United States Court of Appeals for the Federal Circuit

DENISE LAVETTE HARRIS-CAMPBELL,
Petitioner

v.

DEPARTMENT OF THE TREASURY,
Respondent

2024-1470

Petition for review of the Merit Systems Protection Board in No. CH-0752-21-0458-I-1.

Decided: August 20, 2026

TERRI BLANCHARD, Blanchard Law Group, PC, Orland Park, IL, argued for petitioner.

DANIEL HOFFMAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for respondent. Also represented by MARTIN F. HOCKEY, JR., PATRICIA M. MCCARTHY, BRETT SHUMATE.

Before DYK and TARANTO, *Circuit Judges*, and MOORE, *District Judge.*[1]

MOORE, *District Judge*.

Denise Harris-Campbell was an employee of the Internal Revenue Service ("IRS"), and she also served in her personal capacity as a trustee of a trust for her beneficiary goddaughter during her federal service. Various issues with Ms. Harris-Campbell's tax returns and health insurance claims were uncovered, leading the IRS to terminate her employment following an investigation. Ms. Harris-Campbell appealed her termination to the Merit Systems Protection Board ("Board"), and Administrative Judge Daniel R. Fine issued an initial decision reversing the termination. The IRS timely petitioned for review of that reversal, and the Board then entered a final order reversing the initial decision and sustaining Ms. Harris-Campbell's removal. Ms. Harris-Campbell seeks to reverse that final decision. We now affirm.

BACKGROUND

Ms. Harris-Campbell worked as a Taxpayer Accounts Manager and a Revenue Officer for the IRS before eventually rising to the position of Supervisory Revenue Officer. She began serving as a trustee for her goddaughter's trust in 2011, following her goddaughter's mother's death in 2010, but her goddaughter had lived with her in some capacity since 2006. By early 2015, Ms. Harris-Campbell's relationship with her goddaughter had broken down, and her goddaughter followed through on threats to report her to the IRS for accepting compensation or gifts in exchange for preparing tax returns for others, which is undisputedly

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[1] Honorable K. Michael Moore, District Judge, United States District Court for the Southern District of Florida, sitting by designation.

prohibited. 5 C.F.R. §§ 3101.106(b), (b)(5). Her goddaughter reported that Ms. Harris-Campbell "prepared tax returns in exchange for compensation/gifts several times in the past few years," starting "as a family thing, but then spread[ing] to other acquaintances" such that she was preparing "approximately five to six returns for other people each year." Appx. 170.[2] The IRS takes the position that its own employees are held to a higher expectation of tax compliance as they are responsible for enforcing federal tax law, and this was also true for Ms. Harris-Campbell specifically "as a manager who is expected to report and enforce consequences of misconduct by [her] employees." Appx. 128. Ms. Harris-Campbell disclosed her goddaughter's threats and reports to her manager, who advised her to preemptively reach out to the Treasury Inspector General for Tax Administration ("TIGTA").

This reporting triggered a TIGTA investigation, which resulted in the IRS finding, in pertinent part, Ms. Harris-Campbell improperly claimed dependency exemptions for: (1) her goddaughter as a dependent in tax years 2008 to 2014 despite not paying enough of her goddaughter's expenses to warrant that categorization; (2) her goddaughter as her child in tax years 2008, 2009, and 2010; (3) her goddaughter as her stepchild in 2011; and (4) her goddaughter's son as a dependent in tax year 2014 even though the majority of his expenses were paid by the goddaughter. Appx. 362–63. Notably, Ms. Harris-Campbell acknowledged to investigators that "she knew that her actions were technically illegal." Appx. 62, 362. This same investigation also revealed that Ms. Harris-Campbell improperly placed her goddaughter and her goddaughter's son on her Federal Employee Program health insurance plan.

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[2] Citations to "Appx." refer to the Appendix to the Brief of Petitioner submitted by Ms. Harris-Campbell, Dkt. No. 53.

The TIGTA investigation in turn triggered an IRS audit, wherein the IRS determined that Ms. Harris-Campbell's goddaughter and goddaughter's son were indeed listed as dependents on her 2013 and 2014 tax returns and put on her health insurance plan, and that she owed a tax liability, including interest and penalties, as well as a separate amount for the health insurance fraud. Appx. 60, 164, 460–77, 657–70. Ms. Harris-Campbell challenged this determination in U.S. Tax Court, which corroborated the outstanding amounts she owed, and the case was resolved upon a Stipulation of Settled Issues ("Stipulation") between her and the IRS for approximately half of the liability for which she was initially assessed. Appx. 155–57. The Decision from the Tax Court ("Tax Court Decision"), which is signed by the parties, imposed the amounts owed and applicable penalties, "[p]ursuant to the agreement of the parties in this case," without further discussion. Appx. 134–35.

The Stipulation, which was entered on the docket in the Tax Court case, stated in pertinent part that Ms. Harris-Campbell was: (1) as to tax year 2013, "not entitled to claimed dependency exemptions" for her goddaughter and was "liable for the accuracy related penalty under [Internal Revenue Code ('I.R.C.')] § 6662(a) . . . to the extent it still applies after adjusting computations" as stated therein; and (2) as to tax year 2014, "not entitled to claimed dependency exemptions" for her mother, goddaughter, and goddaughter's child, was "not entitled" to $6,300.00 claimed as non-cash contributions, $1,125.00 claimed as cash contributions, $20,342.00 claimed as medical and dental expenses, or the Child Tax Credit, and was "liable for the accuracy related penalty under I.R.C. § 6662(a) . . . to the extent it still applies after adjusting computations" as stated therein. Appx. 156–57. The last paragraph states that the Stipulation is intended to "resolve all of the issues in the case and to be a binding settlement," and that Ms. Harris-Campell's "tax liability [was to] be computed by [the IRS] based on the Stipulation . . . and pursuant to the Internal Revenue Code." Appx. 157. The Stipulation is unsigned by any party.

The Tax Court case concluded in 2020. In the meantime, several separate instances of purported financial misconduct had surfaced. First, in October 2017, Ms. Harris-Campbell failed to settle a disputed charge on her government travel card balance within 30 days following a charge for a hotel that she did not end up staying at, at which point she notified her manager as required, and received alternative discipline. Second, in October 2018, Ms. Harris-Campbell was suspended for 7 days due to travel card misuse where she attempted to pay the balance of her IRS travel credit card from an account that twice had insufficient funds, which she maintained was not misuse but nevertheless stated she understood that two bounced checks in a 12-month period would result in suspension of the card. Appx. 821–22.

On March 17, 2021, the IRS proposed removing Ms. Harris-Campbell based on three Reasons: understating her tax liability; failing to correctly pay the tax liability she owed; and improperly claiming dependent entitlements and benefits on her health insurance which she received through her employment. Appx. 125–31. On August 25, 2021, the IRS sustained each Reason along with its supporting Specification in deciding to remove her, noting that the various instances of misconduct "each separately demonstrate a severe lack of integrity, which is an essential element of your position in keeping the trust of the taxpayers you are entrusted to provide service for." Appx. 51; *see* Appx. 49–54. The purported misconduct related to Ms. Harris-Campbell's travel credit card was also taken into account as prior discipline. Ms. Harris-Campbell was removed from Federal service effective August 27, 2021.

Ms. Harris-Campbell timely appealed her removal to the Board, resulting in Administrative Judge Fine's initial decision reversing her removal. The full Board reversed the initial decision upon the IRS's petition for review, sustaining Ms. Harris-Campbell's removal on the totality of the evidence, including the Stipulation and Tax Court Decision, which had not been afforded evidentiary weight in the initial decision. The Board concluded that the IRS had proven its first Reason for removal by a preponderance of the evidence, merged the second Reason with the first, and did not reach the third. The Board highlighted that as to the Tax Court materials, documentary evidence including the original IRS audit and investigatory hearing materials, and hearing testimony, Administrative Judge Fine "erred in discounting or failing to recognize these and other pieces of evidence as he analyzed the agency's allegations." Appx. 10; *see* Appx. 8. Ms. Harris-Campbell appeared *pro se* throughout these proceedings prior to the instant petition to this court.

Following the Board's final decision, Ms. Harris-Campbell timely petitioned for review. We have jurisdiction under 28 U.S.C. § 1295(a)(9) and 5 U.S.C. § 7703(b)(1).

DISCUSSION

We undertake a narrow review of the Board's decisions pursuant to 5 U.S.C. § 7703(c). We review the underlying record and will only set aside a decision if it is: "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c); *see also Potter v. Dep't of Veterans Affs.*, 949 F.3d 1376, 1380 (Fed. Cir. 2020). It is the petitioner's burden to establish reversible error in the Board's final decision. *See Sistek v. Dep't of Veterans Affs.*, 955 F.3d 948, 953 (Fed. Cir. 2020). We review the Board's legal findings de novo and factual findings under a substantial evidence standard. *McIntosh v. Dep't of Def.*, 53 F.4th 630, 638 (Fed. Cir. 2022) (citation omitted).

An abuse of discretion occurs when an agency reaches a decision "based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or [that] represents an unreasonable judgment in weighing relevant factors." *Beck v. Dep't of Navy*, 997 F.3d 1171, 1182 (Fed. Cir. 2021) (quoting *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005)). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Simpson v. Off. of Pers. Mgmt.*, 347 F.3d 1361, 1364 (Fed. Cir. 2003) (quotation omitted).

Among other grounds, Ms. Harris-Campbell contends that the Board committed reversible error in its treatment of documentary and testimonial evidence, including its consideration of her alleged settlement agreement with the IRS to establish the amount of her disputed tax claim in its evaluation of whether she should be removed. According to Ms. Harris-Campbell, because "[e]vidence of settlement is not admissible when it is offered to prove liability or damages" under Federal Rule of Evidence 408, the Board improperly considered the Tax Court Decision, which was rendered pursuant to the Stipulation and "is the product of a settlement between the IRS and the appellant as a taxpayer," as relevant and material, relying in part on *Tawadrous v. Department of the Treasury*, 110 M.S.P.R. 475 (2009). Petitioner's Br. at 9–14. We disagree.

It is well-settled that "evidentiary issues fall within the sound discretion of the board and its officials." *Curtin v. Off. of Pers. Mgmt.*, 846 F.2d 1373, 1378 (Fed. Cir. 1988). We will therefore only overturn as to evidentiary rulings if there is an abuse of discretion that is "clear and harmful," which means that a petitioner must "prove that the error caused substantial harm or prejudice to his rights which could have affected the outcome of the case." *Id.* at 1378–79 (first citing *Spezzaferro v. FAA*, 807 F.2d 169, 173 (Fed. Cir. 1986), then citing *Cornelius v. Nutt*, 472 U.S. 648, 657–59 (1985)).

Rule 408, entitled "Compromise Offers and Negotiations," provides as follows:

> (a) Prohibited Uses. Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
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> > (1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and
> >
> > (2) conduct or a statement made during compromise negotiations about the claim—except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.
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> (b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Fed. R. Evid. 408. "Although the Federal Rules of Evidence do not apply to Board hearings, they are a helpful guide to proper hearing practices." *Yanopoulos v. Dep't of Navy*, 796 F.2d 468, 471 (Fed. Cir. 1986) (internal citation omitted).

Even if Rule 408 applied, Ms. Harris-Campbell has not shown that it was violated here. The fact of the admitted tax liability to which Ms. Harris-Campbell undisputedly agreed, even if, as she contends, such settlement was not based on a written agreement, is not a "settlement communication" or otherwise a material prepared for "use in negotiations." *See Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294–300 (5th Cir. 2010). Therefore, where the Board relied on the Tax Court documents to establish the fact of a liability that was a product of a settlement, this is not the same circumstance as was contemplated in this court's previous holdings that an "unaccepted offer of settlement" may not be considered because admitting "an admission of liability in the amount of the offer would seriously discourage parties from discussing settlement or making settlement offers." *Cheyenne River Sioux Tribe v. United States*, 806 F.2d 1046, 1050 (Fed. Cir. 1986).

Notably, Ms. Harris-Campbell does not contend that the Tax Court Decision, which specifically was entered "[p]ursuant to the agreement of the parties in this case," was the result of fraud or misrepresented the agreement reached. Appx. 134–35. In its final decision, the Board specifically noted that Ms. Harris-Campbell included the unsigned Stipulation in her own bankruptcy filings, "the totals contemplated by the settlement agreement are consistent with the totals identified in the Tax Court [D]ecision, which does explicitly state that the decision is the product of settlement," and that it "found no instance of [her] substantively disputing the authenticity of the settlement agreement during the adjudication of this appeal." Appx. 9.

Ms. Harris-Campbell now argues that she in fact did dispute the authenticity of the settlement agreement, but this appears to be a semantic dispute where she repeatedly, even in briefing to this court, states her tax liability in an amount consistent with the Stipulation and the Tax Court Decision. Petitioner's Br. at 4 ("The appellant petitioned the U.S. Tax Court for relief and, in December 2020, she resolved her appeal with the IRS for roughly half of what the IRS said she owed."). The Board used Ms. Harris-Campbell's Tax Court documents to establish the amount of her liability as an underlying, non-dispositive fact giving rise to her removal, those documents did not reflect any additional adjudication of the merits of her Tax Court claim, and the Board cited to *Tawadrous* where Tax Court materials were used in a similar manner.

We thus do not see any abuse of discretion in the Board's consideration of the Stipulation and Tax Court documents, and even if there had been an abuse of discretion, Ms. Harris-Campbell has not made a showing of harm or prejudice where there is no substantive dispute as to the fact that she settled with the IRS for a sum consistent with what is reflected in the Tax Court documents and Stipulation.

CONCLUSION

We have considered Ms. Harris-Campbell's remaining arguments and find them unpersuasive. For the foregoing reasons, we affirm the final decision of the Board.

The parties shall bear their own costs.

AFFIRMED