

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-3316

REGINALD CHENEY,

Petitioner,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Lawrence A. Berger, Mahon & Berger, of Glen Cove, New York, for petitioner.

Allison Kidd-Miller, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With her on the brief were Gregory G. Katsas, Assistant Attorney General, Jeanne E. Davidson, Director, and Todd M. Hughes, Deputy Director.

Appealed from: Merit Systems Protection Board

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REGINALD CHENEY,

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DEPARTMENT OF JUSTICE,

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Petition for review of the Merit Systems Protection Board in CH0752070243-I-1.

DECIDED: October 7, 2008

Before MAYER, LINN and MOORE, Circuit Judges.

PER CURIAM.

Reginald Cheney appeals a final decision of the Merit Systems Protection Board (Board) affirming his removal from the Drug Enforcement Administration (DEA). See Cheney v. Dep't of Justice, No. CH-0752070243-I-1 (M.S.P.B. June 7, 2007). We affirm the final decision of the Board

Prior to his removal, Mr. Cheney was employed as the resident agent in charge of the Cleveland resident office of DEA. Mr. Cheney was removed from DEA following an investigation into allegations that he engaged in a course of conduct that included: instructing his subordinates to issue subpoenas outside of the scope of business; discussing an investigation into his conduct with DEA personnel after being instructed

not to do so; and making false statements to DEA internal affairs investigators. Mr. Cheney appealed his removal to the Board. On June 7, 2007, the Board issued an initial decision, which became final on July 12, 2007, affirming Mr. Cheney's removal based upon findings of: (1) misuse of office; (2) conduct unbecoming a DEA Supervisory Special Agent; and (3) making false, misleading, and/or inaccurate statements. The Board further found that Mr. Cheney's misconduct was connected to the efficiency of the service and that his removal did not exceed the tolerable limits of reasonableness.

Mr. Cheney appeals the final decision, and we have jurisdiction under 28 U.S.C. § 1295(a). Our review is limited to setting aside findings or conclusions of the MSPB that we find to be "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c).

Mr. Cheney asserts that the Board's decision was not supported by substantial evidence. We disagree. The Board's conclusions were supported by physical evidence as well as testimony from other DEA agents. To the extent that Mr. Cheney provided testimony on his own behalf, the Board found this testimony to be neither truthful nor credible, and "credibility determinations are virtually unreviewable." Chambers v. Dep't of the Interior, 515 F.3d 1362, 1370 (Fed. Cir. 2008) (internal quotation marks omitted).

For the foregoing reasons, we affirm the final decision of the Board.

COSTS

No costs.