**U.S. Department of Labor**

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**Issue Date: 08 May 2017**

**OALJ No. 2016-AIR-00018**
OSHA No. 4-2950-16-026

*In the Matter of:*

**IAN GATES,**
*Complainant,*

*v.*

**STS AVIATION GROUP, et al.,**
*Respondents.*

# DECISION AND ORDER DISMISSING COMPLAINT

This matter arises under the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 ("AIR-21" or the "Act"). The Act's whistleblower protection provisions provide a complaint procedure through the U.S. Department of Labor.[1] Implementing regulations are at 29 CFR Part 1979, published at 68 Fed. Reg. 14,107 (Mar. 1, 2003).

AIR-21 prohibits an air carrier, or a contractor or subcontractor of an air carrier, from discharging or otherwise discriminating again an employee because he or she: (1) provided, caused to be provided, or is about to provide or cause to be provided to the employer or the federal government information related to a violation or alleged violation of an order, regulation, or standard of the Federal Aviation Administration ("FAA") or any other provision of federal law involving air carrier safety; (2) filed, caused to be filed, or is about to file or cause to be filed a proceeding related to a violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of federal law involving air carrier safety; (3) testified or is about to testify in such a proceeding; or (4) assisted or participated in, or is about to assist or participate in such a proceeding.

## Procedural Background

On or about December 3, 2015, Ian Gates ("Complainant") filed a complaint with the Occupational Safety and Health Administration ("OSHA"), alleging that he was terminated on April 9, 2015, by STS Aviation Group, et al. ("Respondents"), in retaliation for, among other

[1] Pub. L. 106-181, tit. V, 519(a), Apr. 5, 2000, 114 Stat. 145. *See* 49 U.S.C. § 42121.

things, refusing to prioritize scheduling over safety. Complainant also alleged that Respondents filed false police reports about him with the Sheriff's Office of Martin County, Florida, on September 3 and 4, 2015. On March 23, 2016, the Secretary of Labor, acting through the Regional Administrator for OSHA, issued findings dismissing the complaint as untimely filed. On April 25, 2016, Complainant filed objections to the Secretary's Findings, and requested a hearing before the U.S. Department of Labor, Office of Administrative Law Judges ("OALJ" or "Office").[2]

The matter was subsequently assigned to me and, on May 9, 2016, I issued a *Notice of Docketing and Order to Show Cause* ("Order") directing Complainant to provide a written statement showing good cause as to why this matter should not be dismissed due to a failure to file a timely complaint.[3] The Order also directed Complainant to address: (i) whether the parties are properly identified and designated; (ii) if applicable, why Respondents' police report filings should be considered an adverse employment action under the Act; and (iii) any reasons why equitable tolling would be appropriate in this matter. Complainant was also directed to provide a complete copy of the administrative complaint he filed with OSHA. The Order gave Respondents leave to file a reply brief within 30 days of service of Complainant's response.

Complainant thereafter filed a number of items with this Office.[4] As those filings were not responsive to the May 9, 2016 Order,[5] I issued a *Second Order to Show Cause* ("Second Order") on July 6, 2016, instructing Complainant to file a written response within 45 days as to the following items: (i) why this proceeding should not be dismissed due to failure to file a timely complaint; (ii) whether the parties are properly identified and designated; (iii) if applicable, why Respondents' police report filing should be considered an adverse employment action under the Act; (iv) any reasons why equitable tolling would be appropriate in this matter; and (v) a complete copy of the administrative complaint filed with OSHA. The Second Order

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[2] Complainant had a separate case before this Office against different respondents, *Gates v. Gulfstream Aerospace Corp. & Inconen, Inc.*, ALJ No. 2015-AIR-00018 (ALJ July 1, 2016), which was ultimately dismissed for failure to comply with numerous Court orders.

[3] The regulations provide that a complaint must be filed with OSHA "[w]ithin 90 days after an alleged violation of the Act occurs (i.e., when the discriminatory decision has been both made and communicated to the complainant)." 29 C.F.R. § 1979.103(d). It appeared that Complainant filed his complaint with OSHA approximately 230 days after his termination from the company.

[4] On May 27, 2016, Complainant filed by mail a document entitled *Partial Compliance*. That document indicated that it was the first "fax," and that seven supporting faxes would follow. This Office also received a series of faxes from Complainant on May 27, 2016, amounting to approximately 200 pages. On June 7, 2016, Complainant filed approximately 200 more pages by mail, some of which were duplicates of the faxed filings. This filing again indicated that it was "in part compliance" of the May 9, 2016 Order. On June 4, 2016, Complainant faxed a copy of a letter sent to the Secretary of the U.S. Department of Labor and the Secretary of the U.S. Department of Transportation. Complainant also filed a copy of that letter by mail on June 13, 2016. On July 4, 2016, Complainant faxed additional documents again titled *Partial Compliance*.

[5] The majority of Complainant's filings addressed his other whistleblower case before this Office; interactions with OSHA regarding this case; interactions with the FAA; and general information regarding FAA whistleblowing. Complainant also requested that this tribunal "initiate an investigation at the highest levels of US government into across US government agency jurisdictional boundaries the DOT/FAA, DOL, FBI/DHS JTTF FBI . . . ."

limited Complainant's filing to one document of 15 pages, in addition to the OSHA complaint. The order also warned Complainant that failure to provide a responsive filing could result in dismissal of his claim. Respondents were given leave to file a reply brief within 30 days of service of Complainant's response.

On August 19, 2016, Complainant filed another document entitled *Partial Compliance*. On August 22, 2016, Complainant made a series of filings by email. This Office received additional filings on September 1, 2016 and September 8, 2016. It was unclear whether Complainant intended all of the documents to serve as his response to the Second Order; some of the filings appear to have been directed to the Administrative Review Board ("ARB"), the FBI, and other government agencies. However, to ensure that a responsive document was not overlooked, I reviewed these filings, as all Complainant's filings, in their entirety.

Though Complainant's filings were somewhat disordered, and rife with profane language and personal attacks on the undersigned, it appeared that Complainant was asserting that Respondents filed a false police report with the Martin County Sheriff's Office against him on or about September 3, 2015, and that the false police report constituted an adverse employment action under the Act. Complainant submitted:

> … a resounding YES the Respondents' police report filing is most certainly an adverse employment action under the act. However as you have so clearly pointed out in your posturing grandstanding you the DOL OALJ lack the resources to investigate (I assert it is your criminally corrupt treasonous attempts to cover your own backside that has dug you a deeper hole in this cesspit of US Government officials' criminally corrupt treasonous FAA/Foushee choreographed malfeasance that I'm not sure even a settlement offer which right now is off the scale, from my miscreant ex-employers, is going to allow you to dig you, Dorsey, Foushee, Petermeyer and others out of this unholy mess you have created for yourselves, that had YOU or even that other arsehole Dorsey been honest WOULD NOT NEED AN INVESTIGATION. I once again request you to <u>initiate</u> (not carry out your self you lying scumbag) an investigation by the appropriate authorities WHICH IN FACT ARE THE FBI.

(Partial Compliance at 11, Aug. 19, 2016, 10:33).

Additionally, it appeared that Complainant did not want his April 9, 2015 termination to be considered as an adverse employment action in this matter, stating: "equitable tolling IS NOT SOMETHING I BROUGHT UP IN CONNECTION WITH THIS CASE OR IN MY ORIGINAL" OSHA complaint. Complainant continued:

> …the initial maleficent intention of Petermeyer's/Rosado's/Colon's deliberately CRIMINALLY FRAUDULENT as a result, TREASONOUSLY stated 03 December 2015 date in the 23 March 2016 OSHA dismissal/findings letter, of my complaint was to try imply FROM THE VERY BEGINNING when Rosado first contacted me 21 December 2015, I had not filed my complaint timeously against STS/Oberaker/Smith, Before Petermeyer and his crew switching their (and

> subsequently YOUR) attention to the 09 April 2015 adverse action as being where I was supposed to have not filed timeously – YET MORE CRIMINALLY corrupt TREASONOUS US Government officials' BULLSHIT intended to trip me up on statutes of limitation for filing.

(Partial Compliance at 11, Aug. 19, 2016, 10:33).

The Act prohibits employers from subjecting employees to certain adverse personnel or employment actions for engaging in protected activity. While terminating or disciplining an employee are more common examples of potential adverse actions, intimidating, threatening, restraining, coercing, or blacklisting an employee are also potential adverse employment actions under the Act. 29 C.F.R. § 1979.102(b). That said, it was not obvious to this tribunal that the filing of a police report by Respondents in this matter qualified as an adverse employment action under the Act. However, the ARB has cautioned against drawing the definition of "adverse action" too narrowly and, instead, an administrative law judge should determine what constitutes an adverse action in light of the facts and circumstances of the particular case. Additionally, the ARB has indicated that the scope of AIR-21 claims "include[] adverse actions which are not necessarily tangible and most certainly are not ultimate employment actions." *Williams v. American Airlines, Inc.*, ARB No. 09-018, ALJ No. 2007-AIR-004, slip op. at 9-16 (ARB Dec. 29, 2010) (citing *Hendrix v. American Airlines*, ALJ Nos. 2004-AIR-010, 2004-SOX-023, slip op. at 14, n.10 (ALJ Dec. 9, 20014)).

Accordingly, given that the term "adverse action" should be broadly construed, on September 20, 2016, I set the matter for preliminary hearing on February 7, 2017.[6] On January 24, 2017, this Office received Complainant's prehearing submission. On January 25, 2017, I denied a motion by Respondents requesting summary decision.[7] On February 6, 2017, this Office received a filing from Complainant ("Feb. 6, 2017 Fax") that did not appear to be directed to the undersigned, as its greeting addressed "Governor Scott and AG Bondi."[8] On February 7, 2017, I convened a hearing in the Broward County Courthouse, Fort Lauderdale, Florida.[9]

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[6] The hearing was limited to the issue of whether Respondent's complaints about Complainant's conduct made to the Martin County Sheriff's Office on or about September 3, 2015 constitute an adverse employment action as defined by the Act and under the facts specific to this case.

[7] I also denied requests (i) from Respondents to allow Beth Oberacker, Former Director of Human Resources at STS Aviation Group, to appear by telephone so that she could avoid traveling to the hearing; (ii) from Complainant for a stay so that he could continue to attempt to have the FBI initiate an investigation; and (iii) from Complainant for permission to appear telephonically or to hold a telephonic hearing. I explained that the matter required credibility determinations and that it was important to hear the above testimony in person.

[8] Complainant appears to have requested that the respective Governor and Attorney General of the State of Florida initiate an investigation and order the arrest of the undersigned and Respondent's counsel if either "sets foot in the state of Florida." (Feb. 6, 2017 Fax at 1.)

[9] I previously informed Complainant that he bears the burden of establishing whether the filing of a police report in this matter constitutes an adverse employment action under the Act. 29 C.F.R. § 1979.109(a). *Notice of Preliminary Hearing* at 4 n.8 (Sept. 20, 2016); *Order Denying Motion for Summary Decision* at 5 n.11 (Jan. 25, 2017).

Complainant did not appear (Tr. 4).[10] Respondent was represented by Jeffrey Devine, Esq. I admitted ALJ Exhibits 1-8 and Respondent's Exhibits ("RX") 1-2. (Tr. 6, 28). Three witnesses testified on behalf of Respondent. For the reasons set forth in greater detail below, as I find Complainant has not established that he suffered an adverse employment action, his complaint cannot proceed.

This Office received a number of documents from Complainant following the hearing. On February 15, 2017, Complainant filed documents requesting that the ARB sanction and declare void all orders of the undersigned and the administrative law judge that presided over Complainant's other case before this Office. On February 28, 2017, Complainant filed additional documents addressing the ARB and requesting sanctions. I have taken no action relating to these documents.

## Witness Testimony

Lori Duttlinger (Tr. 6-11). I am a human resources generalist with STS Aviation. Part of my duties include onboarding and terminations. I would have access to the corporate personnel systems to know the reasons and dates for an employee's termination. RX-1 is the employee page for Mr. Gates showing his start and stop dates. His termination date from STS Aviation was April 9, 2015, because he was witnessed using a recording device on a client's property in violation of company policy. When an employee is terminated from the company, they still have access to what we call our "employee portal." That is where they can get copies of documents such as W-2s and check stubs if they need them years later.

Elizabeth Oberacker (Tr. 11-21). I used to work with STS Aviation from April 2013 to April 2016 as human resources director. I was aware that Mr. Gates was an employee on a contract assignment for STS before he was fired. My first contact with Mr. Gates was in the fall of 2015 when I investigated a complaint he made against one of our employees, a recruiter, alleging he was not returning phone calls, treating him unfairly and sending him information about jobs that were beneath him. All this occurred after Mr. Gates left STS. I found no reason to substantiate his claim and informed Mr. Gates as much. He then began complaining about being fired from his last assignment for the wrong reasons, and I looked into that as well. I determined that in April 2015, he was working at one of STS's clients when he had a verbal altercation with a security guard that got out of control and that he had a recording device on him, which was against the company's policy. The client then asked STS to remove him from the assignment, which we did.

Also in the fall of 2015, Mr. Gates would call STS Aviation four or five times a day, then send emails with large attachments and then would berate me for not returning his phone calls in a timely manner. He then reached out to other people in the company. They felt bullied, harassed and scared. I became concerned for the safety of the people in our building so I spoke to management. We eventually contacted Captain Budensiek of the Martin County Sheriff's Office, who advised us to send Mr. Gates an email stating very clearly to stop contacting STS by

[10] The official hearing transcript will be abbreviated "Tr." in this decision. By failing to attend the hearing, Complainant did not offer any evidence that might tend to establish an adverse employment action. *Witbeck v. CH2M Hill Ltd.*, ARB No. 15-077, ALJ Nos. 2013-SOX-1, 2014-SOX-40 (ARB Mar. 15, 2017).

phone and email and that he would reach out to Mr. Gates to tell him to stop calling and harassing. RX-2 is an email I sent to Captain Budensiek thanking him for the advice.

Neither I nor anyone else in STS Aviation threatened Mr. Gates or told him we would keep him from any type of employment or make sure he was blacklisted or share his information with any potential employer. The only reason we contacted the Martin County Sheriff's Office was for a concern about the safety of the employees and not to adversely affect Mr. Gates's employment.

John Budensiek, Jr. (Tr. 22-27). I've been with the Martin County Sheriff's Office since April 1997. In September 2015, I was contacted by STS Aviation Group about a former employee, Ian Heath Gates. It was related to me that Mr. Gates was a former subcontractor of STS who was repeatedly calling, emailing and sending faxes to the company after he was fired and would not leave them alone because he wanted a settlement from the company. They asked me what we could do. I got the sense STS was concerned about the safety of the company employees. I suggested that they send Mr. Gates an email notifying him that they did not want any further communication with him. I then called Mr. Gates, who assured me the calls and emails would stop. I started to explain how he was borderline committing a misdemeanor with harassing phone calls to the company. He immediately went into rants about the whistleblower statute. He talked about how we were all corrupt, the FBI was corrupt. He was demanding a counter-complaint against the FBI. He was saying how STS had now filed a false police report with me, which we didn't even take a report because we were trying to handle it with a conversation, but he was demanding a counter-report against STS because they had filed a false claim against him. My conversation lasted about 90 minutes to two hours. I tried to explain there was a legal way to handle the situation and then there was the way he was handling it, and the way he was handling it was not correct. If he wanted to sue STS, he needed to do it through the proper channels. If he wanted documents from STS, he needed to do it in the proper way, not just by calling and emailing and sending faxes. At the end, I just hung up. There was no reasoning with him. We were all corrupt. STS was corrupt. The FBI was corrupt. Mr. Gates called me again but I did not return the call, so he called my boss. I am sure he responded to Mr. Gates, but I don't know what that was. I do know that Mr. Gates somehow got a hold of my bosses email address and has peppered him with many emails. Except for that one phone call, STS has not contacted us at all about Mr. Gates.

## Exhibits

Respondent's Exhibits

RX-1 is the employee page for Complainant showing a start date of November 24, 2014 and an end date of April 9, 2015. It also contains a note from Jessa Beach, Relationship Manager at Sikorsky Aircraft, Coatesville, stating that Complainant was being released "for violations of company policy, in specific, The Photographic and Recording Policy, which states that use of non-Sikorsky-Coatesville registered photographic or recording devices is prohibited on company property."

RX-2 is an email sent by Beth Oberacker to Captain Budensiek stating that Ms. Oberacker sent Complainant an email "specifically telling him to stop calling and emailing employees of STS

repeatedly." Ms. Oberacker also attached a copy of the email sent to Complainant. The email to Complainant, dated September 3, 2015, states "I respectfully request that you cease making any phone calls and sending additional emails to our organization. To be clear, you are not to contact any employees and management team members of any STS division."

Administrative Law Judge's Exhibits

ALJX-1 is a copy of the Secretary's Findings, dated March 23, 2016, dismissing Complainant's complaint.

ALJX-2 is Complainant's request for hearing, dated April 25, 2016 and received April 29, 2016 by fax.

ALJX-3 is the *Notice of Docketing and Order to Show Cause* issued on May 9, 2016.

ALJX-4 is the *Notice of Preliminary Hearing* issued on September 20, 2016, sent to Complainant by Certified Mail.

ALJX-5 is the *Second Order to Show Cause* issued on July 6, 2016.

ALJX-6 is the *Order Denying Motion for Summary Decision* issued on January 25, 2017.

ALJX-7 is STS's *Amended Prehearing Submission* and two subpoena requests, received January 31, 2017.

ALJX-8 is Complainant's prehearing submission.

## Essential Findings of Fact

STS Aviation Group is a company based in Jensen Beach, Florida, that specializes in support services to the aerospace industry, including personnel staffing for client companies. Complainant worked for STS Aviation Group and was on a contract staffing assignment in April 2015 to Sikorsky Aircraft, one of Respondent's clients. Sikorsky had a policy prohibiting the use of photographic and similar recording devices on company property. On April 9, 2015, Complainant was observed using a voice recording device on Sikorsky property and was advised by Sikorsky security personnel to stop. Complainant refused, so Sikorsky requested Respondent end Complainant's assignment for violation of the photographic and recording policy. STS Aviation Group terminated Complainant's employment on April 9, 2015.

As a former employee of STS Aviation Group, Complaint was provided access to a company human resources portal to retrieve financial and personnel documents, such as check stubs and W-2s. Access to the STS Aviation Group HR portal does not indicate a continuing employment relationship with the company.

In the fall of 2015, Beth Oberacker, then STS Aviation Group's human resources director, received a complaint that Mr. Gates had made against one of STS Aviation Group's

recruiters, alleging the recruiter was not returning phone calls, was treating him unfairly and sending him information about jobs that were beneath him. Ms. Oberacker investigated and found no reason to substantiate the claims, and informed Mr. Gates of the results. Mr. Gates then complained about his last assignment with Sikorsky and alleged he was terminated from STS Aviation for the wrong reasons. Ms. Oberacker investigated and determined Complainant's own actions at Sikorsky on April 9, 2015 led to his termination from STS Aviation Group.

Complainant then began almost-daily contact with STS Aviation Group by making or sending repeated unwanted phone calls, faxes, and email barrages to multiple STS employees. Given the increasingly hostile tone and content of these communications, STS Aviation management became concerned for the safety of its employees and contacted Captain John Budensiek of the Martin County Sheriff's Office on September 3, 2015 for advice on how to proceed. At Captain Budensiek's suggestion, Respondent sent Complainant an email telling him they did not want any further communications from him. Captain Budensiek also called Complainant, who eventually assured him that the calling and emailing of STS Aviation would cease.

Respondent only called the Martin County Sheriff's Office after Complainant's unwanted emails, faxes and telephone calls led to a reasonable concern for the safety and welfare of Respondent's employees.

Respondent did not file a formal police report about Complainant with the Martin County Sheriff's Office, and Complainant was never arrested for or charged with any criminal offense relating to his employment with Respondent.

There is no evidence that Respondent's contact of and communication with the Martin County Florida Sheriff's Office is accessible to prospective employers of Complainant.

Complainant did not file his complaint with OSHA within 90 days of his termination.

## **Applicable Law**

For a Complainant to prevail under AIR-21, he, as a covered employee, must prove by a preponderance of the evidence that: (1) he engaged in protected activity which Respondent was aware of; (2) he suffered an adverse employment action;[11] and (3) the protected activity was a contributing factor in the adverse employment action. If Complainant proves that his protected activity was a contributing factor in the adverse employment action, Respondent can escape legal liability by demonstrating with clear and convincing evidence "that it would have taken the same unfavorable action absent [the] protected activity." *Peck v. Safe Air Int'l Inc.,* ARB No. 02-028, ALJ No. 2001-AIR-03 (ARB Jan. 30, 2004); *Svendsen v. Air Methods, Inc.,* ARB No. 03-074, ALJ No. 02-AIR-016 (ARB Aug. 26, 2004).

[11] 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 15 (ARB Dec. 29, 2010).

Adverse actions include discharge or other discrimination "with respect to compensation, terms, conditions, or privileges of employment."[12] 49 U.S.C. § 42121(a). Blacklisting is an adverse action where "an individual or a group of individuals acting in concert disseminates damaging information that would or could prevent a person from finding employment." *Dick v. Tango Transport*, ARB No. 14-054, ALJ No. 2013-STA-060, slip op. at 11 (ARB Aug. 30, 2016) (internal citations omitted). In order to establish blacklisting, the complainant must show that the information disseminated was both damaging and accessible to future employers. *See id.* at 11 (affirming the ALJ's finding that an employer's notation of "other" as the reason for discharge on a driver's report was not blacklisting because it was not damaging given the context); *Webb v. Carolina Power & Light Co.*, ARB No. 96-176, ALJ No. 1993-ERA-042, slip op. at 10-11 (ARB Aug. 26, 1997) (finding that negative comments about complainant made to a colleague were not blacklisting because they were not made to prospective employers or a reference checking company, and there was little risk that the comments "would be maintained in records").

## Conclusions of Law

To be timely, a complaint must be filed with OSHA within 90 days after an alleged violation of the Act occurs. Mr. Gates was fired on April 9, 2015, and filed his complaint on December 2, 2015. As he has presented no evidence supporting equitable tolling, he cannot rely on his termination from STS Aviation as an adverse employment action. Instead, he submits that Respondent violated the Act by filing a false police report with the Martin County Sheriff's Office. Consequently, assuming Complainant engaged in protected activity,[13] he must prove by a preponderance of the evidence that Respondent's contacting the Martin County Sheriff's Office on September 3, 2015 is an adverse employment action as defined by the Act and under the facts specific to this case. I find he has failed to do so.

While the list of prohibited activities in Section 1979.102(b) is broad, contacting law enforcement because of reasonable concerns for the safety of company employees does not fall within the scope of adverse employment actions. Under the facts of this case, Respondent's seeking advice from law enforcement regarding the troubling behavior of a disgruntled former

[12] I note that Complainant was a former employee at the time of the alleged adverse action. In *Harvey v. The Home Depot, Inc.*, ALJ No. 2004-SOX-036 (ALJ May 28, 2004), the ALJ dismissed a SOX complaint made by a former employee for failure to state a claim upon which relief may be granted. The ALJ reasoned that employment discrimination or retaliation could only occur while the complainant is an employee of the respondent, "with the exception of blacklisting or other active interference with subsequent employment," neither of which had taken place. *Id.*, slip op. at 4-5. Other opinions have emphasized the need to establish that the retaliatory act is linked to compensation, terms, conditions, or privileges owed to an employee or former employee. *See Friday v. Northwest Airlines, Inc.*, ALJ Nos. 2003-AIR-019, 2003-AIR-020, slip op. at 9 (ALJ June 27, 2003) (finding that a respondent's threat to turn in a medically-retired, former employee for unlicensed practice of law was not adverse action because it was not related to the employment relationship or any privilege that was owed to a retired employee).

[13] In his complaint filed with OSHA on December 3, 2015, Complainant alleged that he was terminated on April 9, 2015 for not giving in to Respondent's pressure to prioritize scheduling over safety and take short-cuts instead of established procedures. Given the outcome of this case, I need not determine whether Complainant actually engaged in protected activity under AIR-21 or whether any alleged protected activity was a contributing factor in the alleged adverse action.

employee is not akin to coercion, threats, blacklisting, intimidation, or other sufficiently unfavorable employment actions. *Cf. Aviles v. Cornell Forge Co.*, 241 F.3d 589, 593 (7th Cir. 2001) ("As a matter of common sense," employers should not be subject to liability under Title VII for making truthful reports to police regarding former employee's threats, as it would "discourage employers from taking the most prudent action to protect themselves and others in the workplace."). Rather, Complainant's own actions resulted in Ms. Oberaker's sincere concern for the safety of STS Aviation Group employees and necessitated her call to the Martin County Sheriff's Office. The Act's whistleblower protection provisions do not permit an employee to harass a former employer by making repeated and unwarranted telephone calls, emails and faxes, and then claim that he suffered an adverse employment action when that employer seeks advice from law enforcement on how best to handle the situation. I find that the alleged retaliatory act in this case was simply a reasonable reaction taken by a company legitimately concerned for the safety of its employees, and was wholly unrelated to Complainant's employment relationship with STS Aviation Group.

In sum, the record is utterly devoid of any evidence demonstrating that Respondent's actions in contacting law enforcement authorities on September 3, 2015 were linked to Complainant's actual employment with them or in any way impacted the compensation, terms, conditions, or privileges owed to him through his employment. Moreover, Respondent's mere reporting of Complainant's behavior to the sheriff's office, without more, poses no apparent danger to Complainant's future employment prospects. Accordingly, Complainant has failed to meet his burden of demonstrating that Respondent's actions in this matter were in some way related to the compensation, terms, conditions, or privileges which arose from his relationship with them.

## Conclusion

I find that Complainant has failed to establish that he was subject to an adverse employment action under the Act. As Complainant has failed to establish one of the required elements of his claim, his claim for damages filed under the employee protection provisions of AIR-21 is denied.

## ORDER

It is hereby **ORDERED** that the complaint filed by Ian Gates against STS Aviation Group is DISMISSED with prejudice.

**SO ORDERED**.

Digitally signed by STEPHEN R. HENLEY
DN: CN=STEPHEN R. HENLEY, OU=ADMINISTRATIVE LAW JUDGE, O=US DOL Office of Administrative Law Judges, L=Washington, S=DC, C=US
Location: Washington DC

STEPHEN R. HENLEY
Chief Administrative Law Judge

**NOTICE OF APPEAL RIGHTS**: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

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. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(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, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points

and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

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. § 1979.110. 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. §§ 1979.109(c) and 1979.110(a) and (b).