

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

04-3436

MICHAEL O. LUCAS,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

DECIDED: March 9, 2005

Before NEWMAN, MAYER, and GAJARSA, Circuit Judges.

PER CURIAM.

Michael O. Lucas (“Lucas”) appeals the decision of the Merit Systems Protection Board (“board”) finding Lucas unsuitable for federal employment. Lucas v. Office of Pers. Mgmt., No. SF0731030481-I-1 (MSPB Aug. 9, 2004). We affirm.

We must affirm the final decision of the board unless we conclude that it is: “(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) obtained without procedure required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence.” 5 U.S.C. § 7703(c) (2000). In a suitability case, an applicant may be denied federal employment only when it will

“protect the integrity or promote the efficiency of the service.” 5 C.F.R. § 731.201 (2004). In determining whether an agency action will protect the integrity or promote the efficiency of the service, the agency may consider a number of factors, such as “[m]isconduct or negligence in employment,” “[c]riminal or dishonest conduct,” and “[m]aterial, intentional false statement[s].” Id. § 731.202(b)(1-3).

The Office of Personnel Management (“OPM”) presented evidence establishing several charges against Lucas. These charges include: (1) misconduct or negligence in past employment as evidenced by negative evaluations and interviews with supervisors; (2) criminal or dishonest conduct as evidenced by the failure to pay \$79,563.03 in court ordered child support; and, (3) a 1995 plea of no contest to the criminal offense of carrying loaded, concealed handguns. OPM also proved that Lucas made material and false statements by failing to disclose the preceding conduct and legal problems in response to questions on his application for federal employment. Lucas does not contest the occurrence of the events, only their significance to his suitability for employment. Because the board’s findings are supported by substantial evidence and the severity of the charges is facially evident, the denial of federal employment was proper.