

NARRATIVE RESPONSE

The Appellant (Jeffrey N. Lewis) is appealing his removal from federal service, which was effective November 6, 2008, for Inappropriate behavior in the workplace, Insubordination or refusal to carry out orders, and Providing misleading information during an official investigation. The removal stems from Appellant's conduct at the Concord Air Traffic Control Tower on February 16, 2007. The Appellant was an employee as defined by 5 USC, Section 7511 (a) (1).

The Appellant was initially placed on Administrative leave on February 16, 2007, the date of the underlying incident. Separately, based on medical information submitted by the Appellant, a determination was made by the Flight Surgeon that the Appellant was medically disqualified. Appellant filed a grievance on the medical disqualification action and associated leave issues. Included in the agency file are the grievance documents reflecting that Appellant has made that election, and thus, it is not appropriately considered as part of the removal case. However, since Appellant has raised a constructive suspension issue, the grievance documents and associated medical and leave documents are provided.

Appellant has also raised issues regarding the investigation into the underlying incident, so the Agency has included in the Agency file, documents related to his request under the Freedom of Information Act, (FOIA)

The Agency will establish that the medical issue and constructive suspension was already grieved by Appellant, and it is not related to his removal action. The Agency will show that Appellant was not issued a prior admonishment regarding the charges listed above and was not denied his rights to due process.

The Agency will establish with the supporting documentation and testimony that the action the agency took was appropriate action which was based on the facts and circumstances, and is in accordance with applicable laws, rules, regulations, policies and procedures. The agency will further establish that the appellant's removal promoted the efficiency of the service.

Lewis filed an Appeal with MSPB on 11/30/08. Agency Counsel was required to produce an "Initial Agency File", with copies to both MSPB and Lewis. So, for a few weeks in December, they scrambled to produce one. A 452-page IAF was mailed out on Christmas Eve.

One required element was the "Narrative Response". On this one page, Agency Counsel reduced all the tangled details to just a couple generic paragraphs, largely boilerplate. Just like with the original ROI, almost completely lacking in details...

The other 451-pages were mostly filler – a re-sending of the pages Lewis already had, plus a couple hundred meaningless added pages. In fact, the 452-pg IAF provided Lewis only four new documents: three short emails, and the Narrative Response (2% of Exhibits). And the documents they did NOT provide? Most of those have been collected AFTER Lewis was forcibly retired; since early DEC-09 has produced 48-pages of documents more two-years-old, all significant enough to be included in Exhibits.

Additionally, many of the IAF copies were of poor quality, even illegible (e.g., see IAF pg.327, inside the back cover of this binder).

EXHIBIT: 12/24/08 (Agency Narrative Response)

MSPB IAF
Rcvd 12/29/08