

From: Mike Hull <mhull@natca.net>
To: Jeff Lewis <lsjef@yahoo.com>
Sent: Sat, December 4, 2010 1:34:28 PM
Subject: RE: My presentation

Thanks Jeff, I made all of your suggestions and incorporated them with the exception of "biased". In the way the sentence reads, per English grammar, either bias or biased can be used.

Thanks for your help.

KJ

From: Jeff Lewis [mailto:lsjef@yahoo.com]
Sent: Saturday, December 04, 2010 12:34 PM
To: Mike Hull
Subject: Re: My presentation

Mike,

I added some edits in red. No need to do any, though they should tak but a minute or two. The last one is probably the most impactful: the Clancy letter was given to me on 2/6 (not mid-December)...thus only ten-days prior to lockout.

J

From: Mike Hull <mhull@natca.net>
To: Jeff Lewis <lsjef@yahoo.com>
Sent: Sat, December 4, 2010 9:45:59 AM
Subject: My presentation

Hi Jeff,
As promised, here it is.

KJ

<<...>>

Grievance number 08-CCR-1 (Jeff Lewis Medical):

This grievance has to do with payment for medical expenses, as well as all related costs thereto. Additionally, the Agency owes the grievant substantial monies for placing the employee in an enforced leave status that is defined as a constructive suspension, through no fault of the employee as he was clearly locked out of his facility. The employee was not able to procure a psychological evaluation, required by the Agency without justification, proof or otherwise medically required. **(55)** Despite the fact that the Agency states there is no violation of Article 10 because there is no disciplinary action, they actually did constructively suspend this employee!! **(6/19/08 denial of grievance and Fossier email numbered 108)!!**

On or about February 16, 2007, the grievant was “locked out” of his facility by the ATM, Mr. Jason Ralph. **(11)** On the above date, the Agency conducted a “*Workplace Violence Committee Meeting*” via teleconference where there were several allegations brought forth from the ATM regarding the grievant’s alleged behavior that demonstrated an alleged “...*predisposition to hit another person, and was aggressive, confrontational, and belligerent.*” The ATM also stated that he had “*received notice from employees that he received feedback from other employees that they felt intimidated...*” **(7)**

The reason for this lockout was not communicated to the employee until some five (5) months later when he was informed of this teleconference. It was during this conversation among management officials that the RFS decided to remove the grievant’s medical qualification based solely on the ATM’s allegations which included no medical evidence for which the RFS to make his decision. This is a violation of Article 66. Management and FAA medical officials did this based on absolutely no medical reasoning. This is a clear violation of Article 66, Sections 1 and 6 of the WB. The grievant was forced to burn many hours of annual leave, sick leave, as well as to accept many hours of LWOP for no rhyme or reason. This amounted to a constructive suspension of the grievant.

Approximately ten (10) days after this telcon, **and** ten (10) days after the RFS made his non-medical determination to incapacitate the grievant, there is an email from Cindy Lopez-Hickson to the ATM attempting to seek additional information that “...*didn’t come across during the telcon....*” **(15) (Read a few of the questions from this email)!** Then, one (1) day after these unanswered questions, Ms. Lopez-Hickson still has unanswered questions that she states “...*I’m not sure that came across clearly when we had the teleconference on February 16.*” **(16)** Yet, the RFS made the determination to incapacitate the grievant as a result of the telcon, even with all of these unanswered questions!! **(8)**

Approximately one (1) month after this teleconference the grievant was notified by his ATM that he would be required to obtain a medical evaluation and provide required medical documentation. **(23)** In this letter, the ATM even admits that the documents will be used to **determine** the grievant’s ability to perform the duties of his position. Furthermore, the ATM states that if the grievant does not provide the required medical documentation, it may result in disciplinary action against the grievant!! **(Where is this in ER 4.1 or the TOP)?** Lastly the ATM only gives the grievant approximately two (2) weeks to procure and submit said medical documentation at his own expense. There appeared to be a lot of coordination in the drafting of

this letter between HR, Air Traffic and Aerospace medicine and they couldn't even decide what the letter should say. In fact, the ATM did not even include, within the letter, the most important piece of information with regard to the required medical documentation...that being a requirement to obtain a "DSM-IV" and a "multi-axial assessment"! (9, 10, 22, 26, 27, 28, 29, 31, 34) Since the letter was very confusing and did not clearly explain **all** of the medical documentation required, the grievant attempted to find out exactly what was needed. He was only able to obtain this very important information via a phone call to Dick Fossier. The grievant was forced to jump through many unprecedented hoops to attempt to appease management for his medical clearance without any sound medical or other justification. The handling of this entire case by management and FAA medical personnel amounts to a serious abuse of discretion.

In response to this letter from Mr. Ralph, the grievant sent a letter to Mr. Ralph (43) requesting an extension in which to submit the required medical documentation since the Doctor's that he was attempting to procure appointments and evaluations were not available immediately nor within the Agency's artificially and unilaterally imposed two (2) week time frame. Despite this request from the grievant, Mr. Ralph decided to send another letter to the grievant dated 4/17/07 stating that since the grievant did not provide the required medical information, the grievant would be taken off of administrative leave and placed on enforced leave. (51, 53, 59, 85, 86, 87) The grievant was then taken off of administrative leave and placed on "other" leave (annual, sick, LWOP).

In a letter dated June 7, 2007, the RFS states "*...Lewis has demonstrated inappropriate behavior in the workplace for 17 years. He has already been transferred to seven different facilities. In each of these, his behavior remained unchanged.*" (68) If this is true, what took the Agency so long to take any action? If this is true, what proof does he or the Agency have that this is correct? **(There is documentation from Fossier that there are no conduct issues)!! (54)**

On or about June 21, 2007, the RFS declared the grievant *permanently* medically disqualified, again with little or no medical documentation or reasoning. (89, 90) This was done ostensibly based on the medical evaluation submitted by the grievant's doctor. This permanent medical disqualification prompted Mr. Ralph to send an email the very next day hoping the grievant's T&A record to be coded differently. (92, 93-98) This action by the RFS clearly violates Article 66, Section 6c of the WB in that the RFS did not notify the employee, in writing, as to the reason for the permanent medical disqualification. Yet, in a letter dated July 23, 2007, the other Doctor in the office of Aerospace medicine acknowledges the permanent medical disqualification is appropriate. (117) As a further violation of Article 66, the RFS writes the grievant on the very same day and notifies him that "*...there are no official notes kept by the RFS regarding the violence in the workplace evaluation.*" (118)

So if I have this right, the RFS medically incapacitates the grievant solely based on a telcon in which not all questions were answered, then the RFS permanently disqualifies the grievant approximately five (5) months later and he has no notes or other documentation to back up or support any of his findings?

Then, the grievant's own Doctor, with whom he contracted to perform the requirements of the Agency, writes the Agency on August 30, 2007 to suspend his previous conclusions, including his diagnostic summary of Mr. Lewis' psychological evaluation of May 22, 2007. The Doctor goes on to state that he was "...unable to directly speak with Mr. Lewis' immediate supervisor..." and he further states that he did not have access to the grievant's medical file as well as other pertinent data to his evaluation. Lastly, the Doctor states "*these data are crucial in evaluating Mr. Lewis.*" (67, 143-146) It is a shame that the Agency did not see fit to coordinate and cooperate with a Doctor in order so that Mr. Lewis could comply with the Agency's direction in obtaining a medical evaluation!

Additionally, a psychologist from Mr. Lewis' primary health care provider (Kaiser) notifies the FAA that she has met with Mr. Lewis for eight (8) 45-50 minute sessions in a four (4) month period. She concludes that her clinical impressions are based on her contacts with him and in conversations with Dr. Haldeman. This Doctor goes on to state that in her professional opinion, the grievant is experiencing situational stressors and is making very appropriate efforts to cope with his situation. She also states that "...in my professional opinion, Mr. Lewis does not exhibit any signs of a psychological disorder that would impair his ability to perform in a job-setting." She goes on to state that "...if Mr. Lewis had not had the extremely stressful experiences of being locked out of his job and uncertainty about his employment status, he most likely would not have needed mental health services at all." (148)

After all this, and approximately four (4) months after a **permanent** medical disqualification, the Agency notified the grievant that he is scheduled for a physical examination. (171, 172 and 173) When all is said and done, approximately eleven (11) months after the RFS originally incapacitated Mr. Lewis with no justification and approximately seven (7) months after the RFS permanently medically disqualified Mr. Lewis, his medical clearance was fully and completely reinstated by the very RFS who permanently medically disqualified him! (180-183) This is absolutely unbelievable! This lends great credence to the fact that the RFS had **no** right to suspend the grievant's medical clearance based on a telcon for which the RFS did **not** have any medical evidence to do!

Throughout this entire eleven (11) month situation, the Office of Aerospace Medicine is on record as stating that Mr. Lewis was medically incapacitated due to not meeting the standards set forth in FAA Order 3930.3A, Appendix 1G. This regulation states "*the applicant must have no **established** medical history or clinical diagnosis of any of the following: (1) A psychosis; (2) a neurosis; (3) Any personality disorder or mental disorder that the FAS determines **clearly** indicates a potential hazard to safety in the ATC system. The determinations **will** be based on the medical case history (including **past** social and occupational adjustment) **supported** by clinical psychologists and psychiatrists, including such psychological tests as may be required as part of a medical evaluation as the FAS may prescribe.*"

Based on this clear and unambiguous medical qualification from the FAA's own order, one **must** ask what "**established medical history or clinical diagnosis of a psychosis, neurosis, personality or mental disorder**" was the RFS operating off of to determine from a "telcon" that involved no other medical professional (other than him) to medically incapacitate the grievant? Additionally, since everything in Appendix 1G of the Agency's own order requires any of the

above to be determined by the FAS, what proof or documentation does the RFS have that this was all approved by the FAS? I am quite interested in hearing this!! It is no wonder that the RFS attempted to cover his tracks in his letter dated June 7, 2007 that “...Lewis has demonstrated inappropriate behavior in the workplace for 17 years...” (68) Yet in the instant situation, there is no proof of that. More on this later!

In the end and based on all evidence before us, the RFS clearly erred by medically incapacitating the grievant on February 16, 2007 and ultimately disqualifying the grievant based on unsubstantiated and unjustified accusation and allegations from an ATM that is clearly and unequivocally bias against the grievant.

Now lets talk about Mr. Ralph and his clear bias against Mr. Lewis. Mr. Ralph states on a call to the Service Area that Mr. Lewis is very agitated and has been intimidating employees over the last day or so. It just so happens that Mr. Lewis was in Oregon, during his weekend during this alleged intimidation of employees. (Evidence in number 6 and number 7) Then in March 2007, Mr. Ralph cautions Cindy Lopez-Hickson and Dick Fossier regarding their communication with Mr. Lewis. (36 and 37) He states “He will also seek to deluge you with repeated phone calls, documents, and vent about alleged improprieties and bias towards him.” He further states that “...redirect his inquiries to his supervisor or Union rep as appropriate.”

Then in April 2007, Mr. Ralph emails a whole host of FAA management and medical personnel and states that “to preclude becoming a daily target of his rants, I suggest you do not waste your time returning his call.” He further states “...he was already instructed to direct his questions to his Union representative or supervisor, as appropriate.” “He is calling you to circumvent those instructions and to create discord between those responsible for addressing his intolerable conduct.” Lastly, in the same he email “let’s continue to keep each other in the loop.” (46) Notwithstanding Mr. Ralph’s obvious bias toward this employee, the real question here that needs to be answered is; what is Mr. Ralph afraid may be discovered by Mr. Lewis contacting HR directly?

Later in April 2007, Mr. Ralph writes to HR “I am more comfortable with the S/L, AL option because it only results in LWOP if he exhausts his other forms of leave.” Then he states “...the bottom line is, he does not hold a current medical certificate to perform ATC duties and must utilize his own leave rather than us continuing to indulge his poor conduct with Administrative time.” (50)

In July 2007, Mr. Ralph states in an email “he was once again belligerent and I was unable to provide him with the simplest of guidance regarding his inquiries and had to terminate the call.” Then on the same day, Mr. Ralph states “Mr. Lewis became confrontational and extremely volatile , as I attempted to interview him regarding allegations made against him.” It appears that Mr. Ralph is quite content to throw around accusations and allegations with no way to back them up. This is a clear he said/she said scenario with no proof that this ever took place. (More on this in a moment) (101, 102)

Mr. Ralph’s bias becomes quite evident in an email he sent to HR, the Service Area and Security on April 17, 2007. In this email, he states “on April 2, 2007, his original due date, he contacted

me and essentially demanded a six week extension until May 15, 2007.” He then states *“I feel it is overdue that he be placed on LWOP, until the resolution of his employment status.”* (48) Referencing this “contact”, which was a fax from Mr. Lewis to Mr. Ralph (43, 44) there is nowhere that I can see in this fax where Mr. Lewis **demand**s anything. This exaggeration of Mr. Lewis’ fax, brings all of his allegations and accusations into question on how truthful they really are!

Now that I have demonstrated Mr. Ralph’s penchant for embellishment and bias against this employee, lets bring this all into perspective with Mr. Lewis’ FAA career. He began his FAA employment as an air traffic controller in 1986. During his FAA career, he has worked at seven (7) different facilities; TTD, SLE, P80, BJC, RHV, ZOA, and lastly CCR. Additionally, Mr. Lewis has had no conduct history in the twenty (20) years he has been employed...at least until he got to CCR with Mr. Ralph as his ATM. Of note is a letter from then AT Division Manager John Clancy that states *“I wish to personally thank you for the dedication and professionalism you have demonstrated throughout your tenure in the agency.”* This letter was given to Mr. Lewis a mere two (2) months prior to him being locked out of his own facility. Also of note is an email from Dick Fossier where he says *“some of the issues I see is that with almost 20 years of federal service, Lewis has no disciplinary record.”* (54)

The appropriate remedy is what is requested and contained within the grievance dated May, 1, 2008.