior appeal resolved Trobovic's challenge to the validity of the settlement agreement. The finding in that litigation that the settlement agreement is valid and binding on Trobovic has become final and is binding as a matter of collateral estoppel in this appeal. Because Trobovic's position in this appeal depends on his contention that the settlement agreement is invalid, the collateral estoppel effect of the prior decision renders his position in this appeal frivolous. Therefore, summary affirmance is appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) GSA's motion for summary affirmance is granted.
- (2) The motion to reform the official caption is denied.
- (3) Each side shall bear its own costs.

FOR THE COURT

JUL 02 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Nicholas S. Trobovic
Joan Stentiford Swyers, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 02 2009

JAN HORBALY
CLERK