NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

WILLIAM DAVID JONES,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-2110

Petition for review of the Merit Systems Protection Board in No. DC-0752-20-0273-I-1.

Decided: June 9, 2025

WILLIAM DAVID JONES, Rockville, VA, pro se.

STEPHEN FUNG, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by ALLISON JANE BOYLE, KATHERINE MICHELLE SMITH.

Before TARANTO, CLEVENGER, and HUGHES, *Circuit Judges*.

PER CURIAM.

William D. Jones appeals from the final decision of the Merit Systems Protection Board ("Board") dismissing his case for lack of jurisdiction. *Jones v. Dep't of Def.*, No. DC-0752-20-0273-I-1, 2024 WL 3202398 (M.S.P.B. June 26, 2024) ("*Final Order*"). For the reasons stated below, we affirm the Board's final decision.

I

Mr. Jones was previously employed as an Operations Research Analyst (GS-1515-13) by the Defense Logistics Agency ("DLA"), an agency within the Department of Defense, and his duty station was at DLA-Aviation in Richmond, Virginia. On September 13, 2018, a lieutenant with the DLA police force was dispatched to the duty station to take a report of harassment from a female co-worker of Mr. Jones. The co-worker reported in a sworn statement that Mr. Jones had been engaged for some time in an adulterous relationship with another female DLA employee. The relationship had recently ended, and since then, Mr. Jones attempted persistently to use the co-worker as a go-between with his former lover, asking her to deliver messages to and solicit information about his former lover. The co-worker also reported that Mr. Jones had grabbed her by the arm, and she feared for her personal safety due to Mr. Jones's increasingly unpredictable and violent behavior. Based on the allegations of the co-worker's sworn statement, which outlined evidence of physical assault, harassment and elements of a hostile work environment, the lieutenant asked Mr. Jones's former lover to make a sworn statement at police headquarters in the late afternoon on September 13. The former lover's sworn statement detailed a two-year romance gone sour and outlined threatening and defamatory statements made to her or about her

by Mr. Jones, as evidenced by email documents and text messages she gave to the lieutenant.

On September 14, 2018, the lieutenant asked Mr. Jones to come to police headquarters to make a statement regarding the situation. Mr. Jones complied, accompanied by his wife, who gave a sworn statement that she knew all about the affair. In his sworn statement, Mr. Jones confirmed the two-year "off and on" relationship with the former lover, averred that he was in fear for his life because the former lover possessed several guns, and alleged that he was being harassed by her.

Later that day, Mr. Jones's supervisor, John Wait, informed Mr. Jones that he would be required to telework due to the ongoing situation. On September 20, 2018, DLA initiated a misconduct investigation into the allegations made by the two female DLA employees. The objective of the investigation was to determine whether Mr. Jones engaged in harassment and misconduct in the workplace, and, if so, whether his conduct created a hostile work environment against the complaining female workers or anyone else. The same day, DLA issued Mr. Jones a "no contact" order, requiring that he have no direct or indirect contact with the two females. On October 29, 2018, Mr. Jones was allowed to return to work at the duty station, but was given restrictions regarding where he could park and what buildings he could enter. He was not allowed to work in the same building with the two females and was told again not to have any contact with them.

On November 14, 2018, DLA put Mr. Jones on paid administrative leave pending completion of its misconduct investigation. While on leave, DLA required Mr. Jones to surrender his common access card, after-hours access card, Government computer, and keys. On November 17, 2018 Mr. Jones spoke with Mr. Wait on the telephone, and Mr. Wait told Mr. Jones that the misconduct investigation was "wrapping up and not looking good" for Mr. Jones, and that

the agency was considering whether to propose his removal based on the investigation, and he could lose his security clearance. SAppx221.[1]

Later on November 17, 2018, Mr. Jones tendered a resignation letter to DLA, stating "Effective 17 November 2018, I resign from my position as a Senior Operations Research Analyst, GS 1515 13 Step 4 . . . . My reasons for this resignation are personal . . . I have determined that the goals, mission, and vision of this organization are not in line with my own, and have found better opportunity elsewhere." SAppx067. The resignation letter did not suggest in any way that the resignation was involuntarily coerced by any of DLA's actions against Mr. Jones, or by Mr. Wait's conversation with Mr. Jones earlier that day.

On November 29, 2018, DLA notified Mr. Jones that he was prohibited from entering his former duty station until further notice because DLA deemed him a risk to agency personnel for having exhibited "threatening behavior toward other DLA employees," and because he had violated the September 20, 2018 no-contact order. SAppx070.

DLA completed its misconduct investigation on February 8, 2019, concluding that the allegations by the two female employees were substantiated and thus proved that Mr. Jones harassed the two female employees, and thereby created a hostile work environment. The investigation report opined that based on the evidence adduced in the investigation "the proper authority could have pursued administrative action against [Mr. Jones], if not for his voluntary[]y resignation." SAppx181.

On January 2, 2020, Mr. Jones filed an appeal with the Board, alleging that his resignation was involuntary and

---

[1] "SAppx" refers to the supplemental appendix attached to Respondent's Response Brief.

coerced by DLA's creation of a hostile work environment. In support of his allegations, Mr. Jones pointed to the fact that DLA placed him on telework status for 47 days, issued a no-contact order without warning or a hearing, and removed him from all of his usual work and placed him in a room separate from his co-workers.

In response, DLA filed a motion to dismiss the appeal for lack of jurisdiction. DLA argued that the evidence showed that when Mr. Jones was accused of misconduct, the agency took immediate steps to mitigate the circumstances while it investigated the allegations. DLA argued that Mr. Jones did "not allege[] conditions so intolerable that a reasonable person under the same circumstances would have felt that they had no choice but to resign." SAppx158–59.

In response to DLA's motion to dismiss, Mr. Jones disagreed that his resignation was voluntary and uncoerced. SAppx221–27. Mr. Jones stated that "[a]ny person who faced the insurmountable obstacles that I endured at the hands of a few people would have made the same choice that I did." SAppx221. In Mr. Jones's view, DLA's actions of isolating him from the workplace and his two female coworkers, culminating in his placement on administrative leave on November 14, 2018, resulted in constructive discharge from his position.[2] SAppx225.

---

[2] A coerced resignation, if proven, is treated as a constructive removal of the employee, and thus an appealable action within the Board's jurisdiction. *Cruz v. Dep't of the Navy*, 934 F.2d 1240, 1244 (Fed. Cir. 1991) (en banc). Mr. Jones is thus correct to connect coerced resignations with removals. But to the extent Mr. Jones argues that his placement on paid administrative leave is an independent adverse action appealable to the Board, *see* Pet'r's Informal

On March 4, 2020, an Administrative Judge ("AJ") dismissed Mr. Jones's appeal, finding the Board lacked jurisdiction because Mr. Jones failed to nonfrivolously allege that his decision to resign was involuntary. *Jones v. Dep't of Defense*, No. DC-0752-20-0273-I-1 (M.S.P.B. March 4, 2020) ("*Initial Decision*").

The Board's jurisdiction is limited by statute, and, as relevant here, does not extend to employee-initiated actions such as resignations, which are presumed to be voluntary. *Staats v. U.S. Postal Serv.*, 99 F.3d 1120, 1123-24 (Fed. Cir. 1996). The Board only assumes jurisdiction over an appeal by an employee who has resigned if the employee, as a prima facie matter, presents nonfrivolous allegations that the resignation was involuntary. Nonfrivolous allegations are allegations "that, if proven, can establish the Board's jurisdiction." *Garcia v. Dep't of Homeland Sec.*, 437 F.3d 1322, 1330 (Fed. Cir. 2006) (en banc). The required nonfrivolous showing matter is adjudicated by the Board on written submissions by the parties, without a hearing. *See Burgess v. Merit Sys. Prot. Bd.*, 758 F.2d 641, 643 (Fed. Cir. 1985). If the nonfrivolous allegation test is satisfied, the employee is then entitled to a hearing where "the claimant must prove jurisdiction by a preponderance of the evidence." *Garcia*, 437 F.3d at 1344.

Principal grounds for showing involuntariness are that the resignation was the product of coercion by the agency or the product of misinformation or deception by the agency. *Shoaf v. Dep't of Agric.*, 260 F.3d 1336, 1341 (Fed. Cir. 2001). To establish coercion, the employee who has resigned must show that the agency imposed the alleged coercive circumstances and that the employee had no

---

Br. at ¶ 23–24, his argument is misplaced. As relevant here, agency actions short of actual removal, including an agency's proposal to remove, are not independently appealable actions. *See Cruz*, 934 F.2d at 1243.

realistic alternative but to resign. *Staats*, 99 F.3d at 1124. To establish deception, the employee must show that "a reasonable person would have been misled" by an agency's "misleading information" and that the "employee materially relie[d] on the misinformation to his detriment." *Covington v. Dep't of Health & Hum. Servs.*, 750 F.2d 937, 942 (Fed. Cir. 1984) (citing *Scharf v. Dep't of the Air Force*, 710 F.2d 1572, 1575 (Fed. Cir. 1983)).

The AJ found that while DLA's actions may have been "unpleasant," they did not "evince working conditions so intolerable that a reasonable person . . . would have felt compelled to resign." *Initial Decision* at 13. Rather, DLA's actions were "taken because [Mr. Jones] was accused of harassment" and DLA "responded by separating the accused and the accuser while it undertook an investigation into the allegations as required by its policy." *Id.* The AJ found that instead of resigning, "a reasonable person in [Mr. Jones's] situation would have chosen to stay and challenge any adverse action that might have been proposed as a result of the investigation." *Id.* The AJ also addressed the telephone conversation between Mr. Jones and Mr. Wait. The AJ found that Mr. Wait's communication did not amount "to coercion or an improper act by the agency," and that instead of resigning, Mr. Jones "could have challenged the merits of [the] investigation if it resulted in disciplinary action." *Id.* at 13–14. Mr. Jones appealed the AJ's decision to the Board.

The Board affirmed the Initial Decision, with one modification. The Board found there was "no reason to disturb the [AJ's] finding" because "altered work assignments, separation from other employees, and subjection to investigation and a threat of discipline do not amount to a nonfrivolous allegation of involuntary resignation." *Final Order* at 7–9.

The Board modified the AJ's decision only to specifically address Mr. Jones's claim that Mr. Wait provided

misinformation on the likelihood and immediacy of discipline against Mr. Jones, correctly stating that "agency supplied misinformation" can "rebut the presumption of voluntariness." *Id.* at 11. The Board noted that because Mr. Wait's information did not appear to be incorrect, "the agency did not provide misinformation upon which [Mr. Jones] relied to his detriment," and thus Mr. Jones made an "informed choice" to resign. *Id.* at 12. Therefore, Mr. Jones "failed to nonfrivolously allege that he lacked a meaningful choice" and the Board lacked jurisdiction over his appeal. *Id.* at 9.

Mr. Jones timely appealed to this court. We have jurisdiction to review the Board's decision under 28 U.S.C. § 1295(a)(9).

II

We set aside the Board's 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). Whether the Board has jurisdiction to hear and decide a particular appeal is a question of law, which we review de novo. *King v. Briggs*, 83 F.3d 1384, 1387 (Fed. Cir. 1996). "This court, however, is bound by the [Board's] factual findings on which the jurisdictional determination is based unless unsupported by substantial evidence." *Brown v. Merit Sys. Prot. Bd.*, 469 F. App'x 852, 854 (Fed. Cir. 2011) (citing *Bolton v. Merit Sys. Prot. Bd.*, 154 F.3d 1313, 1316 (Fed. Cir. 1998)).

A

Our precedent states the test for determining whether a presumptively voluntary resignation is coerced by agency action and thus is treated as a constructive removal. The test requires proof by a preponderance of the evidence that "the employee had no realistic alternative but to resign or

retire." *Shoaf*, 260 F.3d at 1341 (citing *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975)). We have described this test as an objective one emphasizing that "freedom of choice is a central issue." *Garcia*, 437 F.3d at 1329. The question is "whether working conditions were made so intolerable by the agency that a reasonable person in the employee's position would have felt compelled to resign." *Shoaf*, 260 F.3d at 1341.

The AJ enumerated the agency-imposed actions as restricting Mr. Jones's access to his normal duty station, restating his work assignments and isolating him from the two female employees who had accused him of misconduct. Applying the proper test, the AJ found that Mr. Jones failed to show nonfrivolously that the workplace conditions imposed on him were "so intolerable that a reasonable person in the appellant's position would have felt compelled to resign," and that instead "a reasonable person in the appellant's situation would have chosen to stay and challenge any adverse action that might have been proposed as a result of the investigation." *Initial Decision* at 13. The Board found no reason to disturb the AJ's findings. *Final Order* at 9.

Mr. Jones does not take issue with the test for measuring whether a presumptively voluntary resignation should be treated as a constructive removal. Instead he takes issue with the Board's factual findings, arguing that "[t]he facts do not agree that [Mr.] Jones voluntarily resigned." Pet'r's Reply to Resp't's Informal Br. at 7. Specifically, Mr. Jones asserts that DLA's multiple actions isolating him from his normal duty station and his colleagues are "not instances of 'unpleasant[] circumstances in the workplace;' [they] are components of a constructive removal." *Id.* As such, Mr. Jones simply disagrees with the Board's findings that the agency's restrictions on his work conditions, necessarily imposed to stabilize the workplace during the investigation into his alleged misconduct, were not of the kind that would have driven a reasonable person to resign.

We test the Board's findings in constructive removal cases for substantial evidence. *Brown*, 469 F. App'x at 854. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938). Even when reasonable minds may disagree with a lower court's findings, an appellate court must accept the lower court's findings when the record provides support for the challenged findings. *In re Jolley*, 308 F.3d 1317, 1320 (Fed. Cir. 2002) ("'[T]he possibility of drawing two inconsistent conclusions from the evidence' will not render the Board's findings unsupported by substantial evidence." (citing *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

In this case, the agency presented an objectively rational explanation for its imposition of workplace conditions on Mr. Jones. The Board found that securing a non-hostile workplace pending the outcome of the investigation could not be considered creation of a hostile workplace sufficient to compel Mr. Jones's resignation. Mr. Jones's no doubt earnest subjective belief that the workplace conditions imposed on him would have driven an equivalently placed employee to resign cannot displace the substantial evidence in favor of the Board's contrary conclusion.

B

Mr. Jones also challenges the Board's finding that his resignation was not involuntary because of information he received from Mr. Wait. Pet'r's Informal Br. at ¶ 75.

A resignation is involuntary "if it is obtained by agency misinformation or deception." *Covington*, 750 F.2d at 942. However, "reliance on the misrepresentation is an essential element" and the employee must show that there was a misrepresentation in the first place. *See Christie*, 518 F.2d at 588.

Mr. Jones fails to demonstrate that Mr. Wait's statements constituted misinformation. Mr. Wait told Mr. Jones that the misconduct investigation was "not looking good," that DLA was considering removing Mr. Jones based on the investigation's outcome, and that Mr. Jones's security clearance could be in jeopardy. SAppx221. As the Board found, these statements do not appear to be misleading or constitute misinformation. DLA's investigation recommended that, had Mr. Jones not already resigned, "the proper authority could have pursued administrative action" against him. SAppx181. Further, Mr. Jones's security clearance was potentially in jeopardy, as security clearances can be revoked for adverse personal conduct. *See* 32 C.F.R. § 147.7 ("Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information"). Substantial evidence supports the Board's finding that information received by Mr. Jones from Mr. Wait did not compel Mr. Jones to resign.

CONCLUSION

To secure the Board's jurisdiction over his appeal to it, Mr. Jones had the burden to show nonfrivolously that his presumptively voluntary resignation was involuntarily coerced by agency actions or misinformation. We have carefully reviewed all of Mr. Jones's arguments presented in his many filings to this court, and find none of his arguments suffice to undermine the Board's final decision that he failed to carry his burden to show non-frivolously that his November 17, 2018 resignation should be treated as the agency having constructively removed him from his position. For the reasons stated above, we affirm the Board's final decision.

AFFIRMED

COSTS

Each party shall bear its own costs.