



Issue Date: 30 July 2021

CASE NO.: 2019-AIR-00002

In the Matter of:

LEON ZORABIAN,
Complainant,

v.

SOUTHWEST AIRLINES CO.,
Respondent.

DECISION AND ORDER DENYING COMPLAINT

This matter arises under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR-21”), and the implementing regulations set forth at 29 C.F.R. Part 1979, Subpart B. Leon Zorabian (“Complainant”) alleges that his employer, Southwest Airlines, Co. (“Respondent”) retaliated against him for making safety-related complaints. Attorney Lee Seham represented Complainant. Attorneys Rodney Harrison and Sean Paisan represented Respondent.

A hearing was held on September 25 to 27, 2019, in Long Beach, California. At the hearing, I admitted into evidence joint exhibits: JX A to H and RX 102; Complainant’s exhibits CX 12 to 34, 36 to 48; Respondent’s exhibits RX 101 to 110, 120 to 127; and Administrative Law Judge Exhibit ALJX 1.¹ The parties submitted post hearing briefs and replies.²

After reviewing the complete record and the briefs of the parties, for the reasons set forth below, Complainant’s complaint is denied.

Issues for Hearing

1. Did Complainant engage in protected activity within the meaning of the AIR 21 on March 27, 2018, when he communicated issues with the installation of scuff plates to John Tomczyk?

¹ Complainant withdrew exhibits CX 1, 2, 3, 8, and 10. Respondent withdrew exhibits RX 111 to 119. Complainant’s exhibits CX 4, 5, 6, 7, 9, 11, and 35 were excluded over objection.

² I cite to Complainant’s and Respondents’ post-hearing briefs and replies as CPB or RPB at [page number] and CRB or RRB at [page number].

2. Did Complainant suffer an adverse action on March 27, 2018, when his supervisor asked him whether he was refusing to do the scuff plate work and thrust the scuff plate in his direction?
3. Has Complainant shown by a preponderance of the evidence that the protected activity was a contributing factor in the adverse action alleged? 29 C.F.R. § 1979.109(a).
4. If Complainant establishes the elements of his claim by a preponderance of the evidence, then has Respondent established by clear and convincing evidence that it would have taken the same adverse action in the absence of Complainant's protected activity? 29 C.F.R. § 1979.109(a).
5. If Complainant prevails, he seeks:
 - A. An order directing Respondent to refrain from any retaliatory action in response to the Complainant's efforts to perform, and direct the performance of, assigned maintenance work in compliance with the applicable maintenance manuals;
 - B. An order directing the removal and expungement of all references to discipline or disciplinary counseling from the Complainant's files in any way related to the facts and incidents described in the Complaint;
 - C. An order directing Respondent to cease and desist from all discriminatory conduct toward the Complainant, including but not limited to: threats of discipline, discriminatory assignment practices, and any other means of exerting pressure on the Complainant to perform, and or direct the performance of, assigned maintenance work in a hostile manner that fails to conform to applicable maintenance standards;
 - D. An order awarding Complainant full make whole relief to which he is entitled under the statute, and the costs of this action, including payment of reasonable attorney fees;
 - E. An order granting such additional relief as the Secretary of Labor, or other decision maker in this process, deems proper and just; and,
 - F. An order granting full compensatory damages including compensation for pain, suffering, and emotional distress due to this adverse action.

STIPULATED FACTS

The following facts are stipulated by the parties and require no proof:

1. Respondent is an "air carrier" as defined in 29 C.F.R. § 1979.101, and is subject to the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR 21).
2. Complainant Zorabian is an "employee" as defined in 29 C.F.R. § 1979.101.
3. Complainant Zorabian has been an employee of Southwest Airlines, Co. since 1993.

These stipulations are supported by substantial evidence in the record and are accepted as conclusively proven for all purposes.

FACTUAL FINDINGS

Manuals and Aviation Maintenance Technician Licensing

A Southwest aviation maintenance technician (AMT) must have an Airframe and PowerPlant (A&P) license issued by the federal government. It is the responsibility of anyone with an A&P license to ensure that whatever they work on is airworthy. JX F at 15. Additionally, an AMT must follow the Structural Repair Manual (SRM)—a manual produced by the aircraft manufacturer—and Maintenance Procedures Manual (MPM)—a Federal Aviation Administration (FAA)-approved document. HT 319 at 3; 319 at 20-22; 320 at 1-3. The SRM allows an AMT to assess whether damage exceeds tolerable limits or if a plane is airworthy and can be released back into service. HT 235 at 21-25; HT 260 at 12-16. An AMT must not deviate from the SRM unless Engineering authorizes it. JX H at 9. An AMT who deviates from the SRM or the MPM could be subject to termination and/or license action by the FAA. HT 264; HT 266 at 5-14. An AMT could not defend his or her license by asserting that he or she was following an order of a supervisor. HT 266 at 9-14. Before signing off on maintenance and releasing an aircraft into revenue service, an AMT must determine whether there is any damage on the aircraft exceeding tolerable limits as specified in those applicable manuals. HT 320 at 17-22.

Boeing also generates an Illustrated Parts Catalogue (IPC) which serves as a reference for AMTs. HT 125 at 18-22. IPC has all the parts of an aircraft listed; it includes pictures of the parts and what each part should look like. HT 341 at 16-25.

Determining the Serviceability of Parts

At Southwest, a licensed AMT has authority to determine whether a part is serviceable. Parts arriving from vendors have an attached FAA Form 8130. Generally, parts with an attached Form 8130 are serviceable. JX H at 14. A part that is “bad out of stock” may have a serviceable tag, but is nonetheless unserviceable. HT 353 at 1-5. A suspected unapproved part (SUP) is a part that, for any reason, a person suspects of not meeting the requirements of an approved part. Reasons may include findings such as different finish, size, color, improper (or lack of) identification, incomplete or altered paperwork, or any other questionable indication. JX D at 1. When a Southwest employee discovers a SUP, he or she must remove the part from stock and notify a receiving inspector or Quality Control inspector.³ JX D at 2. Next, the employee fills out the SA-M 857 Part Record and Control Tag to show that the part is unserviceable. JX C at 4. Finally, if there is a possibility that additional SUPs are in stock, the employee completes an SA-M 834 Parts Action Request form. JX D at 2; JX C at 4.

Scuff Plates

A scuff plate protects the cargo door from damage. HT 123 at 10-12. In March 2018, Southwest had a lot of scuff plate work due to cargo door reports, and many planes were out of service due to scuff plate damage, which resulted in delays and the operation was under strain. CX 39 at 8; HT 346 at 1-3, 13. In the month of March, AMTs dealt with hundreds of scuff plates and before March 27, 2018, AMTs had installed approximately five undrilled scuff plates. HT 255 at 23-25.

³ In 2018, Southwest did not staff either of these positions in Los Angeles International Airport (LAX). JX C at 4.

When a dispute arises between an AMT and a supervisor regarding the serviceability of a scuff plate, there are several means to resolve the dispute. Southwest could 1) order a new part via an “aircraft on ground” (AOG) shipment, 2) finish fabricating the part to see if it can be made to fit the plane, or 3) get an engineering authorization (EA) to allow the plane to fly without replacing the damaged part. HT 238-242. Additionally, in 2018, Southwest could have also flown an inspector from Phoenix into LAX to review the parts. *See* HT 392 at 19-22.

Insubordination at Southwest

Although an AMT has authority to determine whether a part is serviceable, an AMT who is insubordinate for failing to follow a supervisor’s directive could be subject to discipline. HT 235 at 13-20; HT 238 10-13.

Some Southwest employees have cards on lanyards outlining guidance for supervisors to follow in cases of possible insubordination. CX 34 at 1; HT 238 at 7-8. The card specifies that first, the supervisor changes the request from a question to a clear, direct order. Next, if the employee continues to refuse, the supervisor says: “are you refusing to follow my direction?” And finally, if the employee continues to refuse, the supervisor says, “failure to follow my directive will be considered insubordination. Insubordination will lead to termination.” *Id.*

It is unclear to what extent supervisors know of and implement this process. Michael Baird—the manager of line maintenance at LAX—did not have a card, but stated the steps on the card were consistent with those a supervisor would take in a case of insubordination. HT 283 at 11-12; 284 at 1-13. Toni Baughman, Senior Human Resources Business Partner for Tech Ops, was not familiar with the process for “handling union employees” and had never seen the card until she was deposed. HT 454 at 1-3.⁴

Complainant knew of two employees who had been escorted off Southwest property for falsifying records, but knew of no one who had been walked off of the property for insubordination. HT 153 at 15-17.

Southwest Human Resources Policies

Southwest has specific policies against intimidation, bullying, and threatening behavior: a Workplace Violence Prevention Policy, a Bullying and Hazing Policy, and a Harassment Discriminatory Retaliation Policy. HT 408-09. Southwest includes the policies in their Guidelines for Employees, which states that employees can be disciplined and terminated for violating the policies. HT 412 at 4-12.

⁴ During her deposition, Ms. Baughman articulated the process outlined on the card for dealing with an insubordinate employee and stated she believed it would culminate with disciplinary action of some sort, but she did not think it would be termination. HT 455 at 1-25. Ms. Baughman’s description of the progression was based on her assumptions of how the progression worked; she had never seen the card until Complainant’s counsel showed it to her. HT 458 at 6-10.

March 27, 2018 Event: Scuff Plate Replacement

On March 27, 2018, Jason Taynai—a “remain on night,” or graveyard supervisor at Southwest—determined that Southwest needed to replace an aft scuff plate because the plate attached to the plane was dented. CX 39 at 9; HT 228 at 12. At the end of his shift, he turned the project over to John Tomczyk—another supervisor at Southwest. CX 39 at 9. Ben Ahmadi—a lead mechanic at Southwest—directed Complainant and Michael Johnson—AMTs at Southwest—to replace the aft cargo door scuff plate. HT 123 at 6-7; 130 at 12-15.

Complainant Deems Replacement Part Scuff Plates Not Serviceable

There were three available replacement aft scuff plates at LAX. After visually inspecting the replacement plates, reviewing the SRM, and measuring the irregularities of the plates with a depth gauge, Complainant concluded the replacement scuff plates were not serviceable. HT 235-36; HT 182 at 2. Complainant rejected the scuff plates because they were: “deformed” with “flaws noticeable enough to be seen without the use of measuring equipment.” JX C at 2. He further stated that the SRM “[did] not allow a new trim piece in this condition to be considered serviceable.” *Id.*

To reach this conclusion, Complainant compared the aft scuff plates to scuff plates in the storage area for the forward position. The scuff plates for the forward position were pre-drilled, countersunk, straight, and had no abnormalities. HT 133-134. Unlike the forward position scuff plates, the aft replacements had a matte finish, were not pre-drilled, and had an exaggerated amount of waviness. HT 134 at 15-17; HT 126 at 20-23. Complainant used a depth gauge to assess the abnormality of the surfaces of the scuff plates. HT 133 at 12.

Installing any of the three available aft replacements presented an additional challenge compared to a “normal scuff plate replacement,” because Complainant would have to drill and countersink the pieces. HT 132 at 2-6. Countersinking is done to prepare the holes for fasteners; it is “something you know how to do when you get an A&P license.” JX G at 81. However, Complainant had never drilled or countersunk a scuff plate; “that was not something [he] had performed.” HT 135 at 8-10. Complainant discussed the condition of the aft scuff plates with Mr. Johnson—who also noted the abnormalities, in particular the waviness of the plates—and told Complainant he would not install them if it were him. HT 131 1-11; HT 33 at 17-18. Mr. Johnson later told Mr. Tomczyk something along the lines of he would “do whatever.” HT 358 at 3-7.

Complainant also discussed the condition of the replacement plates with Mr. Ahmadi who pointed out that the plates were not pre-drilled and that they did not have the tooling to perform the task at hand at that point in time. HT 132 at 10-25. In fact, half of the scuff plates in the stockroom were undrilled, LAX had the necessary tools to install them, and both types were being used on aircraft without issue. HT 314 at 15-25; 315 at 1-5. Complainant stated he never considered it a flaw that the replacement plates were not predrilled. HT 179 at 21.

Complainant referred to a section of the SRM called, “Allowable Damage for After Cargo Door Surround Structure Center Scuff Plate,” which provides specifications for scuff plates already attached to the aircraft. HT 180 at 15. While the document did not specifically address waviness or

warping, it specified areas of the scuff plate that should be flat, without dents. CX 15 at 2; HT 140 at 2-14. On the replacement plates, those areas were wavy. HT 140 at 18.

Southwest's MPM states that a person may suspect that a part is not approved due to the part having a "different finish, size, color, improper (or lack of) identification incomplete or altered paperwork, or any other questionable indication." JX D at 2. Complainant concluded he would not have been able to sign off on his work because the piece would have been "not permitted." HT 131 at 20-21; HT 137 at 2-6; HT 138 at 3-13.

Reporting the Scuff Plates to Mr. Tomczyk

Mr. Ahmadi told Mr. Tomczyk that Complainant had showed him some abnormalities on the replacement scuff plates, and Mr. Tomczyk approached Complainant—who was seated in the mechanics' work area—to inquire why he had not started installing the replacement scuff plates. HT 298 at 18-22; 299 at 17-18; 184 at 5-15. The mechanics' work area is small and people must maneuver around each other. HT 299 at 22.

Complainant reported his concerns about the aft scuff plates to Mr. Tomczyk. Mr. Tomczyk and Complainant discussed the scuff plates for approximately 15 to 20 minutes. HT 301 at 18-9. During the exchange neither Complainant nor Mr. Tomczyk cursed or yelled, but "voices were raised," Complainant appeared agitated. HT 229 at 22; HT 37 at 23-25. While examining the scuff plates, Complainant and Mr. Tomczyk were within a foot of each other analyzing the surface of the plates and looking at the issues Complainant identified. HT 302 at 13-15. During the interaction, Complainant and Mr. Tomczyk were both touching the various three scuff plates to examine them and handing them back and forth. HT 302 at 19-25. Complainant is considerably shorter than Mr. Tomczyk. HT 67 at 13.

Complainant pointed out that the replacement plates were not drilled or countersunk and asked Mr. Tomczyk to look at the SRM. HT 146 at 22-25; HT 145 at 12-22. Complainant showed Mr. Tomczyk that the replacement plates were wavy and told him that, per the SRM, they were not serviceable. HT 301 at 12-15. Mr. Tomczyk disagreed with Complainant's assessment of the replacement scuff plates and believed they were serviceable. HT 302 at 8-9. During their discussion Complainant and Mr. Tomczyk did not reference Section 10.08 of the MPM which describes the identification of a suspected unapproved part (SUP). HT 388 at 1-3.

Mr. Tomczyk noted that all three replacement plates had serviceability tags, and told Complainant that once he installed it, the waviness would flatten. HT 187 at 2-7; 9-12. Complainant disagreed. HT 140 at 19-25. Complainant printed the SRM and offered to show it to Mr. Tomczyk. HT 152 at 2-4. Mr. Tomczyk declined to look at Complainant's printed copy of the SRM, but reviewed the SRM section on "damage limits" and instructed Complainant to drill the pieces. HT 152 at 10-12; HT 339 at 18-19. Towards the end of their interaction and assessment of the scuff plates, Mr. Tomczyk decided it was inappropriate to reference the SRM values because the scuff plates were not attached to an airplane yet. HT 356 at 8-12.

Complainant suggested they order a part from Southwest maintenance. With the assistance of Maintenance Control in Dallas, they could secure an AOG order and receive different replacement parts in less than an hour. HT 148 at 10-17. There was no guarantee, however, that an AOG'd replacement part would be different than the replacement parts in stock at LAX. At some

point, Complainant offered that it would be more efficient for the company if he went to the airplane and started removing the existing scuff plate. HT 146 at 25; 147 at 1-3.

Mr. Taynai heard Mr. Tomczyk tell Complainant there were other scuff plates he could use, and if he did not think any of them were serviceable, then he was going to pick one to install. HT 228 at 12-15. Towards the end of the interaction, Mr. Tomczyk chose what he believed was the best scuff plate, he took the scuff plate in two hands, and told Complainant to install that one. HT 303 at 1-17. While holding a scuff plate, Mr. Tomczyk did not yell, but he adamantly instructed Complainant to “just go start drilling holes” on the scuff plate. HT 151 at 21-23. Mr. Tomczyk—who is considerably taller than Complainant—extended the plate towards Complainant for him to take and at one point the scuff plate obscured Complainant’s view of Mr. Tomczyk. HT 67 at 13; 150 at 18-24; 151 at 3; 34 at 10-11. Complainant shuffled backwards to maintain more space between himself and Mr. Tomczyk. HT 151 at 6-8.

Complainant took the scuff plate from Mr. Tomczyk and continued to analyze it and remarked that it was not serviceable. HT 303-04. Mr. Tomczyk went into the supervisor’s office. Complainant refused to enter the supervisor’s office. CX 20; HT 61 at 6-8. At this point, Mr. Johnson left the mechanics’ area to complete another job while Mr. Tomczyk was in the office. *Id.* Complainant ordered a replacement part via AOG. HT 194.

Mr. Tomczyk again entered the mechanics’ area and told Complainant, “I need you to install this part.” HT 372 at 7-8. Complainant would not install the part. HT 374 at 1-7. After discussing Complainant’s concerns for 15 to 20 minutes, Mr. Tomczyk needed to end the discussion and start the job. HT 305 at 1-4. Mr. Tomczyk asked something along the lines of “then you are refusing to do the work?”⁵ HT 304 at 7-8; 194-96; 243 at 18-20; CX 39 at 9. Complainant became agitated and told Mr. Tomczyk he could not believe he just asked him that. HT 304 18-22; 377 at 20-23; 378 at 11. Complainant quickly walked out of the mechanics’ area and exited the building. *Id.* Complainant believed he would be disciplined for insubordination. He felt his whole career flash in front of him and he could see his “imposed exit from the company by the power invested in a person that’s delivering the message to [him].” HT 155 at 1-6.

Mr. Tomczyk did not have any consequences in mind when he asked the question and did not intend to threaten Complainant. HT 305 at 8; 309 at 15-17. After Complainant walked out, Mr. Tomczyk went into the supervisor’s office and called his supervisor—Mr. Baird—for advice. HT 305 at 20; 306 at 5-6; 379 at 5. Mr. Tomczyk explained the out-of-service condition and told Mr. Baird that Complainant was refusing to install three serviceable scuff plates on the aircraft. HT 277; 278 at 3-6. Mr. Tomczyk told Mr. Baird it was kind of insubordination, he was about to walk him out, and asked for Mr. Baird’s opinion. HT 383 at 12-21. Mr. Tomczyk and Mr. Baird discussed the possibility of insubordination due to Complainant’s emotions and walking out; they also discussed the possibility of walking Complainant out of the property. HT 306 at 11-12; 380-81; 383 at 12-18. They did not determine whether Complainant had been insubordinate. HT 382 at 9-10. Mr. Baird

⁵ There were multiple versions of this final question. Complainant characterized it as a statement. While the exact phrasing of it does not affect the determination of this case because Mr. Tomczyk did not intend it as a threat, I find the most likely version was a question asking Complainant if he was refusing to do the work or job. Other versions included: “Are you refusing to do the assigned job?” HT 374-76; “Then you are refusing to do the work” or “THEN YOU ARE REFUSING TO DO WORK.” HT 152 at 24-25; CX 39 at 6; JX B. Mr. Taynai overheard and corroborated Mr. Tomczyk’s words as a question asking Complainant if he was refusing to the work. CX 39; HT 230-32.

authorized Mr. Tomczyk to send Complainant home if it continued down that road. HT 279 at 5-8; 383 at 12-18; 385 at 21-22. Mr. Tomczyk did not interpret the conversation as instructions, and he decided not to pursue insubordination. HT 12-18. They also discussed the issue of the out of service plane and when they could get it back in service. HT 306 at 15-17.

Mr. Tomczyk felt Complainant was not definitively insubordinate. HT 385 at 1-2. Mr. Tomczyk and Mr. Baird thought it could be insubordination, but they did not pursue it. HT 385 at 21-22; HT 386 at 14. Mr. Tomczyk did not initiate discipline against Complainant. HT 391 at 20-21.

After he called Mr. Baird, Mr. Tomczyk looked for Complainant for a few minutes to see if they could get the job started by removing the plates and eventually installing a serviceable part. HT 308 at 23-25; 309 at 4-5; 395 at 4-8; 379 at 21-23. Mr. Tomczyk could not find Complainant and returned to the office to start an EA. HT 395 at 20-22. Southwest also could have flown an inspector from Phoenix into LAX to review the parts, but Mr. Tomczyk decided seeking an EA would be faster. HT 392 at 19-22. Mr. Tomczyk saw Complainant one to two hours after the discussion with him about scuff plates and the issue of the serviceability of the scuff plates did not come up because “[they] were at another phase of getting the plane back into service” with an EA. HT 308 at 23-25; HT 309 at 4-12. The plane was out of service for six hours. HT 396 at 5.

When Complainant went outside, he also almost immediately contacted Mr. Baird. HT 155 at 21-25. He discussed the incident with Mr. Baird and told him he was not feeling very good and did not know if he could stay at work given what had taken place. HT 155 at 15-17. Mr. Baird was sympathetic, told Complainant he understood, and if he wanted to, Complainant could leave. HT 156 at 3-5; 200 5-6.

Complainant stayed on the premises so he could meet that flight coming from Phoenix and see personally whether the AOG shipped parts were drilled. HT 159 at 18-21. To resolve the repair, Mr. Tomczyk got an EA allowing the airplane to be dispatched and flown as is subject to Engineering’s approval. HT 160 at 11-15; 310 at 23-25; 311 at 1-2. Complainant assisted with the paperwork to get the EA. HT 311 at 4-8; 387 at 7-12. Complainant cleaned, inspected, and taped the damaged aft scuff plates, but did not replace them. CX 19 at 1. Complainant completed his shift that day without any further incidents with Mr. Tomczyk. HT 311 at 8-11. At the end of the shift, Mr. Tomczyk purchased pizza for the crew as supervisors sometimes did, and Complainant ate pizza with the crew and Mr. Tomczyk. HT 311 at 12-19; 204 at 6-25.

The three scuff plates were locked in Mr. Baird’s office. HT 255 at 10-15; 314 at 6-8. Mr. Baird examined them and believed the plates appeared serviceable. *Id.*

Complainant’s Reports of the Incident

A few days after the incident, Complainant contacted Human Resources. HT 156 at 23; HT 157 at 6. On March 29, 2018, Complainant sent a complaint to Southwest’s Safety Reporting System (SRS) stating: “I was put in situation to perform airplane maintenance by way of forceful commands and physical intimidation. Please provide an email so in response to that I can attach my report.” JX A at 1. Complainant received a response that his complaint had been forwarded to Leadership and Employee Relations. *Id.* at 2.

Complainant also made a report of harassment and a hostile work environment. CX 36; HT 403 at 11-13. On March 29, 2018, Complainant wrote and sent an Irregularity Report to Southwest Human Resources, in which he described the incident and asked that the matter be elevated to the executive level. JX B; HT 127 at 15-17; CX 21 at 2. Southwest HR personnel forwarded the report to the appropriate person for review. CX 21 at 2.

In the Irregularity Report, Complainant stated that Mr. Tomczyk, Mr. Taynai, Mr. Ahmadi, and Mr. Mike Johnson were present. JX B. The report accused Mr. Tomczyk of physical intimidation. Complainant wrote that Mr. Tomczyk “began to use his height advantage to tower one of the trim pieces that is approximately three feet long as close as 10 inches from [his] face to the point that [his] view of [Mr. Tomczyk’s] face had become completely obstructed by the object held upon [him].” JX B at 2. He wrote that Mr. Tomczyk ordered him, “you WILL drill this piece and proceed to install,” several times while closing his distance and maintaining a towering stance. *Id.*

Complainant wrote all in caps in red that Mr. Tomczyk stated “THEN YOU ARE REFUSING TO DO WORK.” HT 220 at 5-10. He went on to state that “no one [he had] worked with or come across [had] ever resorted to such prematurely CONCLUSIVE comments by LABELING [him] as such.” JX B at 2. Complainant continued that he did not deserve to be addressed with such words and that Mr. Tomczyk “delivered a blow of unsupported accusations that he could no longer withstand and still continue to stay in the shop.” JX B at 3. As he exited the shop he was thinking about how he asked Mr. Tomczyk to assist him in ordering a new part. *Id.* Complainant believed he was the only one taking steps to make progress by taking it upon himself to order the parts. In the report, he stated that Mr. Tomczyk was actually “refusing to do work himself” because he was not interested in helping Complainant order new parts. *Id.* In the report Complainant noted that submitting to Mr. Tomczyk’s commands would have required him to not put safety first. *Id.* Complainant reported that he called Mr. Baird, and stayed outside of the shop to regain his composure. He stayed at work to receive the new parts from Phoenix. Complainant verified with a depth gauge that both an undrilled and a drilled aft scuff plate in the Phoenix shipment were without the waviness he observed in the original replacement plates. JX B at 3. Complainant concluded the report by describing Mr. Tomczyk and his efforts to dispatch the plane with an EA. *Id.*

Other Accounts of the Incident

On March 28, 2018, one day after the incident, Mr. Johnson sent his description of the incident via email to Complainant, the business representative, and another shop representative for the union. HT 42 at 19-21; CX 20 at 1. In response, Complainant sent Mr. Johnson a copy of the Irregularity Report detailing his version. HT 49 at 15-16. Mr. Johnson’s March 28, 2018 email account of the incident did not mention that Mr. Tomczyk held or shoved the part within a foot from Complainant’s face. CX 20, HT 52 at 10. Mr. Taynai also did not witness Mr. Tomczyk shove the plate in Complainant’s face, but he was working in another area. HT 229 at 19.

Mr. Johnson stated that he witnessed a disagreement between Complainant and Mr. Tomczyk in which Mr. Tomczyk insisted that Complainant use a part that may not have meet the quality standards[...]. CX 20 at 1. According to Mr. Johnson’s written statement, Complainant explained to Mr. Tomczyk that the parts did not appear to have the proper fit and finish. Mr. Tomczyk insisted that Complainant “take the part (one part in particular he picked out that appeared

to be the best if he [sic] three) to facilitate the structural repair....” *Id.* Complainant stated he would not install an improper part; he would remove and commence the repair process but would need a proper replacement part to complete the repair. *Id.* Mr. Johnson wrote that he told Mr. Ahmadi that the parts did not look true and he was not sure he would install them. *Id.* At that point, Complainant and Mr. Tomczyk moved away from Mr. Johnson and Mr. Ahmadi. *Id.* Mr. Tomczyk went into the supervisor’s office and Complainant stayed in the lead area. Complainant refused to enter the supervisor’s office and asked Mr. Tomczyk to come out of the supervisor’s office and “learn something.” *Id.* Mr. Johnson could not hear Mr. Tomczyk’s response. *Id.* Complainant again asked to show Mr. Tomczyk why the part was not good. At this point, Complainant was examining the scuff plate using a depth gauge. *Id.* Mr. Johnson was then called away. *Id.*

On April 1, 2018, Southwest People/Employee Relations Department received an email from Mr. Arthur (Drew) Johnson—an aircraft maintenance technician at LAX—stating that management/employee relations were volatile due to the incident between Complainant and Mr. Tomczyk. CX 36 at 4. Mr. Arthur (Drew) Johnson was not present during the incident, and noted that morale was low. *Id.* Mr. Arthur (Drew) Johnson did not believe that ongoing contract negotiations caused the issue. *Id.*

Southwest Investigations

Following the complaints regarding the March 27, 2018 incident, Southwest began two investigations: (1) a safety investigation into the serviceability of the three scuff plates and (2) a human resources investigation into Complainant’s interaction with Mr. Tomczyk. HT 171 at 18-24.

Internal Safety Investigation

Rob Berner, the Director for Safety Concerns, assigned Barry Smithley to investigate the safety report. HT 402 at 7-25. Mr. Smithley concluded that all of the three scuff plates were serviceable. HT 407 at 6-9. His report noted the three scuff plates in question had slight waviness/ripples on the upper surface. JX C at 4. One of the plates had “very minor/barely perceptible by touch ripples on the surface.” *Id.* The minor imperfections were from previous dent repairs. *Id.*

Mr. Smithley contacted Complainant during his investigation. On April 6, 2018, Complainant confirmed by email that he refused to install the scuff plates because, per the SRM, no dents were allowed in zones 4 and zones 5 of the scuff plates. JX A at 4. The scuff plates in question were wavy in those zones, and Complainant interpreted the waviness as dents. *Id.* Complainant did not use the terminology of “suspected unapproved parts.” JX C at 2. Complainant instead had written “bad” in permanent marker on the surface of each plate, but because the plates were locked in Mr. Baird’s office, Complainant did not fill out the required forms, SA-M 857, explaining why each scuff plate was rejected as required by the MPM. *Id.*

Even though the plates were not yet attached to the aircraft, Mr. Smithley referenced the SRM in his report because “for a secondary structure [...] [t]here is no other guidance to make a determination of serviceability.” JX G at 31. Mr. Smithley’s report noted the SRM 53-60-15-1A-3 provides inspection criteria limits for dents, and does not provide any inspection criteria for waviness/ripples along the surface. *Id.* SRM 53-60-15-1A-1 describes allowable damage related to cracks, nicks, gouges, scratches or corrosion, and similarly, does not provide any inspection criteria

for waviness/ripples along the surface. *Id.* Finally he noted the SRM does not instruct an AMT to use a depth gauge for anything other than a dent. *Id.* He concluded the plates were all serviceable.

Southwest Hostile Work Environment Complaint Investigation

Toni Baughman—the Senior HR Business Partner for Tech Ops for the maintenance and engineering department at Southwest—conducted the human resources investigation. HT 397 at 18-25. At the time of the hearing, Ms. Baughman had worked for Southwest for 18 years, and specifically in Human Resources (HR) for ten years. HT 397 at 15-21. Ms. Baughman had conducted six to 10 workplace investigations in response to employee complaints. HT 398 at 10-13. Generally, once a complaint is made to HR, Ms. Baughman would review the complaint, determine who was involved, ascertain if there were other witnesses, and speak with those involved. Following the investigation she would generate a written report, which would include a summary of the interviews. If she found there was a violation of Southwest policy, she would recommend discipline. HT 398-99.

Ms. Baughman was assigned to investigate whether Southwest’s policies of harassment and intimidation were violated. HT 404 at 1-6. Ms. Baughman interviewed Arthur (Drew) Johnson (April 9, 2018), Mike Johnson (April 10, 2018), Ben Ahmadi (April 26, 2018), Complainant (April 27, 2018), and Mr. Tomczyk (May 3, 2018) by phone. HT 412-13; 397 at 18-25; 415; CX 39. Ms. Baughman took notes during the interviews, she then typed up summaries and discarded her notes. HT 414.

On April 9, 2018, Ms. Baughman interviewed Arthur (Drew) Johnson who did not witness the incident. CX 39 at 2. Mr. Drew Johnson stated Mike Baird is from a non-union background and encourages a type of intimidating behavior. *Id.*

On April 10, 2018, Ms. Baughman interviewed Mike Johnson who witnessed only part of the incident. CX 39 at 4. Mr. Johnson told Ms. Baughman that Complainant was seated and Mr. Tomczyk was standing at the beginning of the interaction. *Id.* Mr. Johnson stated in the interview, at some point both Complainant and Mr. Tomczyk were standing, and Mr. Tomczyk took “one part and stood close to [Complainant] and was shoving the part towards [Complainant].” *Id.* Complainant asked to send for a new part. *Id.* Mr. Johnson stated Mr. Tomczyk then went into the office, and Complainant refused to follow him and continued measuring the plate with a caliper. *Id.* According to Mr. Johnson’s interview, Mr. Tomczyk then refused to look at Complainant’s measurements on the caliper. *Id.* Mr. Johnson stated in the interview he told Mr. Ahmadi the “whole thing [was] crazy and awkward.” He noted there was no cursing or yelling, but it was heated. *Id.* He concluded by saying Complainant was shaken by the interaction and went outside to calm down. *Id.* Mr. Johnson told Ms. Baughman the culture at Southwest had changed; the leadership took a “you are going to do what I tell you” approach and are at times confrontational. He complained that Mr. Tomczyk had “done this before.” *Id.* When asked if there was anything else Ms. Baughman should know, Mr. Johnson replied not really. *Id.* During his interview, Mr. Johnson did not indicate that he interpreted Mr. Tomczyk’s comment or any comments during the incident as threatening Complainant. HT 417 at 18-24.

On April 26, 2018, Ms. Baughman interviewed Ben Ahmadi. CX 39 at 5. Mr. Ahmadi told Ms. Baughman the part “wasn’t straight, it wasn’t predrilled. Sometimes they send them out not predrilled, the line isn’t prepared to drill holes.” *Id.* Mr. Ahmadi stated that he did not witness the

actual incident, but following the incident, Complainant came over saying something along the lines of, “don’t put words in my mouth, don’t tell me I’m refusing to do work.” *Id.* According to Mr. Ahmadi, Complainant was upset. *Id.* Mr. Ahmadi also stated for some reason the work environment has gotten much tenser. *Id.* “They don’t want to call for overtime, we have minimal people. Then there is the whole shenanigan around the scuff plates.” *Id.*

On April 27, 2018, Ms. Baughman interviewed Complainant. CX 39 at 6. During his interview, Complainant was very upset and indicated Mr. Tomczyk was not treating him with the kind of respect to which he was accustomed. HT 424 at 1-6. Complainant wanted to continue to explain to Mr. Tomczyk his objections to the scuff plates, and at some point during the conversation, Mr. Tomczyk was disregarding his concerns. HT 424 19-21. Complainant informed Ms. Baughman he is “the most senior guy in the shop, [he] knows his job, and he cares about doing a good job.” CX 39 at 6. He was insulted by Mr. Tomczyk’s attitude and felt his hostile way of communicating was intimidating and an abuse of power. *Id.*

Complainant told Ms. Baughman he lost his composure when Mr. Tomczyk said, “then you are refusing to do the work?” CX 39 at 6. Ms. Baughman asked Complainant why the statement had such an impact on Complainant. HT 424 at 1-6. Complainant believed the statement “you are refusing to do the work” was the final sentence you say to someone before you pull their badge and walk them out the door. He felt his job was being threatened when Mr. Tomczyk said that to him. HT 424-25; CX 39 at 6.

Prior to her interview with Complainant, Ms. Baughman had never heard anyone link those two things. HT 425 at 4-10. Ms. Baughman had no context for why Complainant reacted so strongly to Mr. Tomczyk’s question. HT 425 at 15-18. No one else that Ms. Baughman interviewed felt or expressed that Mr. Tomczyk was threatening Complainant with that statement. No one else tied the question to imminent termination or suspension. HT 428 at 20-22.

When asked if these things happen frequently, Complainant responded that when things escalate usually we can brush it off and cool down. CX 39 at 6. Complainant also reported that Mr. Tomczyk would write things in the logbooks for each aircraft and normally the AMTs doing the work should write those notes. *Id.* Complainant also told Ms. Baughman it is illegal to put unserviceable parts on an aircraft and that he would like to see Leadership work on their method of delivery. *Id.* Complainant did not mention that he felt he was assaulted or physically intimidated during the incident. HT 423 at 13-20. Similarly, he did not mention anything about the scuff plate in proximity to his face. HT 423 at 21-23.

On May 3, 2018, Ms. Baughman interviewed John Tomczyk. CX 39 at 8. Mr. Tomczyk stated that at the time of the incident, Southwest had a lot of scuff plate work due to cargo door reports and the operation was under strain. *Id.* Mr. Ahmadi had assigned a scuff plate replacement to Complainant and Mike Johnson, and 15 or 20 minutes later, Complainant was complaining that the replacement plates were not pre-drilled. *Id.* Complainant informed Mr. Tomczyk that he AOG’d a replacement part because the replacement plates in stock were wavy and not pre-drilled. *Id.* Mr. Tomczyk noted to Ms. Baughman that there was no guarantee that the replacement part would be pre-drilled either. *Id.* He also told Ms. Baughman that Complainant had a way of delaying getting to his assignments. *Id.* According to his interview statement, after looking at the plates, Complainant and Mr. Tomczyk disagreed whether the plates were serviceable. He told Complainant to install the plate, Complainant insisted it was not serviceable, and Mr. Tomczyk told him again he

thought it was serviceable and to go install it on the aircraft. Complainant told him he could not do that, and Mr. Tomczyk asked him if he was refusing to do the work he was assigned. *Id.* According to Mr. Tomczyk's interview, Complainant got upset and left the building. At that point, Mr. Tomczyk called Mr. Baird. *Id.*

When asked if he threatened Complainant, Mr. Tomczyk responded he is a big guy, over 6' 5," and when he stands in front of people it can be intimidating, but he was not trying to threaten him and he never held the scuff plate over his head or shoved it at him. CX 39 at 8. Ms. Baughman did not ask Mr. Tomczyk what he meant by his statement to Complainant that he was refusing to do his assigned work. *See* CX 39 at 8.

Ms. Baughman reported that her investigation findings were inconclusive. CX 39 at 1. She concluded although Complainant had felt threatened, Mr. Tomczyk had not violated any Southwest policies. HT 428 at 10-14; 429 at 1. Ms. Baughman noted that no one in the interviews described the interaction as being in a threatening manner or raised voices, or yelling, or any of the things that are covered in the policy. She also noted that ultimately there were no repercussions for not doing the work. HT 429 at 6-12. Ms. Baughman concluded Mr. Tomczyk had not actually threatened Complainant, but she recommended that Mr. Tomczyk apologize to Complainant because Complainant had felt disrespected. HT 429 at 1-4; 312 at 3-4. Complainant felt like Mr. Tomczyk had not listened to him. HT 428 at 16. Ms. Baughman wrote in her report that she "suggested [Mr. Tomczyk] apologize for using terms that are associated to pulling someone's badge as this could be interpreted as a threat." CX 39 at 1. Ms. Baughman credited Mr. Tomczyk's statement that he had not intended to threaten Complainant and clarified that her report was referencing statements that Complainant made to her. That is, she was not concluding that the terms were generally understood to be a threat of suspension or termination, rather that Complainant had interpreted the words as a threat. HT 433 at 10-13.

Ms. Baughman concluded "John's leadership style is not meeting the expectations of a Southwest leader and his actions were not respectful of [Complainant's] position and tenure with the company." HT 429 at 13-20. She felt that Mr. Tomczyk failed to deescalate the situation and listen to Complainant's sincere concerns. HT 429-430. She also recommended to Mr. Baird that Mr. Tomczyk finish a series of leadership courses before the end of the year. HT 313 at 1-12; 430 at 16-21. Additionally, she concluded she should coach Mr. Tomczyk on how to interact more respectfully with his employees. HT 430 at 16-21.

Post Investigation

Complainant had an honest and sincere belief that the scuff plates were not serviceable. JX G at 23; HT 281 at 16-17. Following Complainant's interview with Ms. Baughman, Mr. Tomczyk apologized to Complainant. HT 164 at 1-2. Mr. Tomczyk explained to Complainant he was under a lot of stress due to having compressed time to dispatch airplanes, and he had directed that stress at Complainant. HT 164 at 10-13. When apologizing, Mr. Tomczyk characterized the event as the "little incident," to which Complainant took great offense and refused to accept the apology. HT 219 at 9-17. After Mr. Tomczyk apologized to Complainant, Complainant called Ms. Baughman. HT 407 at 10-24. Complainant felt it was a big incident. HT 408 at 1-3. Complainant wanted Mr. Tomczyk to admit he was wrong about whether the scuff plates were serviceable. HT 312 at 21-23. He rejected Mr. Tomczyk's apology. HT 312 at 24-25. During that conversation Ms. Baughman

informed Complainant that the investigation concluded that the parts were serviceable, to which Complainant had no comment. HT 408 at 12-18.

Complainant did not lose wages due to the incident. HT 164 at 20. No one pulled his badge and escorted him out of the building; he was not suspended, disciplined, nor was his pay reduced. HT 214 at 9-13. Mr. Baird did not determine that Complainant did anything that warranted disciplinary action and never spoke to Complainant about a need to modify his behavior. HT 281 at 6-12. He was promoted to lead mechanic, a position which pays more. *See* HT 213 and 216. Promotion to the lead mechanic position is based on seniority and whether the most senior employee has a clean record—i.e. “no disciplinary or derogatory actions pending against him.” HT 216 at 11-20. Approximately a month after the incident, things had returned to normal in Complainant’s unit at Southwest in LAX. HT 426 at 2-10.

Federal Aviation Investigation

The FAA investigated three allegations regarding operations at the Southwest LAX maintenance base, including an allegation that there was pressure not to document discrepancies. On February 21, 2019, the FAA concluded that the evidence substantiated this allegation. CX 27 at 5. According to the FAA investigation, there seemed to be “a lack of an environment of trust, effective communication, and the willingness employees to share mistakes, concerns, or failures without fear of threats or reprisal.” *Id.* The FAA informed Complainant of its findings on February 26, 2019 noting that the FAA’s disposition of safety issues outlined in [his] complaint is independent of any investigation the Department of Labor may be conducting into [his] allegations of discrimination. CX 31.

Prior Accusation of Refusing to Work and Complainant’s Reaction

On June 10, 2017, Complainant had an incident with a flight attendant which resulted in Complainant writing an email to document the event. RX 110. Complainant had a tense exchange with the flight attendant when he declined to repair a soda door in the aft galley of an aircraft because he and the flight captain were concerned about delaying the flight. *Id.* Complainant wrote that the flight attendant said, “I have presented the problem to you and it is up to you to REFUSE DOING YOUR JOB.” *Id.* Complainant also wrote in the email body, “I am not exaggerating!!!” in a larger font. *Id.* Complainant noted that the flight attendant’s inability to consider how the repairs would delay the flight was detrimental to Southwest’s passengers, especially given that he had already marked the outstanding repair as accounted for. *Id.* Complainant notified his supervisor of the incident as well. *Id.*

CREDIBILITY DETERMINATIONS

There was no reason to question or discount the testimony of Michael Baird, Toni Baughman, Ben Ahmadi, or Darrel Huffman (telephone). These witnesses answered questions in a forthright manner and appeared to be credible, believable witnesses. Similarly, I found no reason to doubt the credibility of the depositions of Carl Cansler (deposition), Alvin Fulton (deposition), Barry Smithley (deposition), or Leland Sykes (deposition). Thus, I gave significant weight to their testimony.

Jason Taynai

While I found Mr. Taynai credible, Mr. Taynai was not focused on Mr. Tomczyk and Complainant's conversation because he was working to complete his shift. HT 232 at 24-25; HT 233 1-8. Mr. Taynai overheard portions of the conversation, but admitted he was not focused on the interaction. Thus, I gave his testimony limited weight in my determination.

Complainant

I did not find Complainant credible. At times his responses were inconsistent and confusing. Additionally, Complainant seemed prone to overstatements, exaggeration, and his account of the incident seemed dramatized. Thus, I found Complainant's account of his interaction with Mr. Tomczyk unreliable and gave it little weight.

Complainant, for example, gave inconsistent testimony regarding his promotion to lead mechanic. Complainant testified in his deposition that he was promoted, but at the hearing he denied that he was promoted.⁶ When pressed on this point, Complainant stated that he did not view his new premium position with increased pay as a promotion and he did not give more detail earlier in the hearing because he did not think the attorney would understand it, "because it's an elaborate explanation." HT 213 at 19-25; 216 at 11-20. Even if Complainant was not trying to minimize the fact that he was promoted after the incident, he was not forthcoming and gave inaccurate testimony because he believed a more complete explanation was too elaborate. Such omissions and inconsistencies undermined Complainant's credibility.

Complainant's testimony regarding whether it was an issue that the plates were not predrilled was also inconsistent and confusing. Complainant testified that "[he] had to drill and had to countersink the pieces at hand. So [he] knew there was much more to do than a normal scuff plate replacement." HT 132 at 1-6. Complainant further testified that he never considered it a flaw that the replacement plates were not predrilled. HT 179 at 21. And yet, Complainant also testified that to install a scuff plate where the holes have been filled in, an AMT must use a hole finder—a tool that he claimed LAX did not have prior to August 30, 2018. HT 128 at 18-21; 129 at 23-25; 130 at 1-3. He also testified that "typical removal and replacement of a scuff plate on an aircraft constitutes having a part that is serviceable, that an AMT is able to use to put on an aircraft without additional processes," such as drilling and countersinking. HT 128 at 7-17. From his testimony, it is unclear whether Complainant believed the lack of drilled holes was an issue. Furthermore, Complainant's claim that LAX lacked the ability to drill scuff plates seems implausible. Mr. Tomczyk repeatedly told Complainant to drill the scuff plate, but Complainant never testified that he told Mr. Tomczyk that they lacked the proper equipment for him to drill. It is not credible that in a 15 to 20 minute discussion, and in response to multiple requests to drill a plate, Complainant would not have raised this issue and argued that he could not proceed because he lacked the necessary tools.

⁶ After the hearing, Complainant continued to argue that he was not promoted but rather that it was an "exercise of contractual seniority." CRB at 1. However, there was evidence that if Complainant had "disciplinary or derogatory actions pending against him," he would not have been eligible for the title and pay advancement. HT 216 at 11-20. The advancement was not completely automatic, and resulted in a title and pay increase. Complainant's quibbling is disingenuous.

Complainant was also prone to minor exaggerations, as well as overstating his certainty regarding the incident. For example, he initially testified that Mr. Tomczyk told him several times to go and drill the piece; moments later he testified that Mr. Tomczyk told him over five times. HT 149-50. Similarly, Complainant overstated his certainty regarding the incident. Complainant stated in his Irregularity Report that Mr. Tomczyk declared, “THEN YOU ARE REFUSING TO DO WORK.” JX B at 2. During his March 5, 2019 deposition, Complainant stated that Mr. Tomczyk asked, “Are you refusing to do work?” HT 195 at 14-17; 221 at 13-17. He also stated during the deposition that Mr. Tomczyk said “so you’re refusing to do work” or “you are refusing to do work.” HT 222 at 1-25; 223 at 18. On cross examination, Complainant testified it was possible either statement or question was accurate, but moments later, still on cross, he testified that the Irregularity Report version was accurate “without a doubt in [his] mind.” HT 196 at 16-19.

Whether Mr. Tomczyk stated or asked, “then you are refusing to do the job?” does not affect the outcome of this case because he did not intend it as a threat or a precursor to discipline. Complainant’s contradictory evidence and overstated confidence, however, undermine his credibility. Complainant was unwilling to admit that he did not remember the exact phrasing of Mr. Tomczyk’s statement or question, and yet he gave varying versions of the phrasing. In particular, his testimony that either phrasing could be accurate, only to backtrack and decisively profess he was certain moments later erodes confidence in Complainant’s candor, as well as his recall of the event.

Michael Johnson

Mr. Johnson’s account of the incident evolved after he wrote his initial version. Thus, I did not find Mr. Johnson’s interview with Ms. Baughman or his testimony reliable and gave them no weight.

Mr. Johnson drafted a summary of his version of the events on May 27, 2018, and sent it to Complainant. HT 47 at 19-25. On March 28, 2018, in an email Mr. Johnson sent to Complainant, Ray Hodge (the union area representative), and James Anderson (the union shop representative), Mr. Johnson made no mention of Mr. Tomczyk shoving the plate in Complainant’s face or pushing the plate towards Complainant. CX 20; HT 48. In the email, Mr. Johnson stated that Mr. Tomczyk insisted that Complainant take the part, noting parenthetically “one in particular [Mr. Tomczyk] picked out that appeared the best if (sic) the three....” CX 20. On April 10, 2018, Mr. Johnson told Toni Baughman that Mr. Tomczyk shoved the plate towards Complainant. CX 39 at 4. And during the hearing Mr. Johnson testified that Mr. Tomczyk moved the plate towards Complainant within 10 to 12 inches from Complainant’s face. HT 34 at 10-11.

Mr. Johnson testified he did not include the detail about Mr. Tomczyk shoving the plate in Complainant’s face in his initial email because he was trying to be short and sweet, to the point. HT 53 at 17-21. Yet his summary of the event was a full page and noted parenthetically insignificant details such as Mr. Tomczyk’s selection of the best plate out of three. It is not credible that Mr. Johnson observed his colleague being physically threatened by a supervisor, and decided it was not important to include in a summary of the event.

In response to Mr. Johnson’s email summarizing the event, Complainant sent Mr. Johnson a copy of the Irregularity Report detailing his version. Mr. Johnson testified that he did not read the Irregularity Report, yet his account of the event changed to include details that were in the Irregularity Report. HT 49 at 15-16. I do not credit his testimony that he did not read

Complainant's account. Furthermore, given the changes in his account of the incident, I find him to be a generally unreliable witness. Similarly, I do not credit Mr. Johnson's testimony that Complainant appeared to be presented with the choice of doing the job or facing disciplinary action. HT 38 at 7. It is not credible that Mr. Johnson saw Complainant being coerced into performing a job and excluded that detail from his initial account. Furthermore, all accounts of the event have Mr. Johnson *leaving* the mechanics' area for another job before Mr. Tomczyk asked whether Complainant was refusing to do the job. Thus, I gave Mr. Johnson's interview with Ms. Baughman and his testimony no weight.

John Tomczyk

Complainant argued Mr. Tomczyk's credibility "fell apart" when confronted with contrary deposition testimony. CPB at 15; see also CRB at 4.⁷ Complainant attempted to characterize Mr. Tomczyk as maneuvering Complainant into a disciplinary action. *Id.* I did not have the same impression of Mr. Tomczyk's testimony, and on the whole found him to be credible and believable.

While Mr. Tomczyk was not forthcoming in his testimony regarding his call with Mr. Baird, overall I found him a credible witness. Rather than directly answering the questions of Complainant's counsel, he passively stated that insubordination and walking Complainant off of the premises was discussed on the call. *See* HT 380-81. I find, however, he credibly testified he called Mr. Baird to have a discussion and get advice. He characterized the discussion as "brainstorming" which adequately accounts for his inability to remember exactly what was said and his reluctance to simplify the content of the conversation or characterize those statements as definitive. He did not appear to be hiding information and his account of the events did not appear to be exaggerated and dramatized, unlike the testimony of Complainant. Overall, I found Mr. Tomczyk to be a credible witness and gave his testimony significant weight.

LEGAL STANDARD

General Framework

AIR-21 makes it unlawful for an air carrier or a contractor/subcontractor of an air carrier to "discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee" engaged in a statutorily-defined protected activity. 49 U.S.C. § 42121(a). These protected activities include providing the employer or government "information relating to any violation or alleged violation of any order, regulation or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety." 49 U.S.C. § 42121(a)(1). It also protects filing, testifying, or assisting in a proceeding related to such a violation. 49 U.S.C. § 42121(a)(2)-(4). Whistleblower statutes like AIR-21 are meant to be interpreted expansively, as they have "consistently been recognized as remedial statutes warranting broad interpretation and application." *Menendez v. Halliburton*, ARB Nos. 09-002 and 09-003, ALJ No. 2007-SOX-2005, slip op. at 15 (ARB Sept. 13, 2011).

⁷ Complainant cited to minor inconsistencies in the record that do not affect my assessment of Mr. Tomczyk's credibility. For example, at trial Mr. Tomczyk testified that an AMT cannot defend non-compliant maintenance by asserting he performed it subject to a supervisor's directive. In contrast, during his deposition, Mr. Tomczyk responded to a similar question that he could not speculate. CRB at 4.

To prevail on an AIR-21 whistleblower complaint, the complainant must demonstrate by a preponderance of evidence that he or she (1) engaged in protected activity, (2) suffered an adverse action, and (3) that the protected activity “was a contributing factor in the unfavorable personnel action alleged in the complaint.” 49 U.S.C. § 42121(b)(2)(B)(iii); 29 C.F.R. § 1979.109(a); *Frost v. BNSF Ry. Co.*, 914 F.3d 1189, 1195 (9th Cir. 2018); *Palmer v. Canadian Nat’l Railway*, ARB No. 16-035, ALJ No. 2014-FRS-154, slip op. at 16 (ARB Sept. 30, 2016) (cleaned up).

Protected Activity

An employee engages in protected activity any time he or she provides or attempts to provide the employer or Federal Government with information related to a violation or alleged violation of an FAA requirement or any federal law related to air carrier safety, where the employee’s belief of a violation is subjectively and objectively reasonable.” See 49 U.S.C. § 42121(a)(1); *Sewade v. Halo-Flight, Inc.*, ARB No. 13-098, ALJ No. 2013-AIR-9, slip op. at 16 (ARB Feb. 13, 2015.) An employee need not prove an actual FAA violation to satisfy the protected activity requirement where (1) the employee’s report or attempted report is related to a violation or alleged violation of an FAA requirement or any federal law related to air carrier safety, and (2) the employee’s belief of a violation is subjectively and objectively reasonable. *Sewade* at 17.

Adverse Action

To prevail, the employee must show that he suffered an adverse action. As specified in AIR-21, an employer takes adverse actions if they “discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment.” 49 U.S.C. § 42121(a); 29 C.F.R. § 1979.102(a). The implementing regulations elaborate that it is unlawful for an air carrier “to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee” because the employee has engaged in protected activity. 29 C.F.R. § 1979.102(b).

An action is adverse if it would dissuade a reasonable employee from engaging in protected activity. *Id.* at 17. Adverse actions are “unfavorable employment actions that are more than trivial, either as a single event or in combination with other deliberate employer actions alleged.” *Williams v. American Airlines, Inc.*, ARB No. 09-018, ALJ No. 2007-AIR-004 slip op. at 33 (ARB Dec. 29, 2010).

The ARB regards “the list of prohibited activities in Section 1979.102(b) as quite broad and intended to include, as a matter of law, reprimands (written or verbal), as well as counseling sessions by an air carrier, contractor or subcontractor, which are coupled with a reference to potential discipline.” *Sewade v. Halo-Flight, Inc.*, ARB No. 13-098, ALJ No. 2013-AIR-9, slip op. at 23 (ARB Feb. 13, 2015.) Employer warnings about performance issues are manifestly more serious employment actions than the trivial actions because such warnings are usually the first concrete step in progressive discipline employment policies. *Williams v. Am. Airlines*, ARB No. 09-018, ALJ No. 2007-AIR-004, slip op. at 32 (ARB Dec. 29, 2010). An action is presumptively adverse where: (a) it is considered discipline by policy or practice, (b) it is routinely used as the first step in a progressive discipline policy, or (c) it implicitly or expressly references potential discipline. See *Williams*, slip op. at 23.

Contributing Factor

Complainant must prove by a preponderance of the evidence that his protected conduct was a contributing factor in the adverse employment action—i.e., that it tended to affect the decision in some way. *Frost v. BNSF Ry. Co.*, 914 F.3d 1189, 1195 (9th Cir. 2019)(cleaned up). A contributing factor may be quite modest—it is any factor which, alone or in combination with other factors, tends to affect in any way the outcome of the unfavorable personnel action. *Frost*, 914 F.3d at 1195; see *Palmer v. Canadian Nat'l Railway*, ARB No. 16-035, ALJ No. 2014-FRS-154, slip op. at 53 (ARB Sept. 30, 2016)(reissued with full dissent Jan. 4, 2017). Complainant need not conclusively prove retaliatory motive or animus; “the only proof of discriminatory intent that a plaintiff is required to show is that his or her protected activity was a “contributing factor” in the resulting adverse employment action.” See *Frost*, 914 F.3d at 1195.

To rule for an employee at this step, the ALJ must be persuaded that it is more likely than not that the protected activity played any role in the adverse action, and the ALJ may consider any relevant, admissible evidence in making this determination. *Palmer*, ARB No. 16-035, slip op. at 17-18, 52. The ARB has emphasized that the standard is low and “broad and forgiving;” the protected activity need only play some role, and even an “insignificant” or “insubstantial” role suffices. *Id.* at 53 (cleaned up).

Respondent's Affirmative Defense

If the complainant proves that protected activity was a contributing factor in the adverse action, the respondent may nevertheless avoid liability if it proves by “clear and convincing evidence” that it would have taken the same adverse action in the absence of the protected activity. 49 U.S.C. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1979.109(a). It is not enough to show that the employee’s conduct constituted a legitimate independent reason justifying the adverse personnel action, or that the respondent *could have* taken the personnel action in the absence of the protected activity. See *Speegle v. Stone & Webster Constr., Inc.*, ARB No. 13-074, ALJ No. 2005-ERA-006, slip op. at 11 (ARB Apr. 25, 2014). Instead, the employer must show that it *would have* taken the same adverse action absent the protected activity through either direct or circumstantial evidence. *Speegle*, ARB No. 13-074, slip op. at 11.

Relief

If the employer, however, cannot demonstrate by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity, then the complainant is entitled to relief. 49 U.S.C. § 42121(b)(2)(B)(iv); See, e.g., *Peck v. Safe Air Int'l, Inc.*, ARB 02-028, ALJ No. 2001-AIR-003, slip op. at 22 (ARB Jan. 30, 2004). If a complainant prevails, he or she is entitled to remedies including affirmative action to abate the violation, compensatory damages, and attorney’s fees and costs. See 49 U.S.C. § 42121(b)(3)(B).

ANALYSIS

While Complainant showed that he engaged in protected activity, he failed to demonstrate by a preponderance of the evidence that Respondent took an adverse action against him, and thus his complaint fails. Complainant did not show that (1) the supervisor engaged in physical intimidation, or (2) the supervisor’s words were a threat.

Protected Activity

Complainant had a subjectively and objectively reasonable belief that the replacement scuff plates were not serviceable and that installing them would violate FAA guidance and regulation. Thus he engaged in protected activity when he refused to install any of the three available replacement plates. *See Sewade*, slip op. at 16.

First, Complainant's belief was subjectively reasonable. No one disputed that Complainant had an honest and sincere belief that the scuff plates were not serviceable.⁸ JX G at 23; HT 281 at 16-17. Even Mr. Tomczyk stated that Complainant sincerely believed that the scuff plates were not serviceable. HT 371 at 11-14.

Second, Complainant's belief was objectively reasonable because his colleagues also expressed misgivings and uncertainty regarding the scuff plates. Mr. Ahmadi and Mr. Johnson both identified perceived issues with the scuff plates. Although Mr. Johnson told Mr. Tomczyk he would do whatever, he also told Complainant and Mr. Ahmadi he was not sure he would install them. HT 358 at 3-7; CX 20 at 1. Furthermore, even though Complainant did not explicitly reference Section 10.08 of the MPM or use the language associated with identifying a SUP while he was discussing the plates with his supervisor or Mr. Smithley, the plates could reasonably be categorized as SUPs. As stated above, a suspected unapproved part (SUP) is a part that, for any reason, a person suspects of not meeting the requirements of an approved part. Reasons may include findings such as different finish, size, color, improper (or lack of) identification, incomplete or altered paperwork, or any other questionable indication. JX D at 1. The replacement parts in question had a different finish and an exaggerated amount of waviness. HT 134 at 15-17; 126 at 20-23; 388 at 1-3. Mr. Smithley ultimately concluded that the plates were serviceable, but it was not unreasonable for Complainant to interpret the waviness of the plate as dents, which the SRM clearly prohibited. CX 15 at 2. I find Complainant had a subjectively and objectively reasonable belief that installing the plates would violate FAA guidance and regulation, and thus his refusal to do so was protected activity.

Adverse Action

The primary question is whether Mr. Tomczyk threatened or intimidated Complainant to coerce him into installing the scuff plates—such threats or coercion would constitute adverse actions under AIR-21. Because Complainant failed to show by a preponderance of evidence that Respondent took any adverse action, his complaint fails.

Complainant argued that Mr. Tomczyk physically intimidated him and threatened his job to coerce him into installing the questionable scuff plates. As stated above, after about 15 to 20 minutes spent debating the serviceability of the replacement plates, Mr. Tomczyk asked something along the lines of, “then you are refusing to do the work?” or “are you refusing to do the job?” Complainant argues the question was not a genuine inquiry, but a deliberate mischaracterization of Complainant's conduct as insubordination. CPB at 2. According to Complainant, Mr. Tomczyk used language from a Southwest-produced checklist for confirming insubordination. CPB at 7; CX

⁸ Although Mr. Smithley concluded the plates were serviceable, in his post-hearing brief and reply, Complainant argued that the maintenance on the three replacement plates in question was improper. CPB 9-10; CRB 7.

34. Complainant perceived his job was threatened, and relied on Mr. Johnson's testimony to support this notion. CPB at 7.

Complainant argued the alleged adverse actions here are analogous to the supervisor's alleged threats in *Sewade v. Halo Flight, Inc.* where the supervisor stated in a performance review, "if things don't change... we might go to a different level...." *Sewade*, slip op at 11. In *Sewade*, the ARB directed the ALJ to determine whether the statements, "constituted coercion, threats or intimidation" which would be adverse actions in the whistleblower context. Here, I find Mr. Tomczyk's question and actions, as discussed below, were not threats, coercion, or intimidation.

No physical intimidation or assault

Complainant did not show by a preponderance of the evidence that Mr. Tomczyk physically intimidated or assaulted him during their interaction on March 27, 2018. There was no compelling evidence of a physical threat or intimidation. Instead Mr. Tomczyk, who is considerably taller than Complainant, extended a scuff plate towards Complainant for him to take, and at some point the plate obscured Complainant's view of Mr. Tomczyk's face. There was also evidence that the mechanics' room is small and employees have to maneuver around each other. HT 299 at 15-22. Complainant's account that Mr. Tomczyk aggressively shoved the plate within 10 to 12 inches of his face was not corroborated by any credible witnesses. As stated above, Mr. Johnson's account only evolved to include Mr. Tomczyk shoving the plate towards Complainant after he received a copy of Complainant's statement. I did not find him credible and gave subsequent iterations of his account no weight. Mr. Taynai did not witness a physical assault or intimidation, but admittedly was in another room. I found Mr. Tomczyk's account that he extended the plate for Complainant to take more credible than Complainant's account. Thus, I find there was no physical intimidation or assault.

Mr. Tomczyk's question was not a threat

Similarly, Complainant did not show by a preponderance of the evidence that Mr. Tomczyk's question was a threat. Complainant did not show that the supervisor's question was (1) considered discipline by policy or practice; (2) routinely used as the first step in a progressive discipline policy; or (3) implicitly or expressly referenced potential discipline. See *Williams*, slip op. at 23. Complainant did not show that Mr. Tomczyk intended to threaten Complainant or that the supervisor's statement that he was "about to walk Complainant out of the property" was due to Complainant's protected activity rather than his departure from the work site following the incident.

Although Complainant showed that there is a Southwest-produced practice for addressing insubordination, he failed to show that Mr. Tomczyk was implementing that practice. Furthermore, he failed to show Mr. Tomczyk's question was routinely used as the first step in a progressive discipline policy. Complainant argued that Mr. Tomczyk's question was an initial step in a Southwest-produced card outlining steps for managers to follow in cases of employee insubordination. The card specifies that first, the supervisor changes the request from a question to a clear, direct order. Next, if the employee continues to refuse, the supervisor says: "are you refusing to follow my direction?" And finally, if the employee continues to refuse, the supervisor says, "failure to follow my directive will be considered insubordination. Insubordination will lead to termination." CX 34 at 1; HT 238 at 7-8. Mr. Baird stated the steps on the card were consistent with those a supervisor would take in a case of insubordination, but Ms. Baughman—an

experienced Southwest HR employee—was unfamiliar with the steps outlined on the card until she was deposed. HT 454 at 1-3. Furthermore, several of the employees testified that insubordination could lead to discipline, but no one knew of an instance where someone was disciplined for insubordination after being asked if they were refusing to do a job. Complainant claimed he was sensitive to the question because he had seen two employees walked out of the property, but those employees were not asked if they were refusing to do the job. Complainant was not aware of any other employees being disciplined after being asked if they were refusing to do their work. HT 209-210. No other witness testified of instances of discipline or termination following a refusal to work. HT 41:17-42:5; 208:19-211:3; 257:4-8; 425:11-24. Thus, Complainant showed there is a practice outlined on a lanyard card for addressing insubordinate employees, but he failed to show that it was widely known or routinely used. *See Williams*, slip op. at 23. Furthermore, as discussed further below, he failed to show that Mr. Tomczyk intended to identify insubordination or threaten Complainant with his question.

Complainant did not meet his burden to show that Mr. Tomczyk intended his question as a threat. Complainant argued Mr. Tomczyk knew that Complainant refused to install the plate and thus, it was unnecessary to ask the question at the end of the conversation. Mr. Tomczyk, however, gave credible and convincing testimony that he needed to draw a line under the discussion and move forward to get the aircraft in service. *See* HT 304-05. After discussing the serviceability of the plate for 15 to 20 minutes, Mr. Tomczyk needed a final response, so he could get the plane back in service. Mr. Tomczyk asked if Complainant was refusing to do the work, not if he was refusing to follow his order. While the wording of a threat does not need to be exactly as outlined in the company practice, Mr. Tomczyk's word choice supports his testimony that he wanted to move forward and somehow get the plane in service. Finally, while not dispositive, Mr. Tomczyk's subsequent decisions also indicated that he was focused on getting the plane back into service, not in pursuing a charge of insubordination against Complainant.

Complainant also argued that Mr. Tomczyk and Mr. Baird made a definitive decision that Complainant was insubordinate and that Mr. Tomczyk was about to escort him off of the property. CPB 16. Mr. Tomczyk said in his deposition:

“I basically stated this is kind of insubordination. I said – I asked his thoughts on – you know, his being insubordinate, I'm about to walk him out and he basically agreed with me if that – if it continued down that route, then escort him off the property.” HT 383 at 12-18.

While Mr. Tomczyk and Mr. Baird discussed possible insubordination and escorting Complainant off of the property, Complainant did not show by a preponderance of evidence that Mr. Tomczyk made this threat to Complainant nor did he demonstrate that the discussion was definitive. Mr. Tomczyk gave credible testimony that he called Mr. Baird for advice, they discussed options, and he did not interpret the discussion as definitive instructions.⁹ I find the more persuasive evidence is that Mr. Tomczyk brainstormed with Mr. Baird about the situation, but was more concerned about getting work completed while busy and short staffed.

⁹ Furthermore, while Mr. Tomczyk and Mr. Baird discussed insubordination during the call, it was not clear whether they discussed insubordination and discipline due to Complainant's protected activity or his leaving the work site without explanation.

Complainant also argued that Mr. Tomczyk did not discipline Complainant because he could not find him. Following his call with Mr. Baird, Mr. Tomczyk looked for Complainant. Mr. Tomczyk gave credible testimony that he did so to start removing the plate and get the job started, something that Complainant had also stated he should start. I find Complainant's arguments that Mr. Tomczyk intended to threaten Complainant with discipline or termination unpersuasive.

Additionally, Complainant did not show that Mr. Tomczyk implicitly or expressly referenced potential discipline. *See Williams*, slip op. at 23. Complainant argued he felt pressured to do something he was not comfortable doing. Mr. Taynai stated Complainant appeared agitated because, "I think [Complainant] felt pressured into having to do something he didn't feel comfortable about doing, as far as using one of the parts." HT 229 at 24-25. While this confirms Complainant's feelings during a lengthy disagreement about the serviceability of the plates, it does not confirm that Mr. Tomczyk coerced or threatened Complainant. Complainant also cited to the findings of Ms. Baughman's report as evidence that Mr. Tomczyk threatened Complainant. In her report, Ms. Baughman suggested Mr. Tomczyk should apologize to Complainant "for using terms that are associated to pulling someone's badge as this could be interpreted as a threat." CX 39 at 1. Ms. Baughman clarified that she was stating Mr. Tomczyk should apologize because he used terms that *Complainant* associated with pulling someone's badge. Prior to her interview with Complainant, Ms. Baughman had never heard anyone link those two things. HT 425 at 4-10. Ms. Baughman was credible and her line of questioning during her interview with Complainant supported her testimony. That is, after Complainant described his reaction to Mr. Tomczyk's question, she asked why the words were so impactful. Ms. Baughman had no context for why Complainant reacted so strongly to Mr. Tomczyk's question. HT 425 at 15-18. No one else that Ms. Baughman interviewed felt or expressed that Mr. Tomczyk was threatening Complainant with that statement. No one else tied the question to imminent termination or suspension. HT 428 at 20-22. Complainant did not show by a preponderance of the evidence that there was an implicit or express threat.

Finally, the regulations define actionable adverse actions to include threats. 29 C.F.R. § 1979.102(b). While that inclusion does not require that the threats be carried out, the circumstances following the incident are notable. Complainant stated that Mr. Baird was sympathetic following the incident, told Complainant he understood, and if he wanted to, Complainant could leave. HT 156 at 3-5; 200 5-6. Mr. Tomczyk spent his time addressing the problem rather than searching for Complainant to pull his badge and remove him from the property. Additionally, there was no issue when Complainant returned to the work area. If Mr. Tomczyk intended to discipline Complainant, he had many opportunities during and after Complainant's shift to do so. Complainant assisted Mr. Tomczyk in returning the plane to service, completed his shift without incident, and joined Mr. Tomczyk and the rest of the crew for pizza on site following his shift. At no point did Mr. Tomczyk discipline Complainant and, until his attempted apology, he never brought the incident up again. Furthermore, Complainant did not lose wages due to the incident. HT 164 at 20. No one pulled his badge and escorted him out of the building; he was not suspended, disciplined, nor was his pay reduced. HT 214 at 9-13. Unlike the employee in *Sewade* who was reprimanded, Mr. Baird did not determine that Complainant did anything that warranted disciplinary action and never spoke to Complainant about any need to modify his behavior. HT 281 at 6-12; *see Sewade*, slip op. at 26. Finally, Complainant was promoted to lead mechanic, a position which pays more. *See* HT 213 and 216. While not dispositive, the circumstances following the incident inform whether Mr. Tomczyk and Mr. Baird intended to threaten Complainant's job or discipline him.

I find Complainant did not meet his burden to show by a preponderance of the evidence that he suffered an adverse action. While there was some evidence that a similar line of questioning is part of a Southwest-produced practice for addressing insubordination, he failed to show that Mr. Tomczyk engaged in this practice to coerce him or threaten his job. Because there was no adverse action, Complainant's complaint fails.

ORDER

1. Complainant established by a preponderance of the evidence that he engaged in protected activity.
2. Complainant did not establish by a preponderance of the evidence that Respondent took adverse action against him. Therefore, Complainant's complaint under AIR-21 is denied. All requests for relief under AIR-21 are denied.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within **fourteen (14) days** of the date of the administrative law judge's decision.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for online filing will become mandatory for parties represented by counsel on April 12, 2021. Parties represented by counsel after this date must file an appeal by accessing the eFile/eServe system (EFS) at <https://efile.dol.gov/EFILE.DOL.GOV>. **Before April 12, 2021, all parties may elect to file by mail rather than by efilng.**

Filing Your Appeal Online

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at <https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf> and/or the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed. During this transition period, **you are still responsible for serving the notice of appeal on the other parties to the case.**

Filing Your Appeal by Mail

Self-represented litigants (and all litigants prior to April 12, 2021) may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

Access to EFS for Other Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.

