



In the Matter of:

RODERICK M. BLOUNT,

ARB CASE NO. 09-120

COMPLAINANT,

ALJ CASE NO. 2007-AIR-009

v.

DATE: October 24, 2011

NORTHWEST AIRLINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul W. Iverson, Esq., *Williams & Iverson, P.A.*, St. Paul, Minnesota

For the Respondent:

**James D. Kremer, Esq., Marilyn Clark, Esq., *Dorsey & Whitney, LLP*,
Minneapolis, Minnesota**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce,
Administrative Appeals Judge; and Luis A. Corchado, *Administrative Appeals Judge*.
Judge Corchado filed a concurring opinion.**

FINAL DECISION AND ORDER

Roderick M. Blount alleged that Northwest Airlines, Inc. violated the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21 or the Act)¹ when it terminated his employment after he

¹ 49 U.S.C.A. § 42121 (Thomson/West 2007). Regulations implementing AIR 21 appear at 29 C.F.R. Part 1979 (2011).

complained about an air safety issue. Following a hearing, a United States Department of Labor (DOL) Administrative Law Judge (ALJ) dismissed Blount's complaint. Blount appealed to the Administrative Review Board (ARB). We affirm.

BACKGROUND

Blount began work as a part-time, probationary customer service agent for Northwest at its Minneapolis/St. Paul headquarters on December 4, 2006.² His duties included flight crew verification and passenger contact such as checking in ticket holders, issuing boarding passes, tagging and checking luggage, meeting arrival flights and working departures at assigned gates, processing standby passengers, and printing and completing the paperwork needed for a flight's departure.³ Following two weeks of classroom training with supervisor Lori Weber, Blount spent the next several weeks training on the job with various mentors, including Dynelle O'Gara.⁴

On February 7, 2007, Blount, still a trainee, was assigned to work at gate F-12 with O'Gara as his mentor. Before taking her meal break, she told Blount to print the flight crew information list for a scheduled 11:45 a.m. departure to Seattle.⁵ When she returned, Blount had not printed the list, so O'Gara printed it and instructed Blount about initialing the list as the crew members arrived to verify their identities before allowing them to board the plane.⁶ Blount was busy with passengers and other duties, however, and did not check in any of the crew.⁷

Prior to the flight's departure, O'Gara came back to Blount and asked him to sign off on the crew verification list as she and another agent had checked in the crew members.⁸ O'Gara testified that she wanted to give Blount the experience of being a lead gate agent who must sign off on the paperwork when multiple agents are processing a full flight so that the aircraft may depart on time.⁹ Blount testified that he refused to sign the

² Stipulated Exhibit (SX) 3, hearing transcript (TR) at 125.

³ See SX 13, TR at 277-81.

⁴ See SX 31; TR at 51-62, 72, 283-84.

⁵ SX 8; TR at 74-75, 418-21.

⁶ TR at 79-87.

⁷ SX 10, TR at 190.

⁸ TR at 424-27.

⁹ TR at 403-05.

list because he had not seen any of the crew arrive and had not verified their identities personally.¹⁰

O’Gara testified that Blount’s supervisor, Debra Livecche, overheard the exchange between O’Gara and Blount and informed Blount that his signature on the crew list did not indicate that he had checked each crew member personally – that had been done by other agents, who initialed next to the crew member’s name.¹¹ O’Gara added that she told Blount that as a lead agent in training, he must complete all the paperwork so that the plane could depart on time. Despite the explanation, Blount still refused to sign, so O’Gara then signed the list herself and reported Blount’s behavior to customer service manager Roberta Minks.¹²

Supervisor Weber and Minks met with Blount later that day after discussing the situation with safety director Rick Feltner. He advised them to talk to Blount and try to understand his side but also be prepared to fire him since he was a probationary employee who had refused direction from both a supervisor and a mentor.¹³ Minks testified that Blount insisted that it would have been fraudulent and an FAA (Federal Aviation Administration) violation for him to sign the crew list when he had not personally checked the identification of each crew member who went on board.¹⁴ Minks added that she explained to Blount that he was not vouching for the fact that each crew member’s ID had been checked but “was vouching” for the review and completeness of the document itself, which was part of the paperwork that a lead or primary agent had to complete.¹⁵ Blount did not accept her explanation and insisted that it was still fraudulent for him to sign. Minks and Weber then fired Blount for insubordination.¹⁶

¹⁰ TR at 84-85, 202.

¹¹ TR at 429-30.

¹² TR at 467-68.

¹³ TR at 469.

¹⁴ The FAA requires that no person is admitted to the flight deck unless he or she is a crew member. 14 C.F.R. § 121.547. Further, an aircraft carrier must use the procedures in its security program to prevent unauthorized access to aircraft. 49 C.F.R. § 1544.225.

¹⁵ TR at 472-75.

¹⁶ SX 11.

Blount filed a complaint with the DOL's Occupational Safety and Health Administration (OSHA) on February 15, 2007.¹⁷ OSHA dismissed Blount's complaint, and he requested a hearing, which the ALJ held on May 13, 2008.¹⁸ Following the hearing, the ALJ dismissed Blount's complaint.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated her authority to decide this matter to the ARB.¹⁹ In AIR 21 cases, the ARB reviews the ALJ's findings of fact under the substantial evidence standard.²⁰ Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."²¹ Thus, if substantial evidence supports the ALJ's findings of fact, they shall be conclusive.²² The ARB reviews the ALJ's legal conclusions de novo.²³ The ARB generally defers to an ALJ's credibility determinations, unless they are "inherently incredible or patently unreasonable."²⁴

DISCUSSION

AIR 21 prohibits air carriers, contractors, and their subcontractors from discharging or otherwise discriminating against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee:

¹⁷ SX 18.

¹⁸ SX 24, TR at 200-03.

¹⁹ See Secretary's Order 1-2010, 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1979.110.

²⁰ 29 C.F.R. § 1979.110(b).

²¹ *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951).

²² *Mehan v. Delta Air Lines*, ARB No. 03-070, ALJ No. 2003-AIR-004, slip op. at 2 (ARB Feb. 24, 2005).

²³ *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-35, slip op. at 4 (ARB June 29, 2006).

²⁴ *Jeter v. Avior Tech. Ops., Inc.*, ARB No. 06-035, ALJ No. 2004-AIR-030, slip op. at 13 (ARB Feb. 29, 2008).

provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal 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 under this subtitle [subtitle VII of title 49 of the United States Code] or any other law of the United States^[25]

To prevail under AIR 21, Blount must prove by a preponderance of the evidence that: (1) he engaged in protected activity; (2) he suffered an unfavorable personnel action; and (3) the protected activity was a contributing factor in the adverse personnel action.²⁶ A complainant's failure to prove by a preponderance of the evidence any one of the above listed elements of his complaint warrants dismissal.²⁷

While verification of crew members' identities is on its face an air safety concern,²⁸ protected activity under AIR 21 has two elements: (1) the information the complainant provides must involve a purported violation of a regulation, order, or standard relating to air carrier safety, though the complainant need not prove an actual violation; and (2) the complainant's subjective belief that a violation occurred must be objectively reasonable.²⁹

In this case, the ALJ found that, while Blount firmly believed that signing the crew list without verifying crew members' identities personally would violate an FAA

²⁵ 49 U.S.C.A. § 42121(a). An employer also violates AIR 21 if it intimidates, threatens, restrains, coerces, or blacklists an employee because of protected activity. 29 C.F.R. § 1979.102(b).

²⁶ See 49 U.S.C.A. §§ 42121(a), (b)(2)(B)(i); *Clark v. Pace Airlines, Inc.*, ARB No. 04-150, ALJ No. 2003-AIR-028, slip op. at 11 (ARB Nov. 30, 2006).

²⁷ *Robinson v. Northwest Airlines, Inc.*, ARB No. 04-041, ALJ No. 2003-AIR-022, slip op. at 7 (ARB Nov. 30, 2005).

²⁸ The ALJ stated that the crew verification incident did not "implicate safety definitely and specifically," citing Blount's testimony that "the procedure was not within protocol of the Northwest policy," that he "didn't feel comfortable with the process," that he "would do anything according to what [he thought was] reasonable and within policy and legal," and that he "was trying to explain . . . there was violation . . . at the gate." Decision and Order (D. & O.) at 29-30. We point out that verifying the identity of crew members is inherently an air safety issue.

²⁹ *Sitts v. COMAIR, Inc.*, ARB No. 09-130, ALJ No. 2008-AIR-007, slip op. at 9 (ARB May 31, 2011).

regulation,³⁰ his belief was not objectively reasonable in light of the testimony of O’Gara, his daily mentor; Budge, who drafted Northwest’s policy on crew verification;³¹ Weber, Blount’s classroom trainer; and Minks, a customer service manager who fired Blount for insubordination.³² The ALJ found most of Blount’s testimony to be truthful but “was unable to credit his testimony over that of” Northwest’s witnesses on how the crew verification process worked.³³

³⁰ SX 14. Section 6.10 of the Aircraft Operator Standard Security Program, a document created by the Transportation Security Administration of the Department of Homeland Security, states:

A. Before any crewmember is authorized to board his or her assigned aircraft, a direct aircraft operation employee or authorized representative must verify the aircraft operator employee ID of each crewmember and his or her assignment on that flight.

³¹ SX 13. Northwest’s corporate security policy on crew verification states:

Procedure for verification of crewmember identification and assignment
Prior to crew arriving at the flight the customer service agent (CSA) will retrieve and print the crew list.
The CSA will examine each working crewmember’s identification prior to allowing access to the aircraft including flight attendants who are working deadhead and occupying a jump seat. This verification does not apply to crew members who arrive on the inbound aircraft and do not deplane or to deadhead crew assigned a seat in the cabin.
2 steps:
a. Agent checks crew member ID and places “checkmark” or other indication beside appropriate crew member’s name on paperwork.
b. Agent signs bottom of crew list paperwork with a full signature.

See SX 16.

³² D. & O. at 29-30. In our view, the ALJ did not make an explicit finding that Blount *subjectively* believed that Northwest was engaged in unlawful practices. Since we uphold the ALJ’s finding that Blount’s belief was not *objectively* reasonable, we need not address his subjective belief or lack thereof.

³³ *Id.* at 12.

The ALJ also found that Blount's belief was not objectively reasonable because he testified that he felt he "knew better" than Minks, O'Gara, and Livecche, and rejected what they told him about the procedure.³⁴ Based on his findings regarding the two-step crew verification procedure and his assessment of Blount's credibility and that of Northwest's witnesses, the ALJ concluded that Blount did not engage in protected activity when he refused to sign the crew list.³⁵

Substantial evidence supports the ALJ's factual findings and credibility determinations. O'Gara testified that she had worked on thousands of flight arrivals and departures from Minneapolis. She stated that one agent was always assigned to a specific gate and was responsible for ensuring that all the departure paperwork was complete. She added that in mentoring new employees she allows them to complete personally the tasks of the lead or primary agent assigned to a gate in the normal flight boarding and departure process. She stated that the trainee agent would not learn the procedures as quickly just by watching her but needed to learn hands-on and that is why she told Blount to print out the crew list and later sign off on it so that the plane could depart.³⁶

O'Gara testified that boarding of crew members could extend over several hours and it would be impractical to have just one agent verifying all crew members' identities. Other agents were routinely brought in to help a lead agent with the larger flights, which was why every agent carried a set of generic keys for the gates.³⁷

Budge, a 24-year employee, testified that he wrote Northwest's crew verification policy, based on his review of federal rules. These required that airlines develop a security program but did not specify any particular procedure for boarding crew members. Budge explained that in developing the procedure he considered the time constraints that agents face in working a gate and thus did not require the same agent to verify each crew member's identity.³⁸ Budge added that an agent's signature on the crew list at the end of the boarding process signified that the process of checking the crew members' IDs has been completed (by ascertaining that an agent's initials appear beside each crew member's name). Thus, different agents could verify crew identities, and an agent who had not checked in any crew member could sign the completed list.³⁹

³⁴ TR at 210-13.

³⁵ D. & O. at 30.

³⁶ TR at 403-05.

³⁷ TR at 397-402, 406-07.

³⁸ TR at 503-08.

³⁹ TR at 515.

Weber testified that during Blount’s classroom training on January 14, 2007, she explained the duties of a lead or primary agent assigned to a gate for his or her shift. This agent is responsible for meeting all arrivals, operating the jet bridge, preparing and printing the required paperwork including the flight recap worksheet, weather reports, and crew list, and finally signing off electronically that the required forms are complete and that the flight is ready to depart.⁴⁰

Weber explained that the mentor assigned to a trainee was “there to help them out” but “the best way to learn the job is to jump right in.” She added that the trainees were “expected to perform the duties” of an agent – “that’s how they learn the job” – but the mentor would be there to direct them and an instructor would meet with them at the end of a shift to answer questions and clarify Northwest procedures.⁴¹

At the meeting with Blount, Weber “took a turn” at explaining the sign-off procedure to him, but testified that he “became argumentative” and stated that “he would not sign a crew verification list if he had not checked in every crew member.” Weber testified that she told Blount that signing off to verify that the paperwork was complete was not an FAA violation; it was “just a matter of checks and balances.”⁴²

Minks repeated O’Gara’s description of the crew verification policy, emphasizing that it was not always feasible for just one agent to check all members of a flight crew and that Northwest’s policy did not specify whether one or more agents can verify their identities. She added that the lead agent is not vouching that each person has been checked but only that the process is complete.⁴³ Minks testified that she and Weber explained the policy in a few different ways to try to get Blount to understand that he was not attesting that he had personally checked each ID, but he became “more agitated and more belligerent as the conversation went on” and said, “I’m not going to do it. It’s fraudulent.”⁴⁴

Blount admitted at the hearing that he had learned in classroom training that the initials next to a crew member’s name indicated that the member had been verified and checked in by an agent pursuant to company policy. He also admitted that O’Gara, Minks, and Livecche explained that by signing the list as the lead agent he was confirming that the document was in order, that all the crew members had checked in,

⁴⁰ TR at 279-89, 319.

⁴¹ TR at 292-93, 300, 394.

⁴² TR at 343, 359.

⁴³ TR at 460-65.

⁴⁴ TR at 474-75.

and that the review was complete.⁴⁵ The evidence supports the ALJ's finding that Blount's belief that Northwest engaged in unlawful activity was not objectively reasonable.

In sum, we agree with the ALJ's conclusion that Blount did not engage in protected activity by refusing to accept what his mentor, supervisor, and two managers were telling him about Northwest's crew verification policy and follow his managers' instructions. Because Blount failed to prove that he engaged in protected activity, a requisite element of his case, his entire claim must fail. Therefore, we need not address any of the ALJ's other findings of fact or conclusions of law.⁴⁶

CONCLUSION

Substantial evidence in the record as a whole supports the ALJ's finding that Blount did not prove by a preponderance of the evidence that he engaged in protected activity. For this reason we accept the ALJ's recommended decision and **DISMISS** Blount's complaint.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

Judge Corchado concurring:

I agree with the majority's ultimate decision to affirm the ALJ's dismissal of this case and its conclusion that Blount failed to prove that he engaged in protected activity. I understand but respectfully disagree with the grounds for the decision: that Blount failed to prove he had an objectively reasonable belief of a safety law violation. For the reasons that follow, I conclude that the ALJ incorrectly analyzed the issue of objective reasonableness by requiring too much. More specifically, the ALJ focused too much on the perspective of the longtime employees rather than on the perspective of a new employee trainee. Nevertheless, I would affirm the ALJ's finding that that Blount failed to prove subjective reasonableness for refusing to sign the crewmember list verification.

⁴⁵ TR at 210.

⁴⁶ *Hindsman v. Delta Air Lines, Inc.*, ARB No. 09-023, ALJ No. 2008-AIR-013, slip op. at 5 (ARB June 30, 2010).

The ALJ found that Blount did not meet his burden by showing that he subjectively believed that his employer was engaged in unlawful practices and that his belief was objectively reasonable in light of the facts presented.⁴⁷ After making this finding, the ALJ did not elaborate on the issue of subjective reasonableness, but did explain his finding that Blount's belief lacked objective reasonableness. As further explained below, his legal application of the objective reasonableness test was too rigorous in my view.

In AIR 21 whistleblower cases, the ARB has held that protected activity requires an objectively and subjectively reasonable belief of a violation.⁴⁸ We have also explained that “[t]he standard for assessing whether the Complainant’s belief is reasonable is an objective one determined on the basis of a reasonable person in the circumstances with the Complainant’s experience and training.”⁴⁹ The focus is not heavily dependent on the complainant’s personal belief, but rather on what most new employee trainees might think. We have not expounded on the level of proof needed to establish objective reasonableness in airline safety cases, but the standard should not be onerous.⁵⁰

In my view, the undisputed facts and the ALJ’s findings of fact in this case establish that Blount met the legal standard for an objective reasonableness. The ALJ expressly acknowledged that an argument could be made for Blount’s interpretation of the crew verification policy.⁵¹ The majority opinion expressly acknowledged, and I agree, that “verifying the identity of crew members is inherently an air safety issue.”⁵² The majority also referenced that Northwest had a document created by the

⁴⁷ D. & O. at 29. See *Sylvester v. Parexel Int’l, LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-039, -042; slip op. at 14 (ARB May 25, 2011).

⁴⁸ *Douglas v. SkyWest Airlines, Inc.*, ARB Nos. 08-070, -074; ALJ No. 2006-AIR-014, slip op. at 9 (ARB Sept. 30, 2009).

⁴⁹ *Minard v. Nerco Delamar Co.*, 1992-SWD-001 (Sec’y, Jan. 25, 1994). See also *Svendsen v. Air Methods, Inc.*, ARB No. 03-074, ALJ No. 2002-AIR-016 (ARB Aug. 26, 2004). Cf. *Sylvester*, ARB No. 07-123, slip op. at 15 (objective reasonableness is “based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee”).

⁵⁰ The Secretary has been leery in the past of engaging in hyper-technical interpretations of whistleblower statutes, which are intended as remedial measures to be broadly construed. See, e.g., *Kansas Gas & Elec. Co. v. Brock*, 780 F.2d 1505, 1512 (10th Cir. 1985) (discussing the Energy Reorganization Act).

⁵¹ D. & O. at 29.

⁵² See p. 5 n. 28, *infra*.

Transportation Security Administration of the Department of Homeland Security, which required that “a direct aircraft operation employee or authorized representative verify the aircraft operator employee ID of each crewmember and his or her assignment on that flight.”⁵³

It is true that this policy does not expressly require that the same agent verify all of the crew members’ IDs. But the same cannot be said of the Northwest corporate security policy, which creates the impression that the agent who verifies a crew member ID must also sign the crew member verification document. In describing the “Process,” that policy provides:

The crew list for each flight must be printed. *The* Customer Service Agent (CSA) will examine crewmember’s CREW ID badge, verify the photo/resemblance to the crewmember, and ensure the crewmember is listed on the crew list. *The* agent *then* will place a checkmark or other indication next to the crewmember’s name on the paperwork. *The* CSA will *then* sign the bottom of the crew list and retain with the flight’s other paperwork.^[54]

Arguably, the repeated use of the definite article “the” rather than the indefinite article “a” creates the impression that the provision references the same agent in each step. The majority notes that the “Procedure” provision in that same policy is ambiguous, but this ambiguity would only further confuse a new employee.⁵⁵ Northwest acknowledged that nowhere in the policy does it limit the significance of “the agent’s” signature. Nowhere in the written verification policy is there a reference to a “lead” and “primary” agent. Nowhere on the crew member list does it state that an agent’s signature merely confirms the self-evident fact that the document has initials next to each crew member’s name. In fact, a new employee could reasonably conclude that a signature would have more significance than merely confirming the presence of initials on a crew member *verification* sheet.⁵⁶ And the significance of the agent’s signature was magnified by the fact that it was required for the airplane to get off the ground.⁵⁷

⁵³ See Section 6.10 of the Aircraft Operator Standard Security Program. SX 14.

⁵⁴ (Emphasis added.) Northwest’s corporate security policy (“Process”). SX 13. See D. & O. at 24 n.66.

⁵⁵ See p. 7, *infra*.

⁵⁶ The ALJ quipped that an airline employee working on security check issues could “act now, grieve later.” There is no doubt that this is an alternative to a “refusal,” but having an alternative response like acquiescence is not relevant to the question of whether a person’s belief is objectively reasonable. Moreover, a security issue mistake in the airline industry does not always allow for something to be fixed “later.”

All of this is not to say that Northwest's practice is unlawful or irrational.⁵⁸ It is only to point out that there was an objectively rational basis for Blount's confusion as a new trainee and an objective reason for concern about air safety protocol.⁵⁹ I believe it is a dangerous precedent to say that an initially objective reason for an airport security concern loses its protected activity status because a team of veteran employees insists that a policy does not say what it appears to say.⁶⁰

Notwithstanding the existence of objective reasonableness, I would affirm the ALJ's finding of a lack of subjective reasonableness when Blount refused to sign the crew member verification sheet.⁶¹ Initially, Blount may have had an objectively reasonable basis to question the practice of signing the crew member verification list but he did not credibly testify that his concern was airline safety at the time of his refusal,

⁵⁷ The ALJ used this fact, the delay of the plane departure, as a reason for suggesting that Blount's conduct was unreasonable rather than as a fact showing the significance of Blount's signature on a security-related issue. D. & O. at 29.

⁵⁸ The ALJ made findings that Northwest's practice was justifiable and rational, but these findings are not dispositive on the issue of whether the trainee's different belief of a security violation was objectively reasonable.

⁵⁹ The ALJ repeatedly referred to Blount's status as a new employee and trainee to make the point that he should have simply done what he was told. This is somewhat alarming if the message is that new employees do not have the same rights as other employees to engage in protected activity. In a similar vein, the ALJ repeatedly referred to the many years of experience that each of the Northwest employee witnesses had. This would certainly demonstrate that the veteran employees should know more and had actually experienced Northwest's policies in practice. But it does not remove the notably conflicting words in the written policies and the significance placed upon the signature on the crew member verification sheet.

⁶⁰ Such a result arguably ignores the caution stated in *Passaic Valley Sewerage Comm'rs v. Dep't of Labor*, 992 F.2d 474, 479 (3d Cir. 1993) ("an employee's non-frivolous complaint should not have to be guaranteed to withstand the scrutiny of in-house or external review in order to merit protection under § 507(a) for the obvious reason that such a standard would chill employee initiatives in bringing to light perceived discrepancies in the workings of their agency").

⁶¹ I agree with the majority that the ALJ's finding on subjective reasonableness is not crystal clear. See note 32. However, I believe there are sufficient findings to reasonably conclude that the ALJ also found a lack of subjective reasonableness. See *Zink v. U.S.*, 929 F.2d 1015, 1020-21 (5th Cir. 1991) (reasonable inferences may be drawn by an appellate body reviewing a trial or hearing court's findings of fact); see also *Jackson v. Commissioner*, 864 F.2d 1521, 1524 (10th Cir. 1989) (citations omitted).

which then led to his termination. The ALJ repeatedly pointed to Blount's lack of credibility and implicitly questioned his stated reasons as being shifting and inconsistent. The ALJ believed that Blount was accusing Northwest of requiring him to falsify a document and was more worried about personal liability than raising a safety concern.⁶² Neither concern about falsifying documents or personal liability was realistic in light of the evidence presented. The ALJ found Blount's testimony inconsistent and selective and stated that Blount "cast a shadow on his own hearing testimony."⁶³ Even when given the simple instruction to print off the crew member verification list, Blount did not do so and O'Gara had to print it, which was followed by what seemed to be a power struggle with her.⁶⁴

The issue of subjective belief is a credibility determination made by the ALJ that we cannot overturn if there is substantial evidence supporting such conclusion. I conclude that there was. Consequently, I would affirm the ALJ's dismissal of Blount's complaint for failure to establish that he engaged in protected activity.⁶⁵

LUIS A. CORCHADO
Administrative Appeals Judge

⁶² See D. & O. at 4 n.5.

⁶³ *Id.* at 12.

⁶⁴ *Id.* at 17.

⁶⁵ Given the lack of protected activity, it is not necessary that we analyze whether any of the ALJ's other conclusions were correct or incorrect.