U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 June 2020

CASE No.: 2016-AIR-00008
OSHA No.: 6-3550-15-055

In the Matter of:

DWIGHT PEDERSEN,
Complainant,

v.

AMERICAN AIRLINES,
Respondent.

APPEARANCES:

Joseph M. LaMonaca, Esq.
For the Complainant

Vicki L. Gillette, Esq.
Sean M. McCrory, Esq.
Littler Mendelson, P.C.
For the Respondent

BEFORE: CARRIE BLAND
Administrative Law Judge

DECISION AND ORDER
DENYING COMPLAINT

This proceeding arises under the Wendell H. Ford Aviation Investment and Reform act for the 21st Century, 49 U.S.C.A. § 42121 ("AIR21"), and its implementing regulations, 29 C.F.R. Part 1979. Dwight Pedersen ("Complainant") filed an AIR21 complaint with the Occupational Safety and Health Administration ("OSHA") on May 5, 2015. OSHA denied the complaint, finding that Complainant did not suffer an adverse employment action. Complainant now seeks review of his complaint before the Office of Administrative Law Judges ("OALJ"), and a hearing has been scheduled for April 3, 2018.

PROCEDURAL HISTORY

On May 5, 2015, Dwight Pedersen ("Complainant") filed an AIR21 complaint with the Occupational Safety and Health Administration ("OSHA"), alleging that his employer, American Airlines ("Respondent") "intimidated, retaliated against, harassed, and threated" Complainant on numerous occasions from 2011 until March 2015. On January 28, 2016, after conducting an investigation, OSHA denied the complaint, finding that Complainant did not suffer an adverse employment action. RX 16.[1]

On February 2, 2016, Complainant filed objections to the Secretary's Findings with the Office of Administrative Law Judges ("OALJ"). On April 3, 2018, I convened a formal hearing in Arlington, Virginia, at which both parties were afforded a full and fair opportunity to present evidence and argument. At hearing, Jointly Stipulated Exhibits ("JX") A – DD, Respondent's Exhibits ("RX") 16, and Complainant's Exhibits ("CX") A - B, were admitted into evidence. The following witnesses testified: Douglas Quinn, Michael Peynado, Dominic Brasher, James Chandler, and Dwight Pedersen. On August 6, 2018, an Order Granting a Motion to Extend the Briefing Deadline was verbally granted. Complainant filed his Post-Hearing Brief on August 17, 2018, and Respondent's Post-Hearing Brief was received on August 24, 2018.

The findings and conclusions that follow are based on a complete review of the record in light of the arguments of the parties, the testimony and evidence submitted, applicable statutory provisions, regulations, and pertinent precedent.[2]

STIPULATED FACTS

- Complainant began working for Respondent in October of 1988.

- Complainant worked as a mechanic in Respondent's Maintenance Department, performing maintenance on aircraft component parts.

- The only official disciplinary action Complainant received during his employment with Respondent was a written warning in 2013 for playing an electronic game during his shift, and the parties agree that this allegation is not part of the claims in this proceeding. Complainant was never demoted or suspended, and Respondent never terminated his employment. Complainant, however, claims he was constructively discharged.

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[1] The following references will be used: "Tr." for the official hearing transcript; "JX" for a Jointly Stipulated Exhibit; "CX" for a Complainant Exhibit; and "RX" for a Respondent Exhibit.

[2] In *Austin v. BNSF Railway Co.*, ARB No. 17-024, ALJ No. 2016-FRS-13, slip op. at 2 n. 3 (ARB Mar. 11, 2019) (per curiam), the Administrative Review Board ("ARB") noted that an administrative law judge ("ALJ") need not include a summary of the record in the Decision and Order, as it is assumed that the ALJ reviewed and considered the entire record in making his or her decision. The ARB stated that what is more helpful for its review of whether the ALJ's findings of fact are supported by substantial evidence of record is a tightly-focused set of findings of fact. Accordingly, in this Decision and Order I focus specifically on findings of fact pertinent to the issues in dispute. Thus, although I do not discuss every exhibit in the record, I have carefully considered all the testimony and evidence in reaching my decision.

- On February 24, 2015, Complainant was assigned "to final" a flap and put it back into service.

- On March 3, 2015 a 29F meeting was held regarding the February 24, 2015 flap incident. A 29F meeting is an investigatory meeting provided for by the applicable Collective Bargaining Agreement.

- Complainant filed a complaint with the Federal Aviation Administration ("FAA") on March 2, 2015, raising several issues he claimed were FAA violations. After investigating these complaints, including conducting in-person interviews and an inspection of Respondent's Flight Control Shop, the FAA found only one violation – that an engineering specification order ("ESO") did not contain the procedure for manufacturing and installing a data plate to include the part number and serial number. The FAA required Respondent to amend the ESO manual, which the company did.

- Prior to becoming a supervisor at American Airlines, Doug Quinn had 26 years of experience as an aircraft mechanic – 17 years with Respondent and 9 years prior to that in the military.

- Complainant retired from American Airlines in early 2017 and receives $2,187.42 per month, effective since May 1, 2017, for his lifetime. He also receives full retirement benefits.

- Since January 1, 2017, Complainant has received $1,700.00 a month in Social Security benefits.

- During the time he worked with Respondent to the present, Complainant has the following medical conditions: diabetes, coronary artery disease, high blood pressure, high cholesterol, hearing loss.

- Complainant filed his AIR21 Complaint with OSHA on May 5, 2015. For purposes of attempting to establish his claims in this proceeding, including his hostile work environment/constructive discharge claim, Complainant concedes he will not rely on any alleged acts/actions that occurred prior to August 16, 2013 (which coincides with the time period that he began to be supervised by Doug Quinn and Dave Chandler). Respondent reserved the right, however, to argue that all alleged acts/actions occurring before the 90 day limitation period in this case are outside of the applicable limitations period, irrelevant and/or should not be considered unfavorable personnel actions or for purposes of determining whether Complainant was subjected to a hostile work environment or was constructively discharged.

- Complainant's December 19, 2014 American Airlines pay stub shows year-to-date earnings at $72,950.53.

- The parties stipulate to the authenticity of the documents attached to Complainant's Damages Calculation (Page 6 of 14 through Page 14 of 14). Respondent, however,

disputes that Complainant is entitled to any damages/remedies in this proceeding and reserved the right to argue that the documents attached to Complainant's Damages Calculation do not support the amounts sought in damages by Complainant in this proceeding.

- Complainant was born December 7, 1954.

ISSUES PRESENTED

- Has Complainant proven by a preponderance of the evidence that he engaged in protected activity?

- Has Complainant proven by a preponderance of the evidence that he suffered an adverse employment action?

- Has Complainant proven by a preponderance of the evidence that his protected activity contributed, in part, to Respondent's decision to take adverse action against him, i.e., was the protected activity a factor which, alone or in connection with other factors, tended to affect in any way the outcome of its decision?

- If Complainant met his burden, has Respondent show by clear and convincing evidence that they would have taken adverse action against Complainant in the absence of protected activity?

- If Respondent does not meet its burden, what are the appropriate compensatory damages, costs and expenses and what further relief, if any, is appropriate?

SUMMARY OF THE EVIDENCE[3]

Joint Exhibits:

- JX A: FAA's Letter noticing that a violation of order, regulation, or standard occurred
- JX B: Dr. Bart Trentham's Psychiatric Evaluation (December 21, 2015)
- JX C: FAA ASAP Report for Flight 1705 (March 2, 2015) [Ex. A of the Complaint]
- JX D: February 24, 2015 Supporting Documents [Ex. A of the Complaint]
- JX E: January 9, 2015 Maintenance Write Up [Ex. C of the Complaint]
- JX F: Complainant's medical records from Armstrong Medical Clinic [Ex. 1 to Complainant's 11/17/17 Deposition]
- JX G: 2014 Maintenance Records Summary of Issues [Ex. D of the Complaint]
- JX H: 2013 Maintenance Records Summary of Issues [Ex. E of the Complaint]
- JX I: March 2015 emails from Complainant [Ex. F of the Complaint]

[3] The summary of the evidence is not intended to be an exhaustive analysis of each exhibit or a verbatim transcript of the hearing but merely to highlight certain relevant portions. The exhibits are generally described by their respective face sheets or as described at hearing.

- JX J: Respondent's letter to Complainant recognizing him on 25 years of service [Ex. G of the Complaint]
- JX K: American Airlines Job Description and Essential Functions – Aviation Maintenance Technician [Ex. H to Complaint]
- JX L: Kris Armstrong, M.D., medical letter re: Complainant (March 5, 2015)
- JX M: Kris Armstrong, M.D., Medical disability Certification Documents re: Complainant (April 6, 2015) [Ex. J of the Complaint]
- JX N: Complainant's May 4, 2015 Discrimination Complaint [Ex. 2 of the Complaint]
- JX O: Records obtained from Dr. Bart Trentham by letter request, including Custodian of Records Affidavit
- JX P: Collective Bargaining Agreement between Respondent and Transport Workers Union of America, AFL-CIO (w/Declaration of Josh Voss in Support of Respondent's Motion for Summary Decision), [Exs. 6 and 6A thereto]
- JX Q: Complainant's Response to Respondent's First Set of Interrogatories [Ex. 4 to the 4/20/17 Deposition of Complainant]
- JX R: Complainant's email to Danielle Storie re: Retirement/retrieving personal property
- JX S: U.S. DOT response to FOIA Request re: Investigation of EWB15605
- JX T: Job Assignment re: Elevator (handwritten by Complainant)
- JX U: Michael Peynado statement re: AIL2593 and back-up paperwork
- JX V: American Airlines Pension Option Election Form – Complainant
- JX W: Dave Chandler statement re: flap problem
- JX X: 29F for Complainant – Supervisor's Statement – Dave Chandler
- JX Y: American Airlines SMAARTS Shop Order – TKMQ (A Guide to Understand Shop Order Information)
- JX Z: S/0 Warranty Information (L/H Elevator W/0 Tabs HEAV)
- JX AA: American Airlines Engineering Authorization (MD80 LH Elevator Leading Edge Weight Cadmium Plating Exemption)
- JX BB: CR1 discussion with Complainant
- JX CC: Email from Complainant to Danielle Store re: Stopping Retirement
- JX DD: Joint Stipulated Facts

<u>Complainant's Exhibits:</u>

- CX A: Transcript of April 20, 2017 Deposition of Complainant
- CX B: Complainant's Damages Calculation

<u>Respondent's Exhibits:</u>

- RX 16: OSHA Letter re: The Secretary's Findings (January 28, 2016)

Testimony

Dwight Pedersen (CX A)

Mr. Pedersen's deposition was taken on April 20, 2017. Mr. Pedersen worked for American Airlines for 25 years as a mechanic and a crew chief. CX A at 105. During his deposition, Mr. Pedersen testified that he raised a concern about a wing flap of an aircraft on February 24, 2015, and his employer responded "worse than poorly" to that concern. CX A at 10.
He detailed:

> When we went out to final the flap, we were looking at where the new arm was installed. That arm was off-center to where the original arm was. If that arm would have flexed, it would have struck the edge of that skin, and it would have set up a stress event. Secondly, because of that and the way it was fitting, we went to the Components Maintenance Manual and the IPC. We could not locate this part by name for the flap that was being worked. We could not find where this part came form per the maintenance manual or the Illustrated Parts Catalog per the part number on the flap.
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> So we couldn't have fixed [it] if it was even the right part. Therefore, I went and got the supervisor and them and told them we had a concern. I then went to the computer and took a QA inspector with me to help me to assist because sometimes it's hard to find this stuff in the manuals. But we were trying to find a reference to this when Mr. Quinn come out on the floor and blew up and started yelling at me and telling me, "You get that go[**]amn flap out of here, or you ain't going to have a job."

CX A at 205-206. When asked if Mr. Pedersen had the most up to date paperwork for the flap, he testified that he did. He alleged that the "only thing I know that Mr. Quinn went over and produced was he had printed the entire ESO over, brought it out, and shook it in my face and said, "See, here. See, here," which didn't mean nothing to me because I had already been in the ESO and the IPC and could not find that part listed." CX A at 209.

According to Mr. Pedersen, this incident led to "an F29 meeting approximately three days later, and it was used as a point to repeated intimidation and threats and trick questions, and at that point, they violated my Title 41 rights where they were not supposed to even be talking to me." CX A at 11.

Regarding the same February 24, 2015 "flap incident," Mr. Pedersen alleged that his supervisor, Douglas Quinn, was very belligerent, accused Complainant of lying, and yelled, cursed, and threatened his job if Complainant did not ship out the flap. CX A at 13. Mr. Pedersen stated that Mr. Quinn then took him into the office where he claims Mr. Quinn threatened him and told him if he "held up anything else" he would start keeping records on

Complainant and start writing him up. They then accused each other of raising their voices, and the conversation was over. The conversation lasted no more than 10 minutes and nobody else was present in the office. CX A at 14.

Other than events resulting from the February 24, 2015 "flap incident," Mr. Pedersen stated that Mr. Quinn continued to tell him that he was fixing too many things and if he did not stop, then Complainant would not have a job. CX A at 16; Tr. 258. He described an incident involving Mr. Quinn and another supervisor, Dominique Brasher:

> "[T]hey both came out and tried to intimidate me and took me back to the paint booth and were asking questions about an aileron I had worked on. During that conversation, I stopped both of them and told them, "I want a written directive on how you want me to do my work and how you want me to sign off my repairs." At that point, Mr. Brasher blew up and said, "I ain't giving you a f[*]ckin' written directive. I'm giving you a f[*]ckin' oral directive." When that conversation was over and they both left, I filled out an AOI[4] and put it in the supervisor's inbox.

CX A at 17-18.

Mr. Pedersen stated that Mr. Quinn and Mr. Brasher accused him of spending too much money on parts, holding up parts, and not getting them out on schedule. CX A at 20. He also claimed that Mr. Quinn continuously intimidated him, threatened his job, and accused him of not knowing what he was doing. This occurred five or six times beginning when Mr. Quinn became the shop supervisor until Claimant left the company. CX A at 23. Mr. Pedersen stated that Mr. Quinn complained that he was changing too many parts and questioned how Mr. Pedersen knew that they were bad and why he was not using the maintenance manual to back up his claims. Mr. Pedersen said that he told Mr. Quinn "we don't work by the maintenance manual in the shop. We work by the ESO[5]." CX A at 25. Mr. Pedersen stated that Mr. Quinn's response to this statement was "I only want you to fix what's written up by the aircraft technicians and the QA men on the dock," to which Complainant responded "I cannot do that. We work to the ESO. If I see a discrepancy, I'm supposed to fix it, and there's specific requirements of the manual that I'm supposed to do and look at." CX A at 26.

Mr. Pedersen claimed that he always wrote up the discrepancies that he identified. However, he also stated that half a dozen times his reasoning for changing out a part or pointing out a discrepancy was based solely on his years of experience. He claimed that Mr. Quinn would then ask him to go back and look it up in the maintenance manual and give some references for his claims. CX A at 36. Mr. Pedersen stated that the ESO does not give him those tolerances. It is a discretionary call that is given to the mechanic to handle or the QA inspector.

Mr. Pedersen also described an event sometime in late 2014, where Mr. Quinn asked him to work on an engine part, and following a crew meeting Mr. Pedersen asked to be put on a

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[4] An AOI stands for Avoid Oral Instruction, and is a form that American Airlines uses to document communication, according to Complainant. CX A at 18.

[5] The ESO is the Engineering Standard Order, which is a guide written by the engineers, approved by the manufacturer, and approved by the FAA and American Airlines, according to Complainant. CX A at 25.

different project due to his suspicions that something was wrong with the engine part. CX A at 44. Mr. Quinn then asked Mr. Pedersen to go pull up the entire ESO on that component, and Mr. Pedersen did so. As he was leaving the crew meeting, Mr. Pedersen stated he overheard a crew chief, Keith Brown, telling Mr. Quinn that Mr. Pedersen was right about the engine part. CX A at 48.

The following day, during a daily crew meeting, Mr. Pedersen recalled Mr. Quinn looking at him and Mr. Brown and, in relation to the engine part, saying, "Thanks for shoving that up my ass." CX A at 50. Mr. Pedersen responded to Mr. Quinn, "We didn't shove it up your ass. I'm just telling you why your ass is sore, and the reason your ass is sore is called a crew chief, Kevin Gorman, and a supervisor by the name of Todd Vandenberg. They're the ones that hid this." *Id*. at 51.

Mr. Pedersen spoke of an incident that occurred during a crew meeting in late 2013 or early 2014 where Mr. Brasher accused the mechanics of "gold-plating"[6] parts and instructed them to only fix what was written up when it came into the shop. CX A at 74. Mr. Pedersen stated that the mechanics questioned him about this and Brasher responded, "Well, if anything goes wrong, we're just going to blame the mechanics." CX A at 74-75.

Mr. Pedersen testified about a time in 2014 when Dave Chandler brought him an aileron and asked Complainant to put it on a balance beam and balance it. CX A 80. He stated that the ESO states that all rework and all repainting will be done prior to balancing a flight control, so because there was too much paint missing from the aileron, he could not rebalance it. CX A at 81. Mr. Pedersen eventually told Mr. Chandler that he would balance the part and give him the information but not sign for it because Complainant did not believe it was right. Mr. Chandler allegedly got angry at this response and began "trying to intimidate" Mr. Pedersen. CX A at 82. He stated that as a supervisor, Mr. Chandler could be intimidating to some people, but Mr. Pedersen was not intimidated by him. CX A at 83.

As a result of this incident with the aileron, Mr. Chandler and another supervisor named Shane Gilman were allegedly planning to hold a 29(f) meeting with Complainant. CX A at 87. Mr. Pedersen asked Mr. Gilman to speak with him in the office alone, where Mr. Pedersen asked, "What the hell are you guys trying to pull?" CX A at 88. Mr. Pedersen stated that Mr. Gilman's response was, "Well, quit being an asshole" and "Well, just do what we say." *Id*. Mr. Pedersen responded:

> No. I'm trying to stay the hell out of jail. When I rip the top off of Pandora's Box, it's not going to be going back on me because I've been keeping notes all these years just for this reason. I used to be a policeman. I know what's right and wrong, and I'm not going to put up with it anymore.

CX A at 88. At that point in time, Mr. Pedersen said Mr. Gilman and Mr. Chandler decided not to hold the 29(f) meeting. Mr. Pedersen stated that his supervisors used these 29(f) meetings,

[6] Mr. Pedersen's understanding of "gold plating" is spending too much time and money into repairing components. CX A at 77.

which he explains are fact-finding meetings, as a form of intimidation. CX A at 90. He stated that they were intimidating to the average person, but not to him.

Mr. Pedersen also testified about an incident in which he asked Mr. Chandler to have a 757 flap washed "because it was full of grease and dirt." CX A at 99. He stated that in response to this request Mr. Chandler got "all ugly and belligerent with me and told me I wasn't trying to do anything but trying to hold up the schedule." CX A at 100. After Mr. Chandler would not have the part washed, Mr. Pedersen wrote up an E-58, which is a written document of a defect or discrepancy. *Id*. He also filed an ethics complaint with Respondent's corporate ethics department about Mr. Chandler's treatment of Complainant.

Mr. Pedersen stated that in 2013 he gave a supervisor by the name of Todd Vanderberg two AOIs requesting to have a general manager, Norman Miller, hold a meeting with the shop mechanics regarding some problems they were having and questions they had about "work policies, scheduling and a few other things." CX A at 110. He also stated that this meeting would have addressed the issue of supervisors informing the mechanics that the did not have to follow a program called "In Accordance With that was set up by the FAA, and what it meant is you had to sign your parts off. You had to detail the authority that you used to repair it and sign it out." CX A at 111. Mr. Pedersen stated that Mr. Quinn, specifically, told him in 2013 not to follow this program when the entire crew was present:

> He made some comment that, "Well, yeah. There is an AOI policy here, and you're supposed to sign everything out verbatim, but you guys are going to have to give it a leeway and give it a little grain of salt and not, you know, be so strict that you follow it that way."
>
> And I said, "Well, you either follow it or you don't follow it."

CX A at 112. Mr. Pedersen stated that he then filed a complaint with corporate ethics, and during their investigation he got called into HR where he determined that Mr. Vanderberg had failed to give Complainant's AOIs to the general manager. Additionally, Mr. Pedersen testified that Mr. Vanderberg falsified these documents by writing untrue statements on them. CX A at 116-121. Mr. Vanderberg also tried to hold a 29(f) meeting with Complainant regarding two ailerons that did not go out during his shift, and Mr. Vanderberg wanted to write up Complainant.

Mr. Pedersen testified that during a "critical factors class" in 2013 his general manager, Norman Miller, promised to hold a meeting with Complainant's crew. This was allegedly the second time Mr. Miller had promised this. CX A 130-131.

Regarding the 29(f) meeting that took place in March 2015, Mr. Pedersen testified that his supervisors were not permitted to discuss the "flap incident" with him because he had filed an ASAP, which is a self-reporting program that the FAA and American Airlines collaboratively constructed to report any mistakes or discrepancies. CX A at 140-141. Mr. Pedersen stated that during the meeting his supervisors began questioning him about the flap, to which he responded, "[Y]ou're not even supposed to be talking to me about this flap." CX A at 149. He stated that at that point they went off the record, and then Mr. Pedersen informed them that he was unable to

perform the "final handling" on the flap because the sign out required a crew chief's credentials, which he does not have because somebody had taken his out of the computer system. CX A at 150. At that point, Mr. Pedersen concluded the meeting:

> And then I proceeded to tell them all, "You know, I've had a belly full of your little F29 kangaroo meetings, court hearings," and I took a look at Mr. Anderson, and I said, "I'm going to tell you something right straight up, all of you. I have done filed formal charges on you. I'm done messing with you." And that was the end of the meeting.

CX A at 150. He stated that neither Mr. Chandler, Mr. Gilman, nor Mr. Anderson knew that "formal charges" had been filed against them until that 29(f) meeting. CX A at 151. These formal charges consisted of a formal complaint with OSHA through Complainant's attorney, an EthicsPoint complaint with an outside organization that is turned over to American Airlines, and the ASAP report.[7] Mr. Pedersen testified that following the 29(f) meeting in March 2015 he took a few sick days and was told by his family physician that his blood pressure was "off the chart." CX A at 156. After a few sick days, Mr. Pedersen stated that he informed Respondent that he was taking vacation days due to his blood pressure and stress. Afterwards, he went out on a medical leave. CX A at 157.

Mr. Pedersen has not been cleared to work by a doctor at this point, nor has he asked a doctor to clear him for work since March 2015. He stated that he does feel able to work. He alleged that he contacted Danielle Storie, with Respondent's HR department, requesting to work from home, away from the stress, and never received an answer from her. *Id*. Mr. Pedersen testified that he has not returned to work because of the stress issues associated with working for Respondent. "I have a conscience I've got to live with." CX A 159. He further testified regarding his doctor's advice, "He didn't want me back in there because of my health, because I'm a heart patient and a diabetic." CX A at 160.

Mr. Pedersen testified that someone, possibly crew chief Keith Brown, told him one day that Mr. Quinn was upset with him for writing up two ailerons one night when Complainant was crew chief. He stated that afterwards "they fixed it so I couldn't work crew chief anymore, and it cost me financially." CX A at 167. He later testified that this was an assumption on his part. *Id*. He also stated that two crew chiefs, and fellow bargaining unit employees, Mr. Gorman and Mr. Brown, threatened his job for raising safety issues in the workplace. CX A at 175.

Mr. Pedersen stated that to his knowledge he is still on unpaid leave with Respondent, but he is afraid he may not be able to pass a physical fitness test if Respondent chooses to submit him to one, which they allegedly have the right to do. CX A at 179-180. However, he testified that, despite loving working for Respondent up until the last few years, he does not wish to return to work for them. CX A at 181-182.

Regarding Respondent's adverse action, Mr. Pedersen stated, "[A]ll of the actions that had taken place against me drove me out of the company because of high blood pressure, stress, pain, and conscience." CX A at 201.

[7] It was determined later in the deposition that Mr. Pedersen filed the ASAP report on March 2, 2015. CX A at 202.

In early 2015, Mr. Pedersen testified that he informed Mr. Chandler that he was unable to balance two elevators due to FAR violations. He stated that Mr. Chandler's response was, "Are you refusing to do your job?" CX A at 251. He responded to Mr. Chandler, "No. I ain't refusing to do anything. I'm just trying to tell you there is an FAR violation here, and I can't balance them until all of that stuff is all corrected." *Id.*

Mr. Pedersen testified that the health/stress-related matters that required him to take off from work included being so stressed out that he was in physical pain, high blood pressure, and he and his doctors were afraid he was going to have a heart attack or stroke. CX A at 332. He has not applied to any other employment since taking leave from American Airlines.

Douglas Quinn (Tr. at 37 - 139)

During his hearing testimony, Mr. Quinn testified that he worked for Respondent for 21 years, and currently works for Spirit AeroSystems. Tr. at 38. He stated that his director informed him upon his departure from American Airlines that his leadership style did not match that of American Airlines. *Id*. That same day his boss was released from duty as well as another manager. *Id*. "Personally, I don't believe it was my leadership style. I believe it was more of a personality conflict between she and I, and my boss and her. More so my boss and her." *Id*.

Prior to working for Respondent, Mr. Quinn worked for the Oklahoma Army National Guard as well as the United States Army as an aircraft Black Hawk helicopter mechanic, crew chief and gunner for the duration of both. Tr. at 39. He began working for Respondent on September 17, 1996, as a shop repairperson. *Id*. Mr. Quinn served many roles while working with Respondent, to include working in the shop for one year, a mechanic on the "dock" for several years; he worked as a mechanic at a different hanger, working on different aircraft types, then served in the improvement department as a facilitator. He then served an additional year on the dock, three more years in the mechanic shop, then accepted a supervisor role in the flight control shop in August of 2013. Tr. at 41.

According to Mr. Quinn's testimony, the flight control shop is responsible for the overhaul and repair of the different flight control components that come off of the airplane. In order to alleviate some of the pressure off the dock they will take components off the plane and send them to the shops that specialize in repairing those components while the other mechanics work on the plane itself. Tr. at 41-42. Mr. Quinn's specific duties consisted of overseeing the safety of the employees as well as all overhaul and repair, as well as ensuring the components meet the requirements of the American Airlines engineering authorities, the FAA, and any other authority that governs those parts. Tr. at 42. He supervised approximately 40 mechanics until his shop consolidated with another shop and then that number increased to approximately 85 or 90 mechanics. Tr. at 43. Mr. Chandler became the supervisor of that shop as well. Mr. Quinn supervised the day shift. *Id*.

Mr. Quinn testified that in his 30 plus years as a mechanic or supervisor of mechanics, he has never had any kind of complaint with the FAA made against him. Tr. at 44. Other than this matter, he has never been the center of an investigation of any kind of AIR21 complaint or proceeding. *Id*. He stated that safety is paramount at American Airlines and for him personally.

Every morning his team would begin every meeting by asking the employees if there were any safety issues or concerns. Tr. at 44. If something was brought forward, it would be documented, investigated for validity and severity, and if found to be valid, appropriate action would be determined. Tr. at 44-45. The actions were documented, and a status report was kept and reviewed daily in between each shift. These crew meetings took place each shift. Mr. Quinn stated that mechanics brought up safety issues "probably at least once a week." Tr. at 45. He testified that any issue raised would be investigated immediately.

As a supervisor, in order to promote safety, Mr. Quinn would personally talk with his mechanics and ensure that they were all wearing their proper "PP" and their proper safety equipment. Tr. at 46. He would also encourage to them to bring up any safety issues. So far as policies and procedures in place, he stated that internally it was recommended or preferred that a mechanic bring any safety concern to the crew chief and supervisor immediately. However, there were other avenues such as the ASAP Program, the OSHA hotline, and the FAA hotline. *Id.*

Mr. Quinn testified that the ASAP Program is in place if an employee of Respondent wishes to report a safety issue without having to inform a direct supervisor. If so, they can make a call to that line as a way of reporting it. The report goes directly to a representative of Respondent and is investigated internally. Tr. at 47. The FAA hotline serves as an avenue for reporting FAA violations or safety concerns directly to the FAA. Tr. at 48. There is also an "ethics point complaint" for reporting something believed to be unethical with Respondent's Ethics Department. *Id.*

Mr. Quinn stated that he was Complainant's direct supervisor just for a few months because he worked the second shift. He testified that Complainant had the ability to do the work there but they had issues with him "as far as following our policies and our procedures and documenting maintenance that, that is required by the American Airlines policies and procedures and by the FAA, which governs all of our maintenance that we do there." Tr. at 49.

He continued:

> If a part comes in and it has a hole in it or whatever, that would be considered a discrepancy. If there is a discrepancy of something on a part, we had trouble with [Complainant] documenting down or looking up the references that we would need in order to be – when I say references, all maintenance on airplanes you had to have some type of authority to be able to do that, some document recognized by the FAA and by the American Airlines engineering department that gives you authority to do repairs or any type of maintenance upon an airplane, an airplane component or anything to do with an airplane, you had to have some type of authority to, to touch it.
>
> [We] had difficulty with him looking those up, document them down. If he – and that's what I'm saying by the procedures was the fact that he would not always want to do those things that are required as far as giving references for work that's been done and such things.

Tr. at 50-51. Mr. Quinn stated that following this process is important because repairs to components change per the authority of the manufacturer or by the FAA, so it must be looked up each time to ensure they are working the part correctly. Further, he stated that it is required by law that any repairs be documented. Tr. at 51. In order to determine whether repairs are needed or whether items are within limits or tolerances, the shop's "number one" authority is an "ESO," or engineering specification order. Tr. at 52. They also use the aircraft maintenance manual, illustrated parts catalog, and the American Airlines Repair Document ("AARD"), which has been approved by their internal engineering department.

Mr. Quinn testified that Complainant would commonly report a part as needing replacing, without referencing any authority or looking at any criteria. Complainant would state that his 25 years of experience justify his reasoning. Regarding one specific incident, Mr. Quinn stated, "[Complainant] would automatically want to replace those every time, which in time drives up cost and stuff to the part. But without ever looking at the criteria or testing it to see if it actually fell out of those limits or not." Tr. at 54. Mr. Quinn testified that he knows in this specific case that Complainant did not follow the procedure in consulting the proper authority or testing the part, because Complainant admitted it to him. Tr. at 55.

According to Mr. Quinn, the FAA requires every mechanic that finds a discrepancy with an airplane part to document that discrepancy, if they determined that a part is outside of limits for tolerances, and the reason therefor. Then that record remains with the aircraft for the duration of its life. Tr. at 58. The Respondent's internal policies also share this requirement. Mr. Quinn detailed numerous instances where Complainant failed to document a discrepancy that he identified. Tr. at 59.

Mr. Quinn discussed an incident where he called Complainant into his office to submit a "counseling report" into his file regarding his failure to follow procedures.

> And so we talked. I brought him in. I explained what I was seeing. Asked him if there's something that I could do. You know, did he need training, did he need other resources? Did he need, you know, was it not clear or did he not understand it? And he told me, no, that he doesn't need training. He understands it. In the conversation he said that, you know, that he would try to do better and that he understood. And we left it at that. And based off of that – I hadn't been there that long, I wanted to give him the benefit of the doubt that maybe he would, I ended up not putting it in his file. I did keep a copy of it just to have as a reference but I didn't, I didn't document into his employee file.

Tr. at 60. Joint Exhibit BB are the notes from this meeting which took place on or around March 10, 2014. Mr. Quinn testified that he did not curse at Complainant or yell at him, and he was not critical of him raising any flight safety issues during this meeting. The focus was merely on Complainant's tendency to "write up" items on a component that were unnecessary and not documenting the authority. *Id*. Mr. Quinn never disciplined Complainant for anything. He stated that Complainant never received any of the criticism or instruction given to him in a positive manner. Complainant was never compliant with these instructions and did not want to

follow the procedures, according to Mr. Quinn. Tr. at 63. Complainant believed his 25 years of experience were more reliable than the authorities cited.

Mr. Quinn reiterated that he never indicated to Complainant that there was any problem with him raising safety concerns during these conversations. In fact, the supervisors encouraged him to bring forward any safety issues. Mr. Quinn also repeated, during testimony, that he never cursed, yelled, or threatened Complainant's job or to discipline Complainant in any way. Tr. at 64.

Mr. Quinn testified that Complainant has never held the position of regular crew chief,[8] and certainly not during the time that he was there. He never submitted a resume or went through the application process to become a crew chief. Tr. at 71. When a crew chief is out sick or missing work, a fill-in crew chief is selected based solely on seniority. *Id*. Mr. Quinn testified that Complainant was never passed over when going down the list to select a fill-in crew chief. He stated that it's a very senior shop and many mechanics have more experience than Complainant. If Complainant was ever passed over during this process, Mr. Quinn stated that Complainant had the right to file a grievance pursuant to the collective bargaining agreement, but to his knowledge Complainant never filed such a grievance. Tr. at 72.

Regarding Complainant's allegation that Mr. Quinn instructed him not to file anything with the FAA or an ASAP report regarding Complainant's discovery of some used parts with stress cracks, Mr. Quinn testified that he has no recollection of this incident. Tr. at 77. Mr. Quinn testified that he never told anyone not to contact the FAA because that would be illegal and as a former mechanic he knows it is a right of aircraft mechanics. *Id.* Additionally, he never told any employee not to file an ASAP report or to take no action at all.

Complainant alleged that new and used weights were being mixed together in a drawer in the shop, which was prohibited. Mr. Quinn testified that this is not the case. He stated that mixing serviceable and unserviceable parts is prohibited but not mixing new and used parts. Tr. at 79. In relation to this incident, Complainant alleged he was told by Mr. Quinn, his supervisor, not to write up this "serious violation" or he would not have a job. Tr. at 80. Mr. Quinn denied this accusation, stating that he only told Complainant that mixing new and used parts was not prohibited but to remove any unserviceable weights if there were any mixed in with the serviceable weights. *Id*. Mr. Quinn testified that Complainant did bring forward safety issues that were legitimate, such as the shop crane leaking a couple of times. Tr. at 83. These issues were properly addressed, and the cranes were locked out and powered down so that no one could use them.

Regarding the February 24, 2015 "flap incident," Mr. Quinn testified that Complainant's job was to "just simply look over the paperwork, make sure nothing was missed, and to put the flap into the crate, take it off the stand, put it into the crate and ship it, ship it out." Tr. at 85-86. Mr. Quinn stated that Complainant believed that the flap could possibly have had the wrong part installed on it or installed incorrectly, despite not having printed the up to date installation

[8] According to Mr. Quinn, a crew chief is a supervisor position, one level below his position as shop supervisor. A crew chief is a position inside the union, and a regular crew chief is a crew chief that has actually been assigned that position, not just serving temporarily. Tr. at 67-68.

paperwork, despite not having checked any authority stating why it was incorrectly installed, and despite one of the inspectors stating that everything was legal and installed correctly. Tr. 85-104. Mr. Quinn stated that Complainant and another mechanic, Mr. Andre, believed something could be wrong with the flap based on their interpretation of the "MOC screen," which is the supply system document on the computer. Tr. 89-90. According to Mr. Quinn this screen is not a legitimate authority to determine whether or not a configuration is correct or not. On the MOC screen it says "in big red letters this is not to be used for configuration or installation." Tr. at 91.

After Complainant insisted numerous times to Mr. Quinn that he had the most up to date paperwork, Complainant's supervisor printed out the current paperwork and showed Complainant that he in fact did not have the most up to date version, and everything had been checked and completed. Mr. Quinn detailed:

> And then so he has the actual current paperwork there and all of their concerns about the sign-offs had been signed off and all the way to the end. So it was all completed. They just didn't take the extra steps that they needed to determine if it was complete or not.

Tr. at 91-92. Despite the current paperwork, Complainant still insisted that something was wrong with the flap. Mr. Quinn gave him an hour and a half to look through the manuals and find something in the correct authority to justify his uneasy feeling. When Mr. Quinn returned, an inspector was looking over the flap and assured everyone that it was all signed-off on and legal. "I don't know what they're wanting me to do. And he said, this is all signed off. And he said, it's all legal. He said, my counterpart has already looked at it. He says, I don't know what they want." Tr. at 99.

At that time, Mr. Quinn stated that he and Complainant "kind of went back and forth there a little bit" and argued regarding the flap and why it had not been shipped. Tr. at 100. He stated that both of them were a little frustrated so their voices were raised, and they stepped into Mr. Quinn's office.

> And I told him, I said, look, we've had this discussion before about this. I need you to, I need you to be part of our solution around here, not part of the problem. I need you to get these parts out on time. We need to get them – we need to do our jobs, do them correctly. I said, I need your help. I said, we need to do this. And he said, well, I'm not going to, I'm not going to send this out if I don't think it's right.

Tr. at 102. Mr. Quinn stated that he consistently gave Complainant guidance on where to look for information on each part, such as the maintenance manuals. He stated that the mechanic that signed off on the part had 30 years of experience, similar to Complainant, but had looked up the references and signed off on the part after having it checked by the inspector. Complainant still believed the work was not right. Tr. at 104. Mr. Quinn stated that "[t]hat was a common theme." *Id*. Mr. Quinn testified that at no point during the conversation did he tell Complainant that he shouldn't be raising safety concerns, nor was he critical of him bringing an issue to Mr. Quinn's attention or to the company's attention.

Following this conversation Mr. Quinn stated that Complainant left the office to continue searching for the reference regarding the flap. Mr. Quinn then stated that he would just look it up himself. The testimony is detailed as follows:

Q: Okay, and did you look it up yourself?

A: I did.

Q: Did you find something?

A: I did.

Q: How long did it take you to find something?

A: Fifteen minutes max. I mean, it was probably –

Q: Where did you find something?

A: In the Illustrated Parts Catalog.

Q: Is that exactly where you told him to look earlier?

A: It is.

Tr. at 105-106. Mr. Quinn stated that this reference in the catalog addressed the concern with the flap completely, and was the authority that he told Complainant to go find that showed each part that's on the plane with the part number stamped on it. Mr. Quinn testified that he never threatened to fire or discipline Complainant at any point during the February 24, 2015 conversation.

Mr. Quinn testified that he does not believe that Complainant's concern in relation to the flap was reasonable at all because he could have taken the 15 minutes to look it up himself. Tr. at 115. He stated that he never had a problem with Complainant or any employee raising flight safety concern issues, and they encouraged it. He testified that he talked to and dealt with Complainant the same way he did with all of his other subordinate employees. *Id*.

During cross-examination, Mr. Quinn testified that he received a termination letter from Respondent on September 8, 2017, stating that his leadership style did not "match that of American Airlines." Tr. at 122. He stated that he took no action regarding his termination but did not agree with Respondent's opinion about his leadership style.

During redirect, Mr. Quinn testified regarding a statement that Complainant alleged Mr. Quinn made to him. Tr. at 137. Mr. Quinn stated that due to the timing and subject matter, he believes that Complainant has him confused with a different supervisor. *Id.*

Michael Peynado (Tr. at 140 – 174)

Mr. Peynado testified that he has worked 29 and a half years for Respondent as a mechanic and crew chief. Tr. at 141. He stated that he applied for the crew chief position, then was interviewed and ultimately selected. Prior to his promotion he worked in multiple locations including the structure shop (also known as the flight control shop), the hangar, the seat shop, the door shop, the cooling shop and the thruster-buster shop. Tr. at 142. His position as crew chief falls under the union and is not considered a supervisory position. He holds an A&P license, or airframe and power plant license, an Airline Transport Pilot certificate with instrument, multi-engine rating, and he also has his basic instrument, multi-engine flight instructor ratings. Additionally, he is a ground instructor, basic instrument, and advanced instructor. Tr. at 143. Mr. Peynado has a Bachelor's degree in aviation science.

Mr. Peynado testified that he began working with Complainant in the winter of 2013, when the door shop was combined with the flight control shop. At that time Mr. Peynado was a crew chief and Complainant was a mechanic. Mr. Peynado stated that safety was the number one concern at American Airlines. It was discussed at their "crew talks" or turnover meetings on a daily basis, and they always talked to the mechanics about working safely and performing duties safely. Tr. at 145. Mr. Peynado stated that he never heard a supervisor or a crew chief tell a mechanic to ignore or not fix a problem that they see that impacts aircraft safety. *Id*.

His impression of Complainant was that he was lazy. Complainant "often took a very long time to produce a part. He was normally playing solitaire when he could be working. And he wrote up stuff that was unnecessary, that took even longer to get the part repaired." Tr. at 146. Mr. Peynado stated that after a part would arrive from the hangar, which had already been inspected and gone through evaluation by dock inspectors, Complainant would write up additional things that needed to be fixed or done to the part that were unnecessary. *Id*. Further, Complainant would not use the manuals provided to him to provide support for his claims. Mr. Peynado testified that Complainant complained about the work assigned to him "all the time." Tr. at 147. He stated that the times he saw Complainant playing Solitaire while on the clock was "too numerous to mention." *Id*. He personally saw Complainant's supervisors speak to Complainant about this issue, and Complainant always responded that he was being harassed by the supervisors.

Mr. Peynado said that Mr. Quinn and Mr. Chandler's interactions with Complainant regarding him playing Solitaire were never out of line. There were never what Mr. Peynado perceived to be threats or harassment. Tr. at 149. Mr. Peynado himself spoke to Complainant about his lack of productivity:

> Well, after working with Pete for some time and [seeing] the card games and his lack of productivity, I just went up to him one day and just asked him. I said, Pete, why, why are you the way you are? Why don't you just come in and do your job? And his response to me was, it's my job to let the supervisors and the crew chief pull their hair out.

Tr. at 151. Mr. Peynado testified about a specific incident where Complainant refused to sign off on a part, claiming that it was unairworthy because the paint was missing and the static wick was corroded. Tr. at 155. He said the part was sent to them for a specific task to be performed. Complainant did not provide any support for his opinion. *Id*. Mr. Peynado stated that the two reasons Complainant provided do not deem a part unairworthy because the dock has its own mechanics and inspectors that can paint or change items at any given time. He stated that Complainant's opinion was unreasonable and he did not agree with it, so he signed off the part himself. Tr. at 156. However, during the exchange Mr. Peynado never witnessed any supervisor yell, threaten, or treat Complainant negatively in any way.

Regarding the February 24, 2015 "flap incident," Mr. Peynado stated that he assigned the part to Complainant. He said Complainant offered no support when he reported that the part was "not done correctly." Tr. at 158. After verifying that all the line items were accomplished by mechanics and the part had been signed off by their shop personnel, Mr. Peynado then assigned the part to another mechanic since Complainant refused to sign it off. During the interaction of Complainant with Mr. Quinn and Mr. Chandler, Mr. Peynado testified that he did not witness either supervisor say anything out of line, or intimidate, or threaten Complainant. Tr. at 160. He concluded by stating that Mr. Quinn treated all of the mechanics the same. Tr. at 173.

<u>Dominic Brasher (Tr. at 175 – 193)</u>

Mr. Brasher testified that he has worked for Respondent for 22 years as a cleaner, junior mechanic, general mechanic, and eventually was promoted to supervisor in 2012. Tr. at 176. He has more than 26 years of aircraft mechanic experience. He testified that he supervised Complainant from the end of 2013 through the middle of 2014. During that time, Mr. Brasher stated that Complainant did not follow the process that the mechanics were instructed to follow, such as writing up anything defective or wrong with the parts that would come to them. He detailed a specific instance of this as follows:

> He said that [he] had a lot of years of air traffic experience that he didn't have to write those things up. And we said, Pete, you have to [write] up everything that you find wrong with it. Because what happens is now another mechanic has to go do all that research to find out if they were good or bad.

Tr. at 182. During that conversation, Mr. Brasher testified that he did not threaten, intimidate or raise his voice at Complainant. He stated that he and the supervisors always encouraged Complainant to write up any flight safety issues. Mr. Brasher never witnessed anyone get upset with Complainant for bringing up flight safety issues or threaten him or intimidate him. Tr. at 183. He stated that Mr. Quinn's interactions with Complainant were cordial and no different than his interactions with any other mechanic.

During cross-examination, Mr. Brasher testified that Complainant would "always find ways not to do his work by not signing off stuff." Tr. at 190. He stated that Complainant took longer breaks than other people, and the supervisors would have to make him come back from break. He said Complainant very rarely documented things, and the on-coming mechanic after him would have to document and check the part, or the crew chief would have to do it. Tr. at

190-191. Mr. Brasher testified that Complainant was never written up or disciplined for this issue but the supervisors and crew chiefs would talk to Complainant, hoping his behavior would change. Tr. at 191.

James Chandler (Tr. at 194 – 247)

Mr. Chandler testified that he has worked for Respondent for ten years, and his current position there is production supervisor in a manufacturing shop. Tr. at 198. He supervised Complainant from spring of 2014 until Complainant's departure from American Airlines, approximately one year total. Tr. at 197. Mr. Chandler stated that his duties as supervisor included ensuring the mechanics have safe working conditions and ensuring that the products or the parts that came into the shop are repaired in a timely manner. He conducted daily safety walks to look for any safety issues or concerns. Tr. at 197-198.

Regarding the "flap incident," Mr. Chandler stated that tasks were completed on the flap by at least ten mechanics and eight different inspectors before being assigned to Complainant. Tr. at 201. After being assigned the part, Complainant approached Mr. Chandler and stated that he was concerned the wrong arm had been installed on the flap. Mr. Chandler requested Doug Quinn's assistance as Mr. Quinn was the most senior mechanic there with an A&P license. Mr. Chandler testified to the events that happened that day including Complainant telling Mr. Quinn he had the most up to date paperwork on the flap when he did not, and citing his 25 years of experience as authority for not writing up and shipping out the flap. Tr. at 209-211.

He stated that Mr. Quinn's line of questioning of Complainant was reasonable and never out of line. Mr. Quinn told Complainant to find proper authority for his concern or to ship the part and left for a meeting. Upon his return, Mr. Chandler observed Complainant and Mr. Quinn go into the office to discuss why the flap had not been shipped still. He stated that he did not hear any raised voices from the office after leaving. After the conversation, Mr. Chandler stated that Mr. Quinn found the information to validate that the arm was correct. Mr. Chandler never witnessed Mr. Quinn threaten, harass, or intimidate Complainant, and Mr. Chandler himself never took these actions against Complainant. Tr. at 215-216. Mr. Chandler testified that it is not in his nature to yell at anyone, much less an employee. He has never been accused of harassing an employee before the matter at hand, nor intimidation or retaliation. Tr. at 217.

Mr. Chandler described an incident that occurred the very next day involving an elevator, which Complainant believed required a weight modification. Tr. at 219. Complainant also raised a concern about a missing data plate. Mr. Chandler was able to explain to Complainant that a weight modification was not required due to an exception and found an inspector to approve the weight and balance without the data plate. Then Complainant agreed to balance the elevator. Tr. at 220. Exhibit X is a statement outlining this specific incident. *Id.*

Mr. Chandler testified that his boss, Art Anderson, and he made a joint decision to hold a 29(f) Meeting, which is a section of the Joint Collection Bargaining Agreement that covers investigations between management and unionized employees. Tr. at 223. Mr. Chandler stated that the reason for calling the meeting was a result of the flap incident and the elevator incident.

They wanted to get more information from Complainant and why he was bringing these items up. They wanted to question Complainant about these incidents and get his point of view.

During the meeting, Mr. Chandler asked Complainant why he did not write up items that he believed had a problem. Complainant responded that Mr. Chandler instructed him not to write up these items. Tr. at 225. Mr. Chandler testified that he never told Complainant or any other mechanic not to write up a concern they may have and never would tell them not to do so. *Id*.

A separate 29(f) meeting was held with Complainant's co-worker, Mr. Andre, during which Mr. Chandler asked him the same question regarding not writing up the flap. Mr. Andre stated that he did not have a problem with the part, Complainant had the concern. *Id*.

During Complainant's meeting, Mr. Chandler stated that Complainant was not threatened or intimidated, nor did Complainant complain that he felt intimidated. Complainant was not disciplined in any way, and he was not told that he would be disciplined. Mr. Chandler stated that he did make a recommendation that Complainant receive a disciplinary action due to his history of bringing up items that he claimed were unsafe without any proper validation or support for his claim. Tr. at 227. Complainant was not ultimately disciplined for these incidents. Tr. at 226.

Mr. Chandler testified that he never heard any supervisor, crew chief, or anyone else ever chastise Complainant in any way for bringing up a safety concern. He stated that employees in the flight control shop are never discouraged from reporting safety issues, and they are in fact encouraged to do so in regular meetings and briefings. Tr. at 228-229.

<u>Danielle Storie (Tr. at 248 – 249)</u>

The parties reached an agreement to stipulate as to what Ms. Storie would have testified to had she appeared:

> She would testify that she's an HR manager for American Airlines. She would also testify that Mr. Pedersen was not required by American Airlines to have permission – to get permission from American Airlines to seek employment elsewhere outside of American Airlines. She would testify that she at no point told Mr. Pedersen that he was required to get permission to seek employment elsewhere outside of American Airlines. She would also testify as to the amount that Mr. Pedersen was paying annually for his medical benefits at American Airlines. And she would testify that those amounts were for medical insurance, $567.90 annually; for disability insurance, $25.75 annually; for dental insurance, $15.75 annually; and for vision insurance, $23.40 annually.

Tr. at 248-249.

<u>Dwight Pedersen (Tr. 249 – 264)</u>

Mr. Pedersen testified at the hearing in addition to his deposition testimony. He testified that, despite what Douglas Quinn testified to at the hearing, Quinn told him not to file an ASAP report "[a]fter I showed him that the engine parts that were in the shop weren't being done correctly." Tr. at 251 – 252. In response to Mr. Quinn's testimony, Mr. Pedersen stated that Mr. Quinn's statement regarding there being no engine parts in the shop from 2014 to 2015 was inaccurate and that he did instruct the men in the shop not to file an ASAP report to "protect themselves." He further testified that he never provided Mr. Quinn with an "MOC" because he "hadn't got that far," because they were trying to pull up the ESO from "the Illustrated Parts Catalog and this flap that's listed as a 20-Alpha is not listed in that ESO, so we shouldn't even have been working on it" and that concerned him. He made the report because there was a safety concern about the flaps and he "reported it to my both of my supervisors. I went to them and told them we had problems and I needed help." Tr. at 253 - 255.

Mr. Pedersen confirmed Michael Peynado's testimony that Mr. Pedersen did not show him the flap because he did not come out of his office. Mr. Pedersen further confirmed that he "played solitaire every once in a while, but I always had my other work done before I did that. Or I was setting waiting for parts, or setting waiting for an inspector." Tr. 255 – 56.

In response to Mr. Brasher's testimony stating that Complainant "gold plated" parts, Mr. Pedersen responded, "We replaced anything that we found that was deficient because the plane is going to go back into revenue service, and the only way that plane's going to make money is if it stays in the air." Tr. at 256. Mr. Pedersen testified that he asked Dominic Brasher for an "avoid oral instruction" because Mr. Brasher and Mr. Quinn "dragged me away from my workbench and … started harassing me about the number of bearings I was changing and how I knew they were bad." Tr. at 256 – 257. Mr. Pedersen testified that he got frustrated and told them he wanted a written directive from them on how they want him to sign off on his work. He stated that Mr. Brasher "blew up" and said "I'm not giving you no goddamn written directive, I'm giving you an oral directive." Mr. Pedersen testified that at that point he returned to his work area and got an "AOI" out and filled it out and put it in the inbox at the supervisor's door. Tr. at 257.

When asked whether it was true was Mr. Quinn, Mr. Peynado, Mr. Brasher, and Mr. Chandler had said – that none threatened to fire him, yelled at him, or threatened discipline for any safety issues – Mr. Pedersen stated that "Some of them did, some didn't." Tr. 257 – 58. He testified that Mr. Quinn on multiple occasions told him that if he kept writing stuff up (including during the "flap incident."), he wouldn't have a job. He testified that Mr. Chandler made a similar statement and called him into the office and told him he was going to start keeping records on him. He further told Mr. Pedersen that he'd been raising his voice to him and Mr. Pedersen responded that Chandler had been doing the same. Tr. at 258 – 59.

Mr. Pedersen testified that he believed that if he wanted to work a job outside of American Airlines, he had to have permission from his manager to make sure there was no conflict of interest. He said he sent an email to Danielle Storie when he was out and never heard back from her. Tr. at 260 – 261.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The employee protection provisions of AIR 21 are set forth at 49 U.S.C. § 42121. Subsection (a) prohibits discrimination against airline employees as follows:

> No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employments because the employee (or any person acting pursuant to a request of the employee)—
>
> (1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to 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 or any other law of the United States;
>
> (2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding 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 or any other law of the United States;
>
> (3) testified or is about to testify in such a proceeding; or
>
> (4) assisted or participated or is about to assist or participate in such a proceeding.

49 U.S.C. § 42121(a); *see also* 29 C.F.R. § 1979.102(b)(1)-(4).

An employee's safety violation complaint may be oral or in writing, but must be specific in relation to a given practice, condition, directive, or event. *Peck v. Safe Air International Inc.*, ARB Case No. 02-028, ALJ Case No. 2001-AIR-00003 (ARB January 30, 2004). The Complainant must have a reasonable belief that his complaint is valid. *Id.*

Under the AIR21 standard, complainants must initially prove by a preponderance of the evidence that a protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint. A "contributing factor" is "any factor, which alone or in combination with other factors, tends to affect in anyway the outcome of the decision."[9] If a complainant makes this showing, then the burden shifts to the employer to demonstrate by clear and convincing evidence that it would have taken the same alleged unfavorable personnel action in the absence of the protected behavior. 49 U.S.C. § 42121(b)(2)(B)(ii).

In order to prevail in this case, Mr. Pedersen must prove: (i) that he engaged in protected activity; (ii) that his employer, American Airlines, took an adverse employment action against him; and (iii) that the protected activity was a contributing factor in his employer's decision to

[9] *Powers v. Union Pac. R. R. Co.*, ARB No.13-034, ALJ No. 2010-FRS-030, slip op. at 11 (Jan. 6, 2017) (internal citations omitted).

take the adverse employment action. If Mr. Pedersen satisfies this initial burden by a preponderance of the evidence, Respondent may avoid liability by demonstrating by clear and convincing evidence that it would have taken the same adverse action against him even if he had not engaged in protected activity.

It is undisputed that Respondent was a corporation that provided interstate transport of passengers and cargo under the authority of 14 C.F.R. Part 121. *See* 49 U.S.C. §§ 42121(a), 40102(a)(2), and 40102(a)(15)(C). It is also undisputed that Complainant was an "employee" under the regulations as "an individual applying to work for an air carrier." *See* 29 C.F.R. § 1979.101.

Timeliness

A claim of retaliation must be filed within 90 days of the alleged adverse employment decision. 29 C.F.R. § 1979.103(d) (requiring complainant to file administrative complaint "[w]ithin 90 days after an alleged violation of [AIR 21] occurs"). Complainant filed his whistleblower complaint with OSHA on May 5, 2015.[10] JX N.

Respondent argues that because Complainant filed his complaint with OSHA initiating this proceeding on May 5, 2015, any discrete action of retaliation that occurred before February 4, 2015, 90 days before the filing of the Complaint, cannot serve as a basis for Complainant's AIR 21 action. Respondent asserts that Complainant has only identified two possible discrete unfavorable employment actions that occurred within 90 days of his complaint to OSHA: (1) Complainant's supervisor's alleged comments to Complainant when Complainant refused to sign off on an airline part called a flap on February 24, 2015; and (2) a 29F investigatory meeting on March 3, 2015. As for the remaining actions Complainant alleged Respondent took against him, Respondent argues that Complainant either cannot identify a specific date that the alleged action occurred, or he admitted that the alleged action took place before February 4, 2015, and therefore, according to Respondent, cannot serve as a basis of his claim in this proceeding. Respondent argues that the two actions that Complainant identified in the 90-day time frame do not qualify as unfavorable personnel actions.

Complainant argues that, although it is generally true that any action outside the 90 day filing look back period would not be actionable under AIR21, some of the pre-ninety day look back period items were still in existence 90 days before the filing of the complaint. The items listed in Complainant's Brief are not retaliatory acts, Respondent argues, but rather ongoing issues or complaints by Mr. Pedersen. *See* Complainant's Brief at 16.

The claim must be filed with OSHA within 90 days of the *alleged adverse employment action or decision*, not the alleged protected activity or FAA violation. I agree with Respondent that the only specified alleged adverse actions that fall within the 90 day look back period are the comments made by Mr. Quinn on February 24, 2015, and the 29F meeting held in response to this incident three days later.

[10] Although Complainant's complaint to OSHA is dated May 4, 2015, it was filed on May 5, 2015.

Therefore, Complainant must prove that either the comments made by Mr. Quinn on February 24, 2015, or the 29F investigatory meeting meet the preponderance of the evidence standard for an unfavorable personnel action or, when considered cumulatively, the acts of alleged intimidation, threats, and coercion rise to the high standard required to show a hostile work environment. Constructive discharge would also satisfy the standard for an unfavorable personnel action.

Credibility

In deciding the issues presented, I have considered and evaluated the rationality and consistency of the testimony of all witnesses and the manner in which the testimony supports or detracts from other record evidence. In doing so, I have considered all relevant, probative, and available evidence, and has assessed its cumulative impact on the parties' contentions. *See Frady v. Tennessee Valley Authority*, ALJ No. 1992-ERA-00019 at 4 (Sec'y Oct. 23, 1995).

The ARB has stated its preference that ALJs "delineate the specific credibility determinations for each witness," though it is not required. *Malmanger v. Air Evac EMS, Inc.*, ARB No. 08-071, ALJ No. 2007-AIR-00008 (ARB July 2, 2009). In weighing the testimony of witnesses, the ALJ as fact finder may consider the relationship of the witnesses to the parties, the witnesses' interest in the outcome of the proceedings, the witnesses' demeanor while testifying, the witnesses' opportunity to observe or acquire knowledge about the subject matter of the witnesses' testimony, and the extent to which the testimony was supported or contradicted by other credible evidence. *Gary v. Chautauqua Airlines*, ARB No. 04-112, ALJ No. 2003-AIR-00038, slip op. at 4 (ARB Jan. 31, 2006). It is well-settled that an administrative law judge is not bound to believe or disbelieve the entirety of a witness's testimony, but may choose to believe only certain portions of the testimony. *Johnson v. Rocket City Drywall*, ARB No. 05-131, ALJ No. 2005-STA-00024 (Jan 31, 2007*); Altemose Construction Co. v. NLRB*, 514 F.2d 8, 14, n.5 (3d Cir. 1975).

I find that Respondent's witnesses presented a generally consistent theme regarding its decision-making process. I find all of the Respondent's witnesses, including Complainant, credible and find no reason, except if noted below, to accord their testimony less than normal weight.

Protected Activity

The Board has explained, "As a matter of law, an employee engages in protected activity any time [h]e provides or attempts to provide information related to a violation or alleged violation of an FAA requirement or any federal law related to air carrier safety, where the employee's belief of a violation is subjectively and objectively reasonable." *Sewade v. Halo-Flight, Inc.*, ARB No. 13-098, ALJ No. 2013-AIR-00009, slip op. at 7-8 (Feb. 13, 2015) (citing 49 U.S.C.A. § 42121(a)) (emphasizing, "an employee need not prove an *actual* FAA violation to satisfy the protected activity provided that the employee's report concerns a federal law related to air carrier safety and the employee's belief that the violation occurred is subjectively and objectively reasonable") (emphasis in original). Thus, the "complainant must prove that he reasonably believed in the existence of a violation," and the reasonableness of this belief has both a subjective and an objective component. *Burdette v. ExpressJet Airlines, Inc.*, ARB No.

14-059, ALJ No. 2013-AIR-00016, slip op. at 5 (Jan. 21, 2016). Regarding the former, "To prove a subjective belief, a complainant must prove that he held the belief in good faith." *Id*. Regarding the latter, the Board explained: "To determine whether a subjective belief is objectively reasonable, one assesses a complainant's belief taking into account the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee." *Id*. The Board observed, however, "mere words do not create an FAA violation when the parties' actual conduct does not violate FAA regulations." *Hindsman v. Delta Air Lines, Inc.*, ARB No. 09-023, slip op. at 6 (June 30, 2010). Though the complainant "need not cite to a specific violation, his complaint must at least relate to violations of FAA orders, regulations, or standards (or any other violations of federal law relating to aviation safety)." *Malmanger v. Air Evac EMS, Inc*., ARB No. 08-071, slip op. at 9 (July 2, 2009). Similarly, "once an employee's concerns are addressed and resolved, it is no longer reasonable for the employee to continue claiming a safety violation, and activities initially protected lose their character as protected activity." *Id*. at 8 (internal quotation marks omitted).[11]

Complainant asserts that he engaged in multiple instances of protected activity by refusing to overlook or sign off on major maintenance items, and refusing to allow unairworthy aircraft to be returned to service. *See* Complainant's May 5, 2015 OSHA Complaint (JX N). He averred that he was unwilling to perform illegal maintenance acts, illegally sign maintenance records, or be complicit in the violation of FARs, or violate any standard, order, or regulation of the Federal Aviation Administration. These multiple instances are centered around one specific safety concern he raised February 24, 2015, regarding an alleged inoperative flap that he refused to sign off as inspected and repaired. On March 2, 2015, one day before the 29F meeting regarding the flap incident, but after his conversation with Mr. Quinn, Complainant filed an FAA ASAP Report, documenting and communicating his concern with the airworthiness of the flap. He noted that he first notified his safety department about the event on March 2, 2015, that he submitted the report into the safety system on March 2, 2015, and that the safety incident took place on February 24, 2015. JX C at bates 006.

Respondent argued that Complainant's concerns regarding the flap on February 24, 2015 were not "objectively reasonable." Respondent's Brief at 21 (citing *Blount v. Northwest Airlines, Inc.*, ARB No. 09-120, ALJ No. 2007-AIR-00009, slip op. 10 (ARB Oct. 24, 2011)). First, Respondent pointed out that Complainant was unable to find any authority within the FAA-approved manuals to support his concerns about the flap. Second, Respondent stated that numerous mechanics and inspectors had worked on the flap without noting any airworthiness issues. Third, Complainant requested that another inspector review the flap, and that inspector found no problems with the flap or its installation. Fourth, Mr. Quinn, complainant's supervisor, was able to find documentation within the FAA-approved authorities that confirmed that the correct part was used and installed correctly. Fifth, Mr. Andre, the other mechanic that initially shared Complainant's concerns, ultimately concluded that the flap was airworthy. Tr. at 225.

Although Mr. Andre ultimately concluded that there was no safety concern with the flap, he was initially also concerned. Tr. at 89-90. In determining that the flap was airworthy,

[11] *See also Carter v. Marten Transp., Ltd.*, ARB Nos. 06-101, 06-159, ALJ No. 2005-STA-00063, slip op. at 9 (June 30, 2008); *Williams v. U.S. Dep't of Labor,* 157 Fed. App'x 564, 570 (4th Cir. 2005); *Patey v. Sinclair Oil Corp.*, ARB No. 96-174, ALJ No. 1996-STA-00020, slip op. at 1 (Nov. 12, 1996).

Mr. Pedersen, Mr. Andre, and Mr. Chandler spent more than an hour researching maintenance manuals for the correct part. Therefore, despite the ultimate resulting lack of authoritative support for Complainant's safety concern, I find that the Complainant's safety concern regarding the flap was subjectively and objectively reasonable based on the factual circumstances and available knowledge. Accordingly, I find that Complainant's refusal to sign off on the flap qualifies as protected activity. I do not find that Complainant's filing of the FAA ASAP report qualifies as protected activity as the appropriate authority was found and confirmed that the flap was airworthy and ready to be shipped. At that point, because the issue had been resolved, it was not subjectively or objectively reasonable to report the flap is unairworthy. *See Malmanger*, *supra*, ARB No. 08-071, slip op. at 8.

Knowledge

The aforementioned occurrence regarding the flap involved direct communication between the Complainant and the Respondent. Both Mr. Quinn and Mr. Chandler testified, however, that they had no knowledge that Complainant had filed an EthicsPoint complaint or an ASAP Report until after Complainant left the company. Tr. at 114, 228. Therefore, the only protected activity of which Respondent had knowledge was Complainant's refusal to sign off on the flap due to safety concerns.

Adverse Employment Action

Having established that he engaged in protected activity, Complainant must also prove that he was the subject of an adverse action taken by Respondent. Complainant argues that his employment was continually threatened as a result of his unwillingness to perform illegal maintenance acts, illegally sign maintenance records, or be complicit in the violation of FARs, or violate any standard, order or regulation of the FAA. Complainant's Brief at 18. He stated that Respondent retaliated against him when they unconscionably chose to place the airline's schedules, revenue, and management issues over proper required aircraft maintenance, over the safety and airworthiness of their aircraft fleet, and by "coercing mechanics to only fix what is written up on parts and ignore anything else." *Id*; CX A at 301-302.

As previously determined, the only alleged adverse employment actions that fall within the 90 day look back period from the date the claim was filed are the comments made by Mr. Quinn on February 24, 2015, and the 29F investigatory meeting held on March 3, 2015. Additionally, Complainant argues that he suffered adverse employment action when he was forced to go on leave from his job with Respondent by instruction of his physician, resulting in constructive discharge. I find that Complainant has failed to prove by a preponderance of the evidence that he suffered an adverse employment action. I will address Complainant's allegations of adverse action in turn below.

AIR21 prohibits an employer from taking adverse action against an employee in retaliation for the employee engaging in protected activity. 49 U.S.C. § 42121(a). Adverse action includes discharging or otherwise retaliating against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee engaged in protected activity. 29 C.F.R. § 1978.102(a). Adverse action may also include intimidating, threatening, restraining, coercing, blacklisting, disciplining, harassing, suspending,

or demoting an employee. 29 C.F.R. § 1978.102(b). Complainant bears the burden of establishing by a preponderance of the evidence that Respondent took at adverse action against him. 29 C.F.R. § 1978.109(a).

In *Melton v. Yellow Transportation, Inc.*, ARB No. 06-052, ALJ No. 2005-STA-00002 (ARB Sept. 30, 2008), the ARB adopted the "materially adverse" deterrence standard of *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006). The majority for the ARB wrote:

> *Burlington Northern* held that for the employer action to be deemed "materially adverse," it must be such that it "could well dissuade a reasonable worker from making or supporting a charge of discrimination." For purposes of the retaliation statutes that the Labor Department adjudicates, the test is whether the employer action could dissuade a reasonable worker from engaging in protected activity. According to the Court, a "reasonable worker" is a "reasonable person in the plaintiff's position."

USDOL/OALJ Reporter at 19-20 (footnotes omitted).

Complainant alleges that his job was threatened on numerous occasions by Mr. Quinn, and two crew chiefs, Kevin Gorman and Keith Brown, and that his supervisors regularly tried to intimidate him. CX A at 172-173, 197; JX N. Specifically, Complainant avers that on February 24, 2015, Mr. Quinn threatened to fire him if he did not sign off on a flap that was assigned to him for completion. CX A at 13. Complainant testified that Mr. Quinn yelled, "You get that goddamn flap out of here, or you ain't going to have a job." CX A at 205-206; Tr. at 258-259.

Mr. Peynado, Mr. Brasher, and Mr. Chandler all testified that they never witnessed Mr. Quinn, nor any other supervisor or crew chief threaten or intimidate Complainant in any way. Further, Mr. Quinn testified that he never cursed or screamed at Complainant. Tr. at 110. Nor did Mr. Quinn threaten Complainant's job. *Id.*[12] Further, Mr. Quinn's reaction does not survive the standard set forth by *Burlington Northern*. Not only would a "reasonable worker" not be dissuaded from engaging in further protected activity, but Complainant himself was not dissuaded. The very next day, February 25, 2015, Complainant told his supervisor, Mr. Chandler, that he would not balance an elevator due to a FAR violation.[13] CX A at 248-251; Tr. at 219-220. Based on the evidence before me, I find that a reasonable person in Complainant's position would not have been dissuaded from engaging in protected activity by Mr. Quinn's comments to Complainant on February 24, 2015. Therefore, I do not find that this employer action is materially adverse.

As a result of the flap incident, a 29F fact-finding meeting was held, and Complainant argues that this was used as a form of intimidation. CX A at 11. He also argues that his Title 41 rights were violated during the meeting when his supervisors attempted to speak with him regarding the flap incident. *Id*. Specifically, Complainant stated the following:

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[12] I Mr. Peynado, Mr. Brasher, Mr. Chandler, and Mr. Quinn to be credible witnesses, and I find their testimony with regard to Mr. Quinn's behavior towards Complainant persuasive and reliable.

[13] After a discussion with Mr. Chandler, Complainant ultimately agreed to balance the elevator. Tr. at 220. However, this "elevator incident" was an additional issue that resulted in the 29(f) meeting with Complainant.

> Okay. My explanation is they were using it as a tool of intimidation and threats that they were going to do something to you. Because every time you did something they didn't like, they wanted to have an F29 meeting.

CX A at 90. Complainant testified that these fact-finding meetings are intimidating to the average person, and were intimidating to him at first. He was not, however, intimidated by the 29F meeting in early 2015. CX A at 91. Complainant agreed that these meetings were fact-finding meetings and there is nothing wrong with convening a meeting to find facts. *See* CX A at 126-127. These meetings were held during the normal course of business to find facts surrounding an incident that may have occurred. I do not find that a reasonable employee would be dissuaded from performing a protected activity due to the fear of an investigatory meeting being held. Further, I do not find that Complainant's Title 41 rights were violated as Complainant himself admitted that his supervisors were unaware of his ASAP report or EthicsPoint complaint until the meeting. Therefore, I find that the 29F meeting held on March 3, 2015, was not an adverse employment action.

Constructive Discharge

Complainant also alleges adverse action by Respondent as constructive discharge when he was forced to go on medical leave from his employment in March of 2015. In order to prove constructive discharge, Complainant must show that his "working conditions were so difficult or unpleasant that a reasonable person in [his] shoes would have found continued employment intolerable and would have been compelled to resign." *Menendez v. Halliburton, Inc.*, ARB Nos. 09-002, 09-003, slip op. at 14 (Sep. 13, 2011). Constructive discharge is a question of fact, and the standard is objective: the question is whether "a reasonable person" would find the conditions intolerable, and the subjective beliefs of the employee (and employer) are irrelevant. *Loftus v. Horizon Lines, Inc.*, ARB Case No. 16-082, 2018 WL 2927676 (May 24, 2018); *Dietz v. Cypress Semiconductor Corp*., ARB No. 15-017, ALJ No. 2014-SOX-00002 (ARB Mar. 30, 2016)(citing *Strickland v. United Parcel Svc.*, 555 F.3d 1224, 1228 (10th Cir. 2009)) reversed on other grounds, *Dietz v. Semiconductor Corp.*, 711 Fed. Appx. 478 (10th Cir. 2017).

During Complainant's April 20, 2017 deposition, he stated the following regarding his leave from American Airlines:

> Q: And then you never came back to work after that, did you?
>
> A: No. I woke up one morning, and I was hurting, extremely hurting, in the shoulders and back, and I didn't know what was going on. So I went to my family physician, and he found that my blood pressure was off the chart.
>
> Q: So to answer my question, after the 29F meeting that took place in March of 2015, you never returned to work at American Airlines; right?
>
> A: I went out on vacation and medical leave.
>
> Q: So the answer to my question is "yes"? You didn't –

A: No, I did not return.

Q: You initially went on a vacation; correct?

A: I took a few sick days and then advised them I was taking vacation because of the problems with the blood pressure and stress.

Q: And then you went out on a medical leave; correct?

A: Correct.

Q: Are you able to work right now?

A: I don't know. I haven't talked to my physician about it.

Q: Since the 29F conference that took place in March of 2015, have you had a doctor clear you to return to work?

A: No.

Q: Have you asked a doctor to clear you to return to work since the 29F conference that took place in March of 2015?

A: No.

Q: Do you feel able to work as you're sitting here today?

A: Yes. And I sent an email to Danielle Storey at HR requesting permission to be able to work outside of American Airlines, away from all of the stress, and never received an answer back.

…

Q: Why haven't you returned to work or asked your physician to clear you to return to work?

A: I didn't want to further damage my health because of the stress issues. I have a conscience I've got to live with.

…

Q: Have you been fired since you were at American Airlines?

A: No.

Q: In fact, you're still employed by American Airlines?

A: Unpaid leave.

Q: Do you understand you can come back to work whenever a doctor clears you to come back to work?

A: No.

Q: You don't understand that?

A: Due to the time I've been out, I may not be able to pass a physical to get back in.

Q: Why do you believe you might not be able to pass a physical?

A: Because they have a right to give me a physical when I've been out this long.

Q: And why do you think you can't pass a physical?

A: I may not be able to do the physical movements.

CX A at 156-180.

The evidence in the record does not support a finding that the working conditions were so intolerable that a reasonable person in the Complainant's position would feel compelled to resign. In fact, Complainant himself did not resign. Complainant simply stated that he has not inquired with his physician as to whether he is fit to return to work but feels as though he is able to return.[14] Complainant stated, however, that he has not returned to work for Respondent because he did not want to further damage his health because of the stress. "I have a conscience I have to live with." CX A at 159. The fact that Complainant did not wish to return to work for Respondent because he feared the stress implications of sparring with his supervisors over the airworthiness of parts, or was not physically able to return to work because he might not pass the physical, does not equate to constructive discharge. I do not find that the conditions of Complainant's work environment were in excess of those faced by his co-workers and are more likened to typical workplace disputes and disagreements between Complainant and his superiors revolving around whether parts were airworthy. Therefore, I find that Complainant was not forced to resign and cannot establish constructive discharge.

Hostile Work Environment

Finally, Complainant alleges that the record more than supports the fact that he was subjected to a hostile work environment while employed with Respondent. In order to establish a case for hostile work environment, Complainant must show that he (1) engaged in protected activity; (2) suffered intentional harassment related to that activity; (3) the harassment "was sufficiently severe or pervasive so as to alter the conditions of employment and to create an

[14] Complainant was still employed with Respondent until he retired in May 2017. JX DD.

abusive working environment; and (4) the harassment would have detrimentally affected a reasonable person and did detrimentally affect the complainant." *Sasse v. Office of the United States Attorney*, ARB Nos. 02-077, 02-078, 03-044, ALJ No. 1998-CAA-00007, slip op. at 34-35 (ARB Jan. 30, 2004), *aff'd sub nom Sasse v. United States Dept. of Labor*, 409 F.3d 773 (6th Cir. 2005). "Discourtesy or rudeness should not be confused with harassment, nor are the ordinary tribulations of the workplace, such as the sporadic use of abusive language, joking about protected status or activity, and occasional teasing actionable." *Id.* (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998)).

Complainant testified that his supervisor, Mr. Quinn, approached him five or six times and told him he was "fixing too many things" and if he "kept it up, [he] wasn't going to have a job." CX A at 16-17. This includes a specific incident where Mr. Quinn and another supervisor, Mr. Brasher questioned Complainant about an aileron on which he had worked. Complainant testified that he asked for a written directive instructing him a specific way to work and sign off his repairs, and Mr. Brasher "blew up" and said, "I ain't giving you a f[**]kin' written directive. I'm giving you a f[**]kin' oral directive." CX A at 17-18. Regarding the aileron, he stated that his supervisors told him, "You're spending too much money on parts. You're holding up parts. We're not getting our parts out on schedule because of you." CX A at 20.

Complainant testified by deposition to the following:

> I would be on the floor working my parts, my components, and he would come out and start picking through the paperwork and looking at what I was doing and what I had signed off and what I had written up, and then he would start in complaining that I was changing too many parts and how did I know they were bad and why wasn't I going to the maintenance manual and looking these things up, their tolerances.

CX A at 24-25. Complainant stated that during these conversations Mr. Quinn would threaten to fire him if he "kept it up." *Id.* Complainant also testified about another supervisor, Mr. Vandenberg:

> He falsified documents that he returned to me and didn't give them to the general manager like he was supposed to. He also tried to give me an F29 meeting and tried to write me up because two ailerons didn't go out on a shift. And I had already showed him how much work had to be done on those two ailerons, and even after I found out that they weren't going to go out because they didn't have a specific part, he still wanted to try to write me up because they didn't go out.

CX A at 116-117. Complainant stated that on February 24, 2015, he was harassed and intimidated and told he would lose his job if he wrote up various serious maintenance discrepancies. JX N. Complainant argues that his supervisors used the 29F meeting as a form of harassment as well. CX A at 271. Complainant testified to his allegation of Mr. Quinn's harassing him and his co-workers, "He kept coming in while we were on our supper break and bothering us and asking us questions about the jobs we were doing and wouldn't let us have our supper in peace." CX A at 277.

I have already found that Complainant engaged in a protected activity by refusing to sign off on the flap on February 24, 2015. However, even if the previously-referenced events did occur, they were not related to this activity, as they all happened prior to February 24, 2015, with the exception of the March 3, 2015 29F meeting. I previously found that this meeting was not an adverse action, and I do not find that it was used as a form of intimidation or harassment. The other events to which Complainant testified took place over the course of his employment, if accurate, were mere disagreements with his supervisors over work production, and I do not find them to be sufficient evidence to prove that Complainant suffered an adverse action in the form of a hostile work environment.

Based on the foregoing, I do not find that Complainant has proven by a preponderance of the evidence that he suffered an adverse employment action.

CONCLUSION

Complainant has demonstrated by a preponderance of the evidence that he engaged in protected activity. He has failed, however, to demonstrate by a preponderance of the evidence that he experienced an adverse action. Complainant has therefore failed to demonstrate by a preponderance of the evidence a prima facie case under AIR21.

ORDER

Accordingly, it is hereby **ORDERED** that the Complainant's complaint against Respondent is hereby **DISMISSED**.

SO ORDERED.

CARRIE BLAND
District Chief Administrative Law Judge

Washington, D.C.

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 maybe 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).