The Agency argued that the award is based on a nonfact because the Arbitrator erred by finding that the deciding official testified to not considering the grievant’s prior reprimand in determining the appropriate level of discipline. In this connection, the Agency claims that the Arbitrator erred because the deciding official “expressly testified on the record that she considered [the grievant’s] previous discipline and that she relied on the prior reprimand to determine the appropriate level of discipline.”

To establish that an award is based on a nonfact, the appealing party must demonstrate that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.

Even assuming that the challenged finding is a factual determination, the Arbitrator also relied on other factors – such as, “the failure of the Agency to prove all of the alleged misconduct and the severity of the [g]rievant’s proven misconduct” to fashion the remedy. The Agency has provided no basis for finding that, but for the alleged factual error, the Arbitrator would
have reached a different conclusion. Therefore, the Agency has not shown that the award is based on a nonfact.

B. The award draws its essence from the parties’ agreement.

The Agency argues that the award fails to draw its essence from: (1) Article 44, Section 4.B. of the parties’ agreement, which states that “[n]o employee will be disciplined except for such cause as will promote the efficiency of the service”; and (2) Article 44, generally, which, according to the Agency, “recognizes the progressive discipline model for disciplinary actions.” Specifically, the Agency claims that the Arbitrator erred by not fashioning the appropriate level of discipline in accordance with the parties’ agreement because she did not consider the grievant’s prior reprimand. The Arbitrator did not consider the grievant’s prior reprimand, according to the Agency, because she relied on the alleged “nonfact” discussed above.

When the Authority has rejected a nonfact claim, the Authority also has rejected an essence argument that was based on that nonfact claim. The Agency’s argument is premised on its nonfact argument. Thus, the above principles support rejecting the Agency’s essence claim.

Although the Agency cites U.S. DOJ, INS, Del Rio Border Patrol Sector, Texas, that decision is distinguishable. In that decision, the Authority found an arbitrator’s award deficient where the arbitrator set aside the grievant’s discipline despite the arbitrator’s finding that there was just cause to sustain the discipline. By contrast, here, the Arbitrator did not set aside the grievant’s discipline.

Consistent with the analysis set forth above, we find that the award does not fail to draw its essence from the parties’ agreement.

IV. Decision

We deny the Agency’s exceptions.

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8 U.S. Dep’t of the Treasury, IRS, 66 FLRA 528, 529 (2012).
9 Exceptions at 12.
10 Id.
11 IFPTE, Local 77, Prof’l & Scientists Org., 65 FLRA 185, 190 (2010) (IFPTE) (denying essence exception premised on party’s previously rejected nonfact argument); see also AFGE, Local 3937, 64 FLRA 1113, 1115 (2010) (same).
12 Exceptions at 10, 12.
14 Id. at 932.
15 IFPTE, 65 FLRA at 190.