



U.S. Department
of Transportation
**Federal Aviation
Administration**

San Francisco Airport Control Tower
Terminal 2, Room 630 SFIA
San Francisco, CA 94128-1071
(650) 876-2883

October 30, 2008

Mr. Jeffrey Lewis
28242 South Salo Road
Mulino, OR 97042

Federal Express # 865942882859
Certified Mail # 7003 2260 0003 7298 1389
Return Receipt

Dear Mr. Lewis:

In a notice dated July 28, 2008, you were advised that Andy Richards proposed to remove you from your position as an Air Traffic Control Specialist, AT-2152-FH, at \$106,024 at the Concord ATCT no sooner than 30 calendar days from receipt of this notice for "Inappropriate behavior in the workplace, Insubordination or refusal to carry out orders and Providing misleading information during an official investigation". This notice informed you that you could respond to my proposal both orally and / or in writing within 15-calendar days.

You received all the information relied upon on August 9, 2008 and as such your response time was extended. Mr. Richards received your written response dated Friday August 22, 2008. I have read your entire response.

In your response you first explained that you had included text from the proposed removal and underlined the text that you felt were misleading statements. You further explained that you also included text from the removal proposal and underlined the text that you felt were lies.

You stated for the record that this is quite representative of the ordeal you had endured for eighteen months, since 2/16/07, when you were locked out from your workplace at the Concord ATCT. You stated that the actions that occurred were based on slander. You further stated that in general you found Mr. Andy Richard's proposed removal letter to be astonishing, not just for the many unsubstantiated lies it was presenting, but also for Andy's many prejudiced embellishments not supported by any of the memos and eight sworn testimonies in the Record of Investigation. (ROI)

I will respond to each specification below. Regarding charge #1 for inappropriate behavior in the workplace, specification 1-5, you stated the following:

For specification # 1 you explained that around December or January you started to copy other employee's mimicry of Jason Ralph. You stated that you had not been told to change anything. You added that you felt Jason wanted you to continue, so he could quietly document your alleged misconduct.

I do not find your explanation as a valid reason for your behavior. The signed sworn statement from William Marks states that he asked you not to talk in that manner. You also state you were aware that John and James were previously placed on notice not to continue the behavior. Yet you state no one had placed you on notice, as justification for you to continue the inappropriate behavior.

For specification # 2, you allege that a conversation occurred regarding the oppression in ATC as the reason for your use of the statement, "trying to hold us niggers down." You explained the reason you used the n-word on 1/21/07 was to quote a Randy Newman lyric in the context of that discussion. You also explained your other reason for your use of the word "nigger" was because you had watched 2-3 half hour episodes of the Boondocks with James, which used the n-word dozens of times. You stated your one comment was forwarded, with a little embellishment to management. You added that in the furor of management's reaction that James and John were pressured into further embellishing their stories. You stated there was no reaction from either of the two employees after you used the n-word, only a quick sour look on John's face that clearly suggested that you should not have said that. You refuted that John offered you tips for better TV viewing. You added the wording was altered to make it appear hostile. In addition James and John made false claims that they had replied to your comment.

I find the signed sworn statements made by James Swanson and John Crabtree as credible accounts of what occurred on January 21, 2008. I find your inappropriate statement occurred right after you arrived at work and when you were told what position to work. Both employees placed you on notice that your response was not appropriate. Mr. Swanson also stated that he was watching the Boondocks the previous night when you came into the break room. Mr. Swanson left the DVD on for a few minutes after you arrived, but he shut it off due to it's content. Your sworn signed statement from the ROI stated that you watched the Boondocks for an hour or so with James. As such I do not find your accounts and explanation for what occurred credible.

For specification #3, you stated that you returned to Ms. Hardy's office on February 6, 2007 after signing the Accountability Board (AB) notice. You stated that you wanted to try one more time to convince Patricia that it was reasonable for you to annotate the copy you had signed or to get the copy back and provide her with a full written statement. You explained that she rejected your requests and you restated your requests, calmly and firmly. Ms. Hardy kept reciting that your acknowledging signature didn't really mean anything. You stated that you were at an impasse, so she called Bill Marks down and they both explained that your signature meant nothing. You kept emphasizing, that the document indicated that you were advised of the known specifics, yet you felt that you had been given no specifics. Since you were in a hurry to get to the airport, you then left. You denied that you lunged at anyone or that you made angry demands.

I find the signed sworn statements made by Patricia Hardy and William Marks as credible accounts of what occurred on February 6, 2007. Your inappropriate behavior of yelling and lunging at Ms. Hardy, which continued even after Mr. Marks was brought into her office. Mr. Marks observed you yelling and treating Ms. Hardy in a threatening manner. The Notice to the Respondent clearly explains that no determination of the validity of the allegation has been made and the allegation would be investigated. The notice further states that you would have an opportunity to give a statement before any determination is made. Your memo dated February 11, 2007, which was provided in your statement, only shows that five days later, you continued to request the AB memo back, still ignoring management's instructions. As such I do not find your account and explanation of your behavior on February 6, 2007 credible and in addition you failed to provide a reasonable explanation for your inappropriate behavior.

For specification #4, you stated that after your review of the Administrator Hotline complaint regarding your behavior, you requested an outside investigation. You asked if you could draft a written statement and Jason and Patricia said no. You explained that the meeting ended and

you went downstairs to draft your written statement and ten minutes later Patricia called and advised that you could leave an hour early on Administrative Leave. You stated thanks but no thanks and would stay, but could you have a rain check on the Administrative Leave? You quickly added that you were just kidding, but you would have a statement soon. You printed out the statement and knocked on the locked office door. You saw Jason at his desk and Patricia at her desk on her computer, and you asked that they accept your statement and they refused. You asked if you could slide it under the door and they stated no. You tested sliding it under the door and since it would not fit you left the statement at the foot of the door.

I find the signed sworn statements made by Patricia Hardy and Jason Ralph as credible accounts of what occurred on February 13, 2007. You became belligerent during the meeting and you were placed on administrative leave. You returned to the office and began pounding on the door and yelling, ignoring Mr. Ralph's instructions to leave the building.

For specification #5 you explained that Jason insisted that you needed to sign the memo, you started scribbling a note and then folded up the copy to keep as yours and told Jason he could keep his copy which you would not sign.

I find the signed sworn statement made by Jason Ralph and William Marks as credible accounts of what occurred on February 16, 2007. I find that you displayed inappropriate behavior by waving your hands and pointing in Mr. Ralph's face. After the meeting was terminated Mr. Ralph directed you five times to leave his office, and you ignored these directions.

Regarding charge #2 for insubordination or refusal to carry out orders, you stated the following:

You stated that you were no more hostile than Jason and you departed with a sick leave approval. You stated that it makes no sense that Jason would order you on five separate times to leave his office and that you heard no such orders. You added while fetching your cell phone, Jason ordered you to leave and you left. You stated that you offered a simpleton's solution to the problem, you annotating the memo. You stated that you attempted to reason with Jason. You added that at one point in the meeting Jason ordered you not to annotate on the memo and you paused, but you were rattled enough that you started to scribble a note on the memo.

I find the signed sworn statement made by Jason Ralph and William Marks as credible accounts of what occurred on February 16, 2007. After the meeting was terminated Mr. Ralph directed you five times to leave his office, which you ignored. In your statement you acknowledge that when you returned to the building and Mr. Ralph ordered you not to go upstairs, you choose to ignore that order and continued up the stairs.

Regarding charge # 3 for providing misleading information during an official investigation, under specifications 1-9 you stated the following:

For specification #1, you stated that your answer during the investigation was truthful. You stated that John Crabtree was really not involved in the discussion you had with James about ATC training and fraternity hazing. The theme was oppression, so you felt very comfortable in chiming in with a quick note of a lyric from a Randy Newman song about oppression, "Rednecks". After hearing the n-words used dozens of times just the night before, you felt stupidly comfortable using a word you had never used before. You had made a mistake; you used the n-word once, in a non-disparaging context, quoting a lyric.

I find the signed sworn statements made by James Swanson and John Crabtree as credible accounts of what occurred on January 21, 2007. When you reported to work on January 21st, after CIC Crabtree informed you of your assignment, you responded, "You're trying to keep a nigger down". As such I find the information you provided on March 23, 2007 as misleading.

For specification # 2 you stated that your answer was truthful and you were not sure what was misleading here.

I find the signed sworn statements made by James Swanson, John Crabtree and William Mark as credible, when they told you on two separate occasions that type of speech was inappropriate and told you to stop speaking in that manner. In addition you stated that you had watched the DVD for an hour or so with Mr. Swanson, as justification for your inappropriate behavior the following day. Mr. Swanson stated that he turned the DVD off a few minutes after you arrived in the break room. I find the information you provided on March 23, 2007 as misleading.

For specification #3 you stated that you never made this statement as claimed by Ken Moyer.

In response I find the signed sworn statement made by Mr. Moyer as credible, based on the all the information I have received and reviewed for this case.

For specification #4 you stated that your answer is truthful and you demanded nothing.

I find the signed sworn statements made by Patricia Hardy and William Marks as credible accounts of what occurred on February 6, 2007. Both employees stated that you were yelling and demanded the paper you had signed back. You continued yelling your demand at Ms. Hardy, until Mr. Marks took you outside of her office. I find the information you provided on March 23, 2007 as misleading.

For specification #5 you stated you were telling the truth and to your knowledge Ms. Hardy brought Mr. Marks down on the basis of a Weingarten.

I find the signed sworn statements made by Patricia Hardy and William Marks as credible accounts of what occurred on February 6, 2007. Ms Hardy stated that you lunged and attempted to intimidate her to return the letter. Ms. Hardy called Mr. Marks because she was fearful of her safety. I find the information you provided on March 23, 2007 as misleading.

For specification #6 you stated you were truthful again.

I find the signed sworn statement made by Jason Ralph and William Marks as credible accounts of what occurred on February 16, 2007. Both statements show that you approached Mr. Ralph in a threatening manner, while waving your hands and pointing in his face. I find the information you provided on March 23, 2007 as misleading.

For specification #7 you stated that you were not aware that the prior testimonies of Jason Ralph and Bill Marks had both suggested that you were hostile and potentially violent in the 2/16 meeting. You stated that you did nothing hostile as approaching Jason and waving your hands, etc.

I find the signed sworn statement made by Jason Ralph and William Marks as credible accounts of what occurred on February 16, 2007. In your signed sworn statement you responded No,

when asked if you continued to shout and shake your hand toward Mr. Ralph's face. I find the information you provided on March 23, 2007 as misleading.

For specification #8, you stated in this same call Jason directed you to not visit the tower and to not make harassing calls to the tower.

I find the signed sworn statement made by Jason Ralph and William Marks as credible accounts of what occurred on February 16, 2007. Jason Ralph ordered you from his office several times, based on your threatening behavior. Your response is misleading because you attempted to make it appear that the reason you left the building was only due to your request for sick leave, rather than having been ordered to leave.

For specification # 9, you stated that since you were running up the metal stairs to get your cellphone, which may have attributed to the banging noise that was heard by witnesses. You stated that you were going to the fourth floor to get your cell phone from your unlocked locker.

I find your response as a reasonable explanation for the banging noise that occurred when you reentered the building and ignored Mr. Ralph's order to leave. However in the signed sworn statement from Mr. Ralph, he explains that you then returned to his office and attempted to gain entry. You stated in your signed sworn statement that you stated that you passed by his door on your way down and you did not knock on Jason's door. I find the information you provided on March 23, 2007 as misleading.

In all I have considered your full response and explanations and find that you have not provided any evidence that you did not engage in the behavior for which you were charged. In your response I find that you make excuses for your behavior and state that the sworn testimony by your co-workers in the Report of Investigation was embellished, that they lied and made false claims. You failed to accept any responsibility for your inappropriate behavior and stated that your only violation was the use of the n-word. I find that your inappropriate behavior and your outbursts are disruptive to the workplace. Your conduct is detrimental and a significant distraction to the operations and mission. As FAA employee under the standards of conduct you are expected to behave in a manner that will not cause management to question your reliability, judgment and trustworthiness in carrying out your responsibilities as an employee of the Federal Government. You are required to exercise courtesy and tact at all times when dealing with fellow workers and managers to support and assist in creating a hospitable and productive work environment.

Overall I find that your inappropriate behavior, insubordination and providing misleading information provided during an official investigation, has adversely affected the agency's operations and mission.

I gave full consideration to the factors listed in the proposal notice and your response. I also reviewed the Human Resources Policy Manual (HRPM), Chapter ER-4.1 and the accompanying Human Resources Operating Instruction (HROI), Table of Penalties:

As such I find that the reason and specifications outlined in the notice of proposed letter is fully supported by the evidence and warrants your separation to promote the efficiency of the service. Therefore, it is my decision that you be removed from duty effective November 6, 2008.

Should you wish to dispute this decision, you may file an appeal under (1) the

FAA Guaranteed Fair Treatment (GFT) Appeal procedure or (2) the Merit System Protection Board (MSPB). However, you may elect only one of these forums to challenge this decision.

- (1) If you elect to appeal this decision under the FAA GFT Appeal procedure, you must submit your written appeal within 10 calendar days after receipt of this notice. Your appeal must be addressed to Mark Deplasco, Acting District Manager, San Francisco ATCT, Terminal 2, Room 630 SFIA, San Francisco, CA 94128-1071. The appeal must include a statement of the specific relief sought and a copy of all supporting evidence. Please provide the name of your Partisan if the individual has been identified. Attached is a copy of the GFT Appeal procedures. Additionally, you may review the GFT appeal procedures at: https://employees.faa.gov/org/staffoffices/ahr/policy_guidance/hr_policies/pms/pmsch3/#perf5.
- (2) If you elect to appeal this decision to the MSPB, you must submit your appeal to the Regional Director, Merit System Protection Board (MSPB), 201 Mission Street, Suite 2310 San Francisco, CA 94101-1831. Your appeal must be filed in writing within 30 calendar days of the effective date of this action. If your appeal is not filed within this 30-day calendar limit, it may be dismissed as untimely unless you can show good cause for the delay. Enclosed is a copy of the MSPB appeal form that may be used in presenting your appeal or you can transmit your appeal electronically by accessing the board's main web site at <http://www.mspb.gov/>. A complete copy of the MSPB regulations can be located at 5 CFR 1201, which can be viewed on the MSPB web site as well as general information about the MSPB. Also enclosed is a copy of the MSPB regulations.
- (3) If you elect to grieve this matter under the FAA/NATCA negotiated grievance procedure; you must submit a formal grievance to me no later than 20 calendar days after the effective date of this decision. The grievance must be filed in accordance with Article 9, Section 8 of the agreement. The written grievance will be processed with Step 2 of the negotiated grievance procedure. Be advised, if you elect to grieve this matter under the Negotiated Grievance Procedure (NGP), your right to an MSPB appeal is waived. If however, you allege prohibited discrimination, you may ask the Board to review the final grievance decision rendered by the arbitrator. The mailing address, time limits and conditions by which you may subsequently appeal to the MSPB are listed in 5 CFR 1201, Subpart E.

A claim of discrimination may not be raised in the GFT Appeal procedure. If however, you believe that this action is taken in whole or part on the basis of discrimination due to race, color, religion, sex, national origin, disability, age, sexual orientation, or in retaliation for participation in the EEO process, and you wish to file a complaint of discrimination, you need to contact the Office of Civil Rights National Intake Unit at 1-888-954-8688 no later than 45 calendar days after the effective date of this action. You may file a complaint of discrimination in accordance with the EEO Complaint Procedure or as part of an MSPB appeal, but not both.

Should you elect to file a complaint of discrimination under the EEO Complaint Procedures, the time limits and conditions by which you may subsequently appeal to the MSPB are listed in 5 CFR 1201, Subpart E.

Claims of sexual orientation discrimination are accepted and investigated within the Department of Transportation. Discriminatory claims on this basis may not be raised with either the Equal Employment Opportunity Commission (EEOC) or the MSPB. Consequently, claims of sexual orientation discrimination cannot serve as a basis to ultimately file with the MSPB under the conditions addressed in Subpart E.

Jeffery Lewis
Letter of Decision

7

The FAA has a free, confidential Employee Assistance Program (EAP) specifically designed to assist employees and/or members of their family to effectively deal with the challenges faced in daily life. You may seek assistance through this confidential program by contacting the 24-hour EAP Hotline at 1-800-234-1327 or visiting the EAP website at www.madellanhealth.com.

If you have questions regarding this notice or the GFT or MSPB Appeal procedures, you may contact C. Rosslyn Marable, Employee Relations Specialist, AWP-16, at (310) 725-7865. Your local union representative can provide information about the NGR.

Sincerely,


Mark A. DePlasco
Acting Manager, San Francisco District

cc: AWP-16a

7