

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

LONDON STEVERSON,
Petitioner,

v.

SOCIAL SECURITY ADMINISTRATION,
Respondent.

2009-3287

Petition for review of the Merit Systems Protection Board in CB-7521-08-0017-T-1.

Decided: June 17, 2010

RONALD P. ACKERMAN, Law Office of Ronald P. Ackerman, of Culver City, California, argued for petitioner.

TARA K. HOGAN, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for respondent. With him on the brief were TONY WEST, Assistant Attorney General, JEANNE E. DAVIDSON, Director, and TODD M. HUGHES, Deputy Director.

Before RADER,* *Chief Judge*, PLAGER, and LOURIE, *Circuit Judges*.

PER CURIAM.

I.

London Stevenson petitions for review of the final decision of the Merit Systems Protection Board (the “Board”) terminating his position as an Administrative Law Judge with the Social Security Administration (the “SSA”). Because substantial evidence supports the Board’s decision to uphold Mr. Stevenson’s termination, this court *affirms*.

II.

Mr. Stevenson was an Administrative Law Judge for the SSA’s Downey, CA branch office. On April 18, 2008, the SSA filed a complaint with the Board seeking to remove Judge Stevenson from his position based on four charges: (1) conduct unbecoming of an administrative law judge, (2) misuse of government property, (3) lack of candor, and (4) failure to follow agency policy.

The first charge related to Judge Stevenson’s use of agency letterhead for personal correspondence in violation of agency policy. The agency based the charge on four separate specifications. In the first three specifications, the agency alleged that Judge Stevenson used official agency letterhead to send three letters to mortgage or loan companies relating to a personal home loan. The letters had an official SSA seal as well as the name and address of Judge Stevenson’s SSA office. Judge Stevenson had signed the letter with the title “Administrative Law Judge.” The fourth specification alleged that Judge

* Randall R. Rader assumed the position of Chief Judge on June 1, 2010.

Steverson had used official agency letterhead to lodge a complaint against a California state court commissioner he had appeared before in a custody dispute. In response, the Superior Court of California's counsel wrote to the SSA's regional counsel identifying the letter and explaining that the use of an official title and stationery might be a violation of California's judicial ethics codes. In addition, the state court commissioner identified in the letter by Judge Steverson filed a judicial ethics complaint with the SSA against Judge Steverson.

The second charge contained two specifications. The first specification alleged that Judge Steverson had used his work computer between 2001 and 2007 to view and store sexually oriented material. A routine resource management initiative by the SSA's information technology division revealed that Judge Steverson had stored over 1000 sexually graphic files on the individual personal drive of his government computer. The second specification alleged that Judge Steverson had misused his government computer in 2004 and 2005 by using it for several personal business ventures. Judge Steverson has since admitted that the use of his work computer relating to his personal business ventures was in violation of agency policy.

The third charge asserted that Judge Steverson had displayed a lack of candor during his investigatory interview with Hearing Office Chief Administrative Law Judge Cynthia Minter. Judge Minter was assigned to question Judge Steverson after the allegations specified in charges one and two arose. Judge Steverson received advance notice of the interview and waived his right to have a union representative present. At the interview, Judge Steverson maintained that he had no idea how the sexually graphic material got on his computer and that he

thought his use of official stationery was acceptable under the circumstances.

The fourth charge related to Judge Stevenson's use of his business address to send and receive personal correspondence. In June 2004, the office director for Judge Stevenson's branch office informed all employees that the office mailing address was not to be used for personal correspondences.

The administrative law judge assigned to the complaint held a two-day hearing and heard testimony from six witnesses, including Judge Stevenson. The administrative law judge later issued an initial decision upholding all but the lack-of-candor charge and finding that a 35-day suspension was the appropriate penalty. The SSA then petitioned the full Board contesting the administrative law judge's finding that the lack-of-candor charge had not been proven and the penalty determination of a 35-day suspension rather than the proposed removal. The Board agreed in whole with the SSA and found good cause to remove Judge Stevenson. This appeal followed.

III.

This court must affirm the Board's decision unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence." 5 U.S.C. § 7703(c); *Chase-Baker v. Dep't of Justice*, 198 F.3d 843, 845 (Fed. Cir. 1999).

Administrative law judges may be removed for "good cause established and determined by the [Board]." 5 U.S.C. § 7521(a). "Deference is given to the agency's judgment unless the penalty exceeds the range of permissible punishment specified by statute or regulation, or

unless the penalty is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion.” *Parker v. United States Postal Serv.*, 819 F.2d 1113, 1116 (Fed. Cir. 1987) (internal quotation marks omitted).

On appeal, Judge Stevenson raises two arguments. First, Judge Stevenson argues that the Board’s decision to sustain the charge of lack of candor is not supported by substantial evidence. Second, Judge Stevenson argues that the Board’s decision to remove him was an abuse of discretion.

As to the first, substantial evidence supports the Board’s finding that Judge Stevenson displayed a lack of candor during his interview with Judge Minter. “Lack of candor . . . is [a broad] and more flexible concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete.” *Ludlum v. Dept. of Justice*, 278 F.3d 1280, 1284 (Fed. Cir. 2002). Here, in response to Judge Minter’s questioning relating to the use of SSA official stationery, Judge Stevenson stated that he thought it was fine because he was using an out-of-date SSA stationery that had since been replaced by the agency. In addition, in regards to the sexually oriented material on his computer, Judge Stevenson claimed that he was either not responsible for the content or had no idea how it got on his computer. The Board found both these excuses unbelievable—rightly so. What difference would it make to the recipient of an SSA correspondence whether the stationery used was out-of-date? How would the recipient even know that it was out-of-date? Even more, Judge Stevenson’s claim of ignorance as to the 1000 sexually graphic files on his computer strains credulity. Significantly,

agency information technology staff testified that the type of files found on Judge Stevenson's personal work computer were files created by the user, which required several separate and volitional acts by him. Substantial evidence therefore supports the Board's findings.

Judge Stevenson's second argument on appeal—that removal was an unreasonable penalty given the charges—also fails. The charges at issue here are sufficient such that the Board did not abuse its discretion in deciding to terminate Judge Stevenson. Again, all charges alleged were sustained. Judge Stevenson engaged in conduct unbecoming of an Administrative Law Judge, misused government property, displayed a lack of candor with an investigatory official, and failed to follow agency policy. Together, these charges amount to good cause for removal. The agency therefore did not abuse its discretion in removing Judge Stevenson from employment.

The judgment of the Board is affirmed.

COSTS

No costs.