

000001

8

You are logged in as Jason Brush, Office Name:NASHVILLE .

Start Page	Search	Create Intake	Complainant	Respondent	Investigation	Determination	Additional Information	Case Comments	Case Summary
----------------------------	------------------------	-------------------------------	-----------------------------	----------------------------	-------------------------------	-------------------------------	--	-------------------------------	------------------------------

Complainant Name:	Estabrook, Mark	Respondent Name:	FedEx Express
Local Case Number:	4-1760-14-002	Activity Number:	22807127

Case Summary

Investigation Information					
Case Type:	AIR21				
Investigator ID:	Brush, Jason				
Date Complaint Filed:	10/09/2013				
Docketing Date:	10/28/2013				
Allegation Code:	P - Participation in Safety and Health activities				
Date of Adverse Action:	08/09/2013				
Adverse Action Type(s):	Discipline ; Suspension ; Other				
Allegation Summary:	Complainant alleged that he was retaliated against by Respondent in that he was removed from flying status and ordered to seek mental health services on August 9, 2013 after raising safety concerns.				
Statutory Implications:					
ROI Submitted to Supervisor:	07/15/2014				
RSI Approval:	07/15/2014				

Respondent-COMPANY Information					
Respondent Name:	FedEx Express				
Number of Employees:					
SIC Code:	4512				
NAICS Code:	481112				
Union:	YES				
Legal Entity:	Corporation				
Organization Type:	COMPANY				
Primary Address:	3610 Hacks Cross Road Memphis TN 38124 US				
Alternate Address:					
Phones:	Type	Country Code	Area Code	Number	Ext
	Voice - Work	1	901	369-3600	
Email Addresses:					

Establishment Details					
Company Name:	FedEx Express				
Employer ID:					
DUN's Number:					
Parent Company Name:					
Address:					
Phones:	Type	Country Code	Area Code	Number	Ext
Controlling Employer Name:					
Address:					
Phones:	Type	Country Code	Area Code	Number	Ext

Complainant Information - Mr Mark Estabrook					
Complainant Name:	Mr Mark Estabrook				
Primary Address:	Post Office Box 1890 Manchaca TX 78652 US				
Alternate Address:	Seham, Seham, Meltz & Petersen, LLP 445 Hamilton Avenue, Suite 1204				

		White Plains NY 10601 US			
Phones:	Type	Country Code	Area Code	Number	Ext
	Cellular	1	901	230-4933	
	Voice - Work	1	914	997-1346	
Email Addresses:		ssmplaw@ssmplaw.com cargopilot@gmail.com			
Determination for Complainant - Mr Mark Estabrook					
Date	Determination	Final Determination	Docket Number	Comments	
07/15/2014	RD - Agency Dismissed/Non-merit	Yes			
Backlog Strategies Used for Complainant - Mr Mark Estabrook					
Determination Amounts for Complainant - Mr Mark Estabrook					
Backpay:					
Punitive/Civil:					
Compensatory:					
Interest:					
Total:		\$.00			
Complainant Reinstated:		NO			
DWPP Appeals					
Appeal Filed:					
Acknowledgement Letter Sent:					
Investigative File Requested:					
Investigative File Received:					
DWPP Determination:					
Appeal Committee Determination:					
Appeal Determination:					
Determination Code:					
Investigative File Returned (After Reinvestigation):					
Comments:					
Case Comments					
Case Comments:					
Additional Information					
Tracking Information					
Tracking Info:					
National:					
No Data Found					
Regional:					
No Data Found					
Admin History					
Administrative Closure Date:					
Reason for Administrative Closure:					
Detailed Reason for Administrative Closure:					

Exit



July 15, 2014

Mark Estabrook
c/o Lee Seham, Attorney
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

Re: FedEx Express / Estabrook / 4-1760-14-002

Dear Mr. Estabrook:

This is to advise you that we have completed our investigation of the above referenced complaint filed by Mr. Mark Estabrook (Complainant) against FedEx Express (Respondent) on October 9, 2013, with an amendment dated April 16, 2014, under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (AIR21), 49 U.S.C. §42121. In brief, Complainant alleged that Respondent placed him in a Non-Qualified (NOQ) flight status in August 2013 and again in April 2014, for requesting a meeting with Respondent's Chief Executive Officer (CEO) to discuss safety related concerns.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, finds that there is no reasonable cause to believe that Respondent violated AIR21 and issues the following findings:

Secretary's Findings

Complainant was placed in NOQ flight status on August 5, 2013 and again in April 2014. On October 9, 2013, with amendment dated April 16, 2014, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of AIR21. As this complaint was filed within 90 days of the alleged adverse action(s), it is deemed timely.

Respondent is an air carrier within the meaning of 49 U.S.C. §42121 and 49 U.S.C. §40102(a)(2).

Complainant is an employee within the meaning of 49 U.S.C. §42121.

Complainant requested a meeting via an email sent to Respondent System Chief Pilot on August 4, 2013 "for the purpose of discussing security issues" with Respondent's CEO, "Fred," referring to Fred Smith, CEO of FedEx. More specifically, Complainant wanted to discuss "something related to 9/11." Although Respondent believed this request was an inappropriate method of arranging a meeting with the CEO of a global enterprise, Respondent's Chief Pilot nonetheless scheduled a meeting for August 9, 2013. Present at this meeting was Complainant's Fleet

Captain, Respondent Managing Director of Aviation and Regulatory Security (Security Director), and Complainant. Of note, prior to the meeting, Complainant was removed from the flight schedule, with pay, due to Respondent's apprehension based upon the nature of Complainant's email. According to Respondent, Complainant acknowledged understanding of the reason for his placement on NOQ status. During the meeting, Complainant explained his uneasiness with Respondent's practice of providing shipment tracking information on-line. Complainant opined that terrorist groups could use this information in carrying out attacks and thus suggested that the Department of Homeland Security be asked to instruct airlines to cease making tracking information readily available. Complainant also spoke about a former Respondent employee who is currently serving a prison term for attempted hijacking of an airplane. Specifically, Complainant reported hearing "rumors" that the former employee had converted to Islam and may secretly be communicating with terrorists and providing them with operational data. According to Respondent, the Fleet Pilot and Security Director, found Complainant's comments to be, "curious and quite disconcerting."

After the meeting concluded, and due to the nature of the conversation, Respondent felt it was necessary to ensure Complainant's ability to safely perform his necessary job functions. Therefore, Respondent directed Complainant to be evaluated by an aeromedical advisor. This instruction was made pursuant to the applicable Collective Bargaining Agreement (CBA), which allows for Respondent to "direct a pilot to contact or see the Company's aeromedical advisor if the Company has reasonable basis to question whether a pilot has developed or recovered from and impairment to his ability to perform duties as a pilot. A pilot in active status who is directed to contact or see the Company's aeromedical advisor, shall be removed from any conflicting scheduled activities with pay until the aeromedical advisor determines whether the pilot is fit for flight duty." *FedEx Express Pilot's Collective Bargaining Agreement, Section 15.D.1 & 2*. The available testimonial and documentary evidence demonstrates that Respondent had a subjectively reasonable basis for directing Complainant's evaluation and seemingly complied with all the administrative requirements of the CBA provision.

Complainant initially spoke with Respondent's aeromedical advisor on August 16, 2013. After the conversation, Respondent's aeromedical advisor found sufficient cause for recommending that Complainant undergo a full psychiatric evaluation. Complainant was thereafter referred to an independent psychiatrist. This secondary evaluation was completed on September 11, 2013 and found Complainant unfit for flying duties. Following the applicable CBA procedures, Complainant then submitted an evaluation previously performed by a doctor of Complainant's choosing as a "secondary evaluation" indicating he was in fact fit to fly. Because the medical evaluations were inconsistent a Medical Review Panel was convened and it was ultimately determined that Complainant was fit to return to duty. Complainant was therefore returned to active status and received all owed monetary compensation and leave.

In April 2014, Complainant suffered physical injuries while off-duty. Once medically cleared, he flew several flights without incident. However, Complainant was placed in NOQ status, with pay, once Respondent realized that an updated medical opinion, formally authorizing Complainant to return to service, had not been provided by Complainant. Complainant was immediately returned to qualified flight status upon Respondent's receipt of the necessary documentation.

Respondent's proffered non-retaliatory basis for the Complainant's NOQ status in August 2013, was predicated upon their subjective belief that Complainant may not have been medically qualified to perform his duties as a pilot. Respondent therefore adhered to the CBA requirements regarding evaluation by an Aviation Medical Examiner. In regards to the April 2014 NOQ status, the evidence once again demonstrates that the requirements imposed by Respondent were in accordance with the applicable rules, regulations and policies. It appears, in both situations, Respondent was justified in the actions taken with no evidence of retaliatory intent identified. The fact that Complainant was, without unnecessary delay, put back on active flight status when Respondent's concerns were eliminated, and steps taken to ensure no monetary or benefit lost, further counters Complainant's contentions.

Consequently, this complaint is dismissed.

Respondent and Complainant have 30 days from receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street, NW, Suite 400
Washington, D.C. 2001-8002
(202) 693-7452 FAX (202) 693-7365

With copies to:

Federal Express Corporation
3620 Hacks Cross Rd., Bldg. B - 3d Fl.
Memphis, TN 38125

Kurt A. Petermeyer, Regional Administrator
Occupational Safety and Health Administration
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W., Room 6T50
Atlanta, GA 30303

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an ALJ, in which the parties are allowed an opportunity to present their evidence *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under AIR21. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of the complaint. The

rules and procedures for the handling of AIR21 cases can be found in Title 29, Code of Federal Regulations Part 1979, a copy of which may be obtained at www.whistleblowers.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lauren Fehlman', written in a cursive style.

Lauren Fehlman
Regional Supervisory Investigator

cc: Chief Administrative Law Judge, USDOL
DWPP
Matthew Davison, Attorney for Respondent
FAA

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
 Street, Apt. No., or PO Box No. Seham
 City, State, ZIP+4 WP NY

PS Form 3800, August 2006 See Reverse for Instructions

2040 2222 1000 0607 ET02

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
 Street, Apt. No., or PO Box No. FedEx
 City, State, ZIP+4 DAVID KNOX

PS Form 3800, August 2006 See Reverse for Instructions

(b) (7)(C)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LEE SEHAM
SEHAM, SEHAM METZEL
REVERSE
445 Ham. 1st Ave
W. The Plains, NY 10607

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery 7/18

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below: _____

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number (Transfer from service label) 7013 1090 0001 7722 0402

PS Form 3811, February 2004 Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Knox
FedEx/Express
3620 Hacks Cross Rd.
Memphis, TN 38125

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery 7/18

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below: _____

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number (Transfer from service label) 7013 1090 0001 7722 0419

PS Form 3811, February 2004 Domestic Return Receipt

102595-02-M-1540

(b) (7)(C)

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



July 15, 2014

Chief Administrative Law Judge
Office of Administrative Law Judges
U. S. Department of Labor
800 K Street NW, Suite 400 North
Washington, D.C. 20001-8002

Re: FedEx Express / Estabrook / 4-1760-14-002

Dear Sir or Madam:

The above referenced matter is a complaint of retaliation filed under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. Enclosed are copies of the Secretary's Findings, a copy of the original complaint, and the first page of the report of investigation should either party request a hearing before an Administrative Law Judge.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lauren Fehlman".

Lauren Fehlman
Regional Supervisory Investigator

Enclosures: Secretary's Findings
Copy of Complaint
Report of Investigation (First Page Only)

Fehlman, Lauren - OSHA

From: Fehlman, Lauren - OSHA
Sent: Tuesday, July 15, 2014 3:43 PM
To: 'FAA-AIR21@faa.gov'
Subject: FedEx Express/Estabrook/4-1760-14-002
Attachments: SKMBT_C45414071515050.pdf

Please find attached the Secretary's Findings for the Subject case. If you need any additional information, please feel free contact me.

Sincerely,

Lauren Fehlman

*Regional Supervisory Investigator
Department of Labor, OSHA
Nashville Area Office
51 Century Blvd, Suite 340
Nashville, TN 37214
615-232-3803*

NOTICE:

This e-mail message and any attachments to it may contain confidential information. The information contained in this transmission is intended solely for the use of the individual(s) or entities to which the e-mail is addressed. If you are not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that you are prohibited from reviewing, retransmitting, converting to hard copy, copying, disseminating, or otherwise using in any manner this e-mail or any attachments to it. If you have received this message in error, please notify the sender by replying to this message and delete it from your computer.

Fehlman, Lauren - OSHA

From: Fehlman, Lauren - OSHA
Sent: Tuesday, July 15, 2014 3:51 PM
To: (b) (7)(C)
Cc: Rosa, Anthony - OSHA
Subject: FedEx Express/Estabrook/4-1760-14-002
Attachments: SKMBT_C45414071515050.pdf

Please find attached the Secretary's Findings for the Subject case.

Lauren Fehlman

*Regional Supervisory Investigator
Department of Labor, OSHA
Nashville Area Office
51 Century Blvd, Suite 340
Nashville, TN 37214
615-232-3803*

NOTICE:

This e-mail message and any attachments to it may contain confidential information. The information contained in this transmission is intended solely for the use of the individual(s) or entities to which the e-mail is addressed. If you are not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that you are prohibited from reviewing, retransmitting, converting to hard copy, copying, disseminating, or otherwise using in any manner this e-mail or any attachments to it. If you have received this message in error, please notify the sender by replying to this message and delete it from your computer.

000013

6

Brush, Jason - OSHA

From: Lee Seham <ssmpls@aol.com>
Sent: Wednesday, December 18, 2013 9:26 AM
To: Brush, Jason - OSHA
Subject: Re: FedEx/Estabrook - Case No. 4-1760-14-002

Dear Mr. Brush:

This email will serve to confirm that, in view of the international travel plans of both myself and my client, you have extended our deadline for rebuttal until January 15, 2014.

Thank you for your consideration.

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, New York 10601
Tel: (914) 997-1346 Fax: (914) 997-7125
Email: ssmpls@aol.com Website: www.ssmplaw.com
Other offices located in *Manhattan *Houston *Minneapolis *Seattle

PRIVILEGED AND CONFIDENTIAL INFORMATION

This email transmission is intended only for the use of the individual(s) herein named, and may contain confidential and/or legally privileged information from SEHAM, SEHAM, MELTZ & PETERSEN, LLP. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email/file document is strictly prohibited. If you have received this mail/file document in error, please notify us by telephone so that we can arrange for the return of the document to us at no cost.

-----Original Message-----

From: Brush, Jason - OSHA <Brush.Jason@dol.gov>
To: SSMPLS <SSMPLS@aol.com>
Sent: Mon, Dec 16, 2013 9:14 am
Subject: RE: FedEx/Estabrook - Case No. 4-1760-14-002

Mr. Seham,

Thanks for the phone call this morning. Per our discussion, I have attached a copy of FedEx's position. Should you have any rebuttal, please provide it to me no later than January 3, 2013. I am allowing the extra days due to upcoming holidays and anticipated office closures.

In the meantime, if there is anything I can do to assist you, please do not hesitate to contact me.

Respectfully,

Jason P. Brush
Regional Investigator

U.S. Department of Labor – OSHA
Nashville Area Office
51 Century Blvd, Suite 340
Nashville, TN 37214

Phone: (615)232-3803
Fax: (615)232-3827

Brush, Jason - OSHA

From: David Knox <david.knox@fedex.com>
Sent: Monday, November 18, 2013 8:00 PM
To: Brush, Jason - OSHA
Cc: Laurie Bond
Subject: Estabrook v. FedEx Express - Case No. 4-1760-14-002

Mr. Brush,

It was a pleasure talking to you earlier today. I wanted to confirm my understanding that the due date for FedEx's response to Mr. Estabrook's complaint is December 2. If my understanding is incorrect, please let me know at your earliest convenience. Thank you.

David P. Knox
Senior Counsel
Federal Express Corporation
3620 Hacks Cross Rd., Bldg B - 3d Fl.
Memphis, Tennessee 38125
Telephone: 901-434-6286
Facsimile: 901-434-9271
Email: david.knox@fedex.com

This e-mail may contain privileged and confidential information and is intended only for the use of the specific individual(s) to whom it is addressed. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use, dissemination or copying of this e-mail or the information contained in it or attached to it is strictly prohibited. If you have received this e-mail in error, please delete it and immediately notify the person named above by reply e-mail.

Brush, Jason - OSHA

From: SSMPPLS@aol.com
Sent: Tuesday, November 05, 2013 8:19 AM
To: Brush, Jason - OSHA
Subject: Re: FedEx/Estabrook - Case No. 4-1760-14-002

Dear Sir:

Thank you very much for your quick response.

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, New York 10601
Tel: (914) 997-1346 Fax: (914) 997-7125
Email: ssmppls@aol.com Website: www.ssmplaw.com
Other offices located in *Manhattan *Houston *Minneapolis *Seattle

PRIVILEGED AND CONFIDENTIAL INFORMATION

This email transmission is intended only for the use of the individual(s) herein named, and may contain confidential and/or legally privileged information from SEHAM, SEHAM, MELTZ & PETERSEN, LLP. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email/file document is strictly prohibited. If you have received this mail/file document in error, please notify us by telephone so that we can arrange for the return of the document to us at no cost.

In a message dated 11/4/2013 6:37:34 P.M. Eastern Standard Time, Brush.Jason@dol.gov writes:

Good afternoon,

I apologize for the oversight in not enclosing the Designation of Representation form. Since you presented us with a cover letter notice of appearance, it is not necessary for you to complete that particular form.

Jason P. Brush
Investigator
U.S. Department of Labor-OSHA

Sent from my Verizon Wireless 4G LTE DROID

SSMPPLS@aol.com wrote:

Dear Sir:

We received today via certified mail a letter dated October 28, 2013, signed by Regional Supervisory Investigator Lauren Fehlman, which references you as the Regional Investigator and provides your contact information.

We thank you for your response and take this opportunity to clarify that the Complainant in this matter is Captain Mark Estabrook. Our firm serves as his legal counsel.

The October 28 letter references the enclosure of a Designation of Representative form; however, the form was not enclosed. We respectfully request that you forward this form to us at your convenience.

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, New York 10601
Tel: (914) 997-1346 Fax: (914) 997-7125

Email: ssmpls@aol.com Website: www.seham.com
Other offices located in *Manhattan *Houston *Minneapolis *Seattle

PRIVILEGED AND CONFIDENTIAL INFORMATION

This email transmission is intended only for the use of the individual(s) herein named, and may contain confidential and/or legally privileged information from SEHAM, SEHAM, MELTZ & PETERSEN, LLP. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email/file document is strictly prohibited. If you have received this mail/file document in error, please notify us by telephone so that we can arrange for the return of the document to us at no cost.

Brush, Jason - OSHA

From: SSMPLS@aol.com
Sent: Monday, November 04, 2013 1:29 PM
To: Brush, Jason - OSHA
Cc: cargopilot@gmail.com
Subject: FedEx/Estabrook - Case No. 4-1760-14-002

Dear Sir:

We received today via certified mail a letter dated October 28, 2013, signed by Regional Supervisory Investigator Lauren Fehlman, which references you as the Regional Investigator and provides your contact information.

We thank you for your response and take this opportunity to clarify that the Complainant in this matter is Captain Mark Estabrook. Our firm serves as his legal counsel.

The October 28 letter references the enclosure of a Designation of Representative form; however, the form was not enclosed. We respectfully request that you forward this form to us at your convenience.

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, New York 10601
Tel: (914) 997-1346 Fax: (914) 997-7125
Email: ssmpls@aol.com Website: www.ssmplaw.com
Other offices located in *Manhattan *Houston *Minneapolis *Seattle

PRIVILEGED AND CONFIDENTIAL INFORMATION

This email transmission is intended only for the use of the individual(s) herein named, and may contain confidential and/or legally privileged information from SEHAM, SEHAM, MELTZ & PETERSEN, LLP. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email/file document is strictly prohibited. If you have received this mail/file document in error, please notify us by telephone so that we can arrange for the return of the document to us at no cost.

000019



U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

DESIGNATION OF REPRESENTATIVE

Mark Estabrook

v.

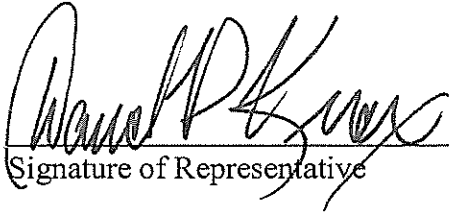
Case No. 4-1760-14-002

FedEx Express

TO:

Jason P. Brush, Regional Investigator
U.S. Department of Labor – OSHA
Nashville Area Office
51 Century Blvd., Suite 340
Nashville, TN 37214
Phone: (615) 232-3803
Facsimile: (615) 232-3827
Email: brush.jason@dol.gov

The undersigned hereby enters his appearance as representative of **Federal Express Corporation (identified in this matter as “FedEx Express”)** in the above captioned matter.



Signature of Representative

David P. Knox

Senior Counsel

Title

Date

11/7/2013

Representative's Address and ZIP Code

Federal Express Corporation
3620 Hacks Cross Road, Bldg B – 3d Floor
Memphis, Tennessee 38125
Telephone: (901) 434-6286
Facsimile: (901) 434-9279
Email: david.knox@fedex.com



November 7, 2013

VIA ELECTRONIC MAIL: brush.jason@dol.gov
AND FEDEX DELIVERY

Mr. Jason Brush
Regional Investigator
U.S. Department of Labor - OSHA
Nashville Area Office
51 Century Blvd., Suite 340
Nashville, Tennessee 37214

RE: Mark Estabrook v. FedEx Express
OSHA Case Number 4-1760-14-002
FedEx Matter No. 60-14499

Dear Mr. Brush:

I am an attorney in the Legal Department for Federal Express Corporation. My department handles the employment-related legal affairs for Federal Express Corporation, including responding to complaints of discrimination filed with your agency. The above-referenced complaint has been assigned to me for response. I will submit a Designation of Representative form shortly. As noted therein, please direct all further communications regarding this matter to my attention at the following address:

David P. Knox, Senior Counsel
Federal Express Corporation
3620 Hacks Cross Road, Bldg. B – 3d Floor
Memphis, Tennessee 38125
Email: david.knox@fedex.com
Telephone: (901) 434-6286
Facsimile: (901) 434-9279

We received your letter dated October 28, 2013, enclosing a copy of the complaint, on November 6, 2013. Accordingly, we will submit a written response to Mr. Estabrook's

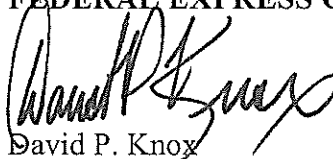
Mr. Jason Brush
November 7, 2013
Page 2

allegations by November 26. If you believe our response is due by an earlier date, please let me know your proposed deadline as soon as possible.

In the meantime, if you have any questions or need any additional information, please feel free to contact me.

Sincerely,

FEDERAL EXPRESS CORPORATION

A handwritten signature in black ink, appearing to read "David P. Knox". The signature is written in a cursive style with a large initial "D".

David P. Knox
Senior Counsel

cc: Lee Seham
Seham, Seham, Meltz & Petersen, LLP

1025346

4

000023

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



October 28, 2013

Whistleblower Protection Program Manager
Office of Audit and Evaluation (AAE-2)
FAA National Headquarters (FOB 10A)
800 Independence Avenue, S.W., Suite 911
Washington, DC 20591

Re: FedEx Express / Estabrook / Case No. 4-1760-14-002

Dear Sir or Madam:

I am enclosing for your information a complaint filed under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121. This complaint is currently under investigation by the Occupational Safety and Health Administration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Fehlman".

LAUREN FEHLMAN
Regional Supervisory Investigator

Enclosures: Copy of Complaint

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



October 28, 2013

FedEx Express
3610 Hacks Cross Road
Memphis, TN 38124

Re: FedEx Express/Estabrook/Case No. 4-1760-14-002

Dear Sir or Madam:

We hereby serve you notice that a complaint has been filed with this office by Mr. Mark Estabrook (Complainant) alleging retaliatory employment practices in violation of the whistleblower provisions of Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121 (AIR 21). A copy of the complaint is enclosed.

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing the whistleblower provisions of AIR 21, and will conduct its investigation following the procedures outlined in 29 CFR Part 1979. You may obtain a copy of the pertinent statute and regulations at <http://www.whistleblowers.gov>. Upon request, a printed copy of these materials will be mailed to you.

Under these procedures, OSHA will disclose to the parties information relevant to the resolution of the case as well as provide all parties an opportunity to fully respond. As such, both you and Complainant will receive a copy of each other's submissions to OSHA that are responsive to the above referenced whistleblower complaint. **We request that any future documents that you submit to OSHA, you also send a copy to the Complainant at the address below:**

Lee Seham
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, New York 10601

If the information provided contains private, personally identifiable information about individuals other than the complainant, such information, where appropriate, should be redacted before disclosure. OSHA may contact the party directly for the un-redacted copy, if necessary.

We would appreciate receiving from you within 20 days a written account of the facts and a statement of your position with respect to the allegation that you have retaliated against Complainant, in violation of the Act. Please note that a full and complete initial response, supported by appropriate documentation, may help to achieve early resolution of this matter. Voluntary resolution of complaints can be affected by way of a settlement agreement at any time.

Within 20 days of your receipt of this complaint you may submit to this agency a written statement and any affidavits or documents explaining or defending your position. Within the same 20 days you may request a meeting to present your position. The meeting will be held before the issuance of any findings and a preliminary order. At the meeting, you may be accompanied by counsel and by any persons relating to the complaint, who may make statements concerning the case.

If investigation provides this agency with reasonable cause to believe that the Act has been violated and reinstatement of the complaint is warranted, you will again be contacted prior to the issuance of findings and a preliminary order, at which time you will be advised of the substance of the relevant evidence supporting the complainant's allegations, and you will be given the opportunity to submit a written response, to meet with the investigator and to present statements from rebuttal witnesses. Your rebuttal evidence must be presented within ten (10) business days of this agency's notification described in this paragraph.

Attention is called to your right and the right of any party to be represented by counsel or other representative in this matter. In the event you choose to have a representative appear on your behalf, please have your representative complete the Designation of Representative form enclosed and forward it promptly. All communications and submissions should be made to the investigator assigned below. Your cooperation with this office is invited so that all facts of the case may be considered.

Sincerely,

Jason P. Brush
 Regional Investigator
 U.S. Department of Labor - OSHA
 Nashville Area Office
 51 Century Blvd, Suite 340
 Nashville, TN 37214
 Ph: (615) 232-3803
 Fax: (615) 232-3827
 Email: brush.jason@dol.gov




LAUREN FEHLMAN
 Regional Supervisory Investigator

Enclosure: Designation of Representative
 Copy of Complaint

7012 1010 0001 1038 6764

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here


Sent To	<i>FedEx Express</i>
Street, Apt. No.; or PO Box No.	
City, State, ZIP+4	<i>Memphis</i>

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



October 28, 2013

Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, New York 10601

Re: FedEx Express/Estabrook/Case No. 4-1760-14-002

Dear Mr. Seham:

This letter acknowledges receipt of your whistleblower complaint filed under Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121 (AIR 21), on October 21, 2013 against FedEx Express (Respondent).

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing the whistleblower provisions of AIR 21, and will conduct its investigation following the procedures outlined in 29 CFR Part 1979. You may obtain a copy of the pertinent statute and regulations at <http://www.whistleblowers.gov>. Upon request, a printed copy of these materials will be mailed to you.

Under these procedures, OSHA will disclose to the parties information relevant to the resolution of the case as well as provide all parties an opportunity to fully respond. As such, both you and Respondent will receive a copy of each other's submissions to OSHA that are responsive to the above referenced whistleblower complaint. We have notified Respondent of the filing of this complaint and provided Respondent with a copy. **We request that any future documents that you submit to OSHA, you also send a copy to the Respondent at the address below:**

FedEx Express
3610 Hacks Cross Road
Memphis, TN 38124

If the information provided contains private, personally identifiable information about individuals other than you, such information, where appropriate, should be redacted before disclosure. OSHA may contact the party directly for the unredacted copy, if necessary.

Attention is called to your right and the right of any party to be represented by counsel or other representative in this matter. In the event you choose to have a representative appear on your behalf, please have your representative complete the Designation of Representative form enclosed and forward it promptly.

At this time, an investigator has been assigned to your case and will be contacting you in the near future. In the interim, please save any evidence bearing on your complaint, such as notes, minutes, letters, or check stubs, etc., and have them ready when the investigator named below

meets with you. It will be helpful for you to write down a brief factual account of what happened and to prepare a list of the names, addresses, and telephone numbers of the potential witnesses, together with a brief summary of what each witness should know.

You are expected to cooperate in the investigation of your complaint and failure to do so may cause your complaint to be dismissed.

Sincerely,

Jason P. Brush
 Regional Investigator
 U.S. Department of Labor- OSHA
 Nashville Area Office
 51 Century Blvd, Suite 340
 Nashville, TN 37214
 PH: (615) 232-3803
 Fax: (615) 232-3827
 Email: brush.jason@dol.gov



LAUREN FEHLMAN
 Regional Supervisory Investigator

Enclosure: Designation of Representative

7529 RECD 1000 0101 2102


U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark OCT 28 2013	
Sent To <i>SEHAM SEHAM, MELTZ</i>	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4 <i>White Plains NY</i>	
PS Form 3800, August 2006 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>Lee Seham</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery <i>11-4</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: Lee Seham, Attorney Seham, Seham, Meltz & Petersen, LLP 445 Hamilton Avenue, Suite 1204 White Plains, NY 10601</p>	<p>Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p style="text-align: center; font-size: 1.2em;">7012 1010 0001 1038 6757</p>
PS Form 3811, February 2004	Domestic Return Receipt
	102595-02-M-1540

Case Activity Worksheet

Run Date: 10/28/13

Occupational Safety and Health Administration

Filed Date:	10/21/13	Local Case Number:	4-1760-14-002	Activity Number:	22807127	Reporting ID:	0420100	
Case Type:	AIR21	Statutory Implication:						
Allegation:	P - Participation in Safety and Health activities			Investigator:	Brush, Jason		Assigned Date:	10/25/13
Allegation Summary:	Complainant alleged that he was retaliated against by Respondent in that he was removed from flying status and ordered to seek mental health services on August 9, 2013 after raising safety concerns.							
Respondent Information	Name:	FedEx Express		Phones:	Emails:			
Primary Address:	3610 Hacks Cross Road		W	(901)369-3600				
	Memphis TN 38124 UNITED STATES							
Alternate Address:								
Complainant Information	Name:	Mr Mark Estabrook		Phones:	Emails:			
Primary Address:	Post Office Box 1890		C	(901)230-4933	ssmplaw@ssmplaw.com			
	Manchaca TX 78652 UNITED STATES		W	(914)997-1346	cargopilot@gmail.com			
Determination Date	Determination	Total Compenstation	\$0		Reinstatement			
I certify that the complaint was filed with me on(date):								
Signature	Title			Date				
	REGIONAL Investigator			10/28/13				

Note: This report contains sensitive information that may not be appropriate for distribution outside OSHA. Local offices should review the information BEFORE it is provided to outside requestor.

SEHAM, SEHAM, MELTZ & PETERSEN, LLP *ms*

ATTORNEYS AT LAW
445 HAMILTON AVENUE, SUITE 1204
WHITE PLAINS, NEW YORK 10601
TEL: (914) 997-1346
FAX: (914) 997-7125
ssmplaw@ssmplaw.com
www.ssmplaw.com

August 12, 2014

BY FED EX

Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street, NW, Suite 400
Washington, DC 20001-8002

Re: Estabrook v. Federal Express Corporation
Case No. 4-1760-14-002

Dear Sir:

This firm represents the Complainant, Captain Mark Estabrook, in the above AIR21 case.

Please find enclosed the Complainant's Objections to Secretary's Findings. Complainant requests a hearing before an Administrative Law Judge.

Respectfully submitted,

Lee Seham / LS

Lee Seham

cc: Federal Express Corporation
3620 Hacks Cross Road, Bldg. B - 3d Floor
Memphis, TN 38125

Kurt A. Petermeyer, Regional Administrator
Occupational Safety and Health Administration
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W., Room 6T50
Atlanta, GA 30303

RCd OSHA AUG15-14-PH0240

**BEFORE THE CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES DEPARTMENT OF LABOR**

MARK ESTABROOK,)	
)	
Complainant)	
)	
v.)	OBJECTIONS TO
)	SECRETARY'S FINDINGS
FEDERAL EXPRESS CORPORATION)	
)	Case No. 4-1760-14-002
Respondent.)	
)	
)	

Complainant Captain Mark Estabrook, by his attorneys, Seham, Seham, Meltz & Petersen, LLP, submits the following objections to the Secretary's Findings in this matter dated July 15, 2014:

OBJECTIONS

1. The Secretary's mischaracterization of the original complaint, chronology of events and neglect of evidence begins in the lead paragraph of his July 15, 2014 letter of findings to Complainant:

"In brief, Complainant alleged that Respondent placed him in a Non-Qualified (NOQ) flight status in August 2013 and again in April 2014, for requesting a meeting with Respondent's Chief Executive Officer (CEO) to discuss safety related concerns."

The Secretary's Findings gave no consideration to, or evaluation of, Complainant Estabrook's protected activity related to his refusal of Respondent's directive to depart Laredo, Texas, into a line of known severe thunderstorms and turbulence in violation of the Company's Airbus A300/310 Pilot Handbook, Flight Operations Manual and government FAA safety regulations. Complainant's refusal to accept Respondent's reckless disregard for Air Traffic Control's denial of a flight clearance to Memphis, is exactly the kind of protected decision-making that the AIR21 legislation was designed to protect and encourage. This incident was clearly referenced in paragraphs 4-8 of the Complaint (Attachment A) occurring in the time frame of April 10 to May 2, 2013 (and previously recorded in a separate AIR21 OSHA Submission 861872), as the basis for Respondent's subsequent discriminatory retaliation.

2. The Secretary's Findings failed to apply the inference or presumption in favor of a finding of discrimination to the Respondent's conduct toward Complainant Estabrook subsequent to the Laredo Departure as required by well-established AIR21 precedent. *Clark v. Pace Airlines, Inc.*, ARB No. 04-150, ALJ No. 2003-AIR-28 (ARB Nov. 30, 2006), slip op. at 12-13.

3. The Secretary's Findings erroneously hold that the Respondent was "justified" in placing Estabrook on Non-Qualified (NOQ) flight status in August 2013 to the extent that it bases this justification on events that occurred at an August 9, 2013 meeting between Complainant Estabrook and Respondent's representatives. Respondent's placement of Complainant on NOQ flight status occurred on August 5, 2013, which *pre-dated* the August 9, 2013 meeting.

4. The Secretary's Findings err to the extent that it insinuates that Complainant's "acknowledged understanding of the reason for his placement on NOQ status" equated to his acceptance of the legitimacy of his placement on NOQ flight status. In fact, Complainant merely concluded the Respondent's Chief Pilot was retaliating against him for his refusal to fly into a line of thunderstorms several months prior and his subsequent filing of an AIR21 complaint in response to the initiation of disciplinary action against him in retaliation for his protected activity related to the Laredo departure. In further retaliation for Estabrook's protected activity, Respondent's Chief Pilot invented new allegations against Estabrook when he falsely alleged that Estabrook had suffered a mini-stroke. Captain William McDonald made this accusation to both FedEx legal counsel and flight management prior to the August 9, 2013 meeting with Complainant Estabrook.

5. The Secretary's Findings failed to recognize that the Respondent's placement of Captain Estabrook on NOQ flight status resulted in a loss of flight privileges and overtime opportunities, denigrated Complainant Estabrook's professional reputation and stature among his fellow pilots and had a stigmatizing and threatening effect designed to chill Complainant Estabrook and other FedEx pilots from engaging in protected activity.

6. The Secretary's Findings erroneously suggest that the Respondent provided Complainant Estabrook with a reason for his placement on NOQ flight status. Such is not the case. To date, Respondent's only timely explanation to Complainant for his grounding and directed medical evaluation was simply that "he knew too much." Only after this present AIR21 action commenced did the Respondent create its shifting rationale and defenses.

7. The Secretary's Findings erroneously determined that Complainant Estabrook's reference to the Respondent's CEO as "Fred" in an August 4, 2013 email seeking a phone call to discuss security concerns "justified" placing Complainant on NOQ flight status. The Secretary's Findings failed to give proper consideration of evidence demonstrating that the Respondent's CEO is and was frequently referred to as "Fred" throughout the history of the company," that he and the Respondent have claimed to maintain an open door policy for the carrier's pilots, and that Complainant's past service as Security Chairman for the FedEx Pilots Association (FPA) resulted in a legitimate expectation that he would be able to raise security issues directly with the CEO without suffering the retaliatory response of being placed on NOQ flight status and/or subject to mandatory psychiatric evaluation. Further, Complainant had previously briefed FedEx Express Executive Vice President and Chief Operating Officer William J. Logue in 2002 on his security concerns, and it is only logical that the next officer in the company's hierarchy would be CEO Fred Smith.

8. The Secretary's Findings mischaracterized the nature of Complainant Estabrook's protected activity on August 9, 2013, relating to Safe Cargo practices, which is detailed in the Complaint at paragraphs 9-14.

9. In general, the Secretary's Findings failed to make any effort to assess the relative credibility of the Respondent's representatives and Complainant, but rather improperly resolved all factual disputes in favor of the Respondent without providing any rationale.

10. In making its factual determinations, the Secretary's Findings failed to take into consideration the Respondent's resort to pretext and shifting rationales in evaluating the Respondent's credibility, including the Respondent's initial reliance on its supposition

and false allegation that Complainant Estabrook posted on an internet website as “Mayday Mark” (Complaint §§ 15-17), and attempts to pressure Complainant Estabrook to admit that he had suffered a Temporary Ischemic Attack (TIA). When Respondent’s legal and flight departments concluded at the August 9, 2013 meeting that Complainant had in fact not suffered a “mini-stroke” and had not posted such an admission on an internet bulletin board, they began looking for new excuses and strategies by which they could ground Complainant Estabrook. The Secretary completely ignores Respondent’s actions and misapplies the chronology of events.

11. The Secretary’s Findings failed to address evidence undermining the credibility of Respondent’s denial of retaliatory motive including the admission by the Manager of A300/310 Fleet Operations, Captain Rob Fisher, that the reason for compelling Complainant Estabrook to submit to psychiatric evaluation was that “you know too much.” (Complaint § 19). Complainant clearly and explicitly asked Respondent to preserve relevant recorded telephone calls as evidence and provided the Secretary the dates, phone numbers, times and duration of all relevant calls, but there is no mention of the Secretary’s Investigator listening to any of the telephone calls in his findings or making any attempt to obtain this evidence from the Respondent on a voluntary basis.

12. The Secretary’s Findings erroneously concludes that the “available testimonial and documentary evidence demonstrates that the Respondent had a subjectively reasonable basis for directing Complainant’s [psychiatric evaluation]....” The Secretary’s Investigator failed to properly investigate this matter, including, but not limited to: (a) properly analyzing the shifting rationales provided by the Respondent for demanding the psychiatric evaluation, (b) misapplying sections of the collective

bargaining agreement (CBA) without consideration for actual violations that preceded the order to submit to psychiatric evaluation, (c) failing to interview the medical professionals involved in the evaluation process, which ultimately confirmed Complainant Estabrook's fitness for flight, (d) failing to consider the defects and inconsistencies in Dr. Glass' psychiatric evaluation and improperly concluding that Dr. Glass acted as an "independent psychiatrist," or (e) failing to obtain or evaluate evidence identified by the Complainant, including audiotapes of conversations between Respondent representatives and the Complainant, which Complainant repeatedly asked the Investigator to request from the Respondent.

13. The Secretary's Findings erroneously concluded that the Respondent complied with the applicable CBA provisions in order to require Complainant Estabrook to submit to a psychiatric evaluation and made no effort to address or resolve the factual and legal arguments by the Complainant that the Respondent violated the applicable provisions of the CBA related to psychiatric evaluations of its pilots. (Complaint § 22 as supplemented by Complainant's submission dated January 27, 2014).

14. The Secretary's Findings erroneously concluded that Complainant was "immediately" returned to qualified flight status upon completion of his mental health evaluations and that he received "all owed monetary compensation and leave" when reinstated to flight duty upon completion of these evaluations. The Complainant did not receive full reimbursement for his costs or attorney's fees. In addition, the Complainant suffered additional adverse impact from the Respondent's discriminatory treatment for which he has not been made whole, including the cost and emotional stress of having his

job and license placed in jeopardy with false medical accusations while being subjected to intense simulator evaluations and additional flights with a Line Check Airman.

15. The Secretary's Findings tacitly accept the protected nature of the Complainant's protected activity under AIR21 detailed in paragraphs 4 through 14 of the Complaint, including the Complainant's good faith belief that the live tracking of cargo aircraft facilitated the use of such aircraft for terrorist purposes in a manner that failed to conform with 49 C.F.R. § 1544.103(a)(1); 49 C.F.R. § 1544.205(c)(1); 49 C.F.R. § 1544.205(a). Respondent's emulation of Soviet-style psychiatric evaluation and treatment to quiet the Complainant's protected activity is very disturbing for not only labor in the United States, but for the future security and safety of our national aviation system.

16. The Secretary's Findings erroneously concluded that Respondent was justified in the actions taken and that there was no evidence of retaliatory intent identified.

17. The Secretary's Findings erred in failing to conclude that Complainant Estabrook's protected activity as described in his Complaint was at minimum a contributing factor, if not the primary factor, in Respondent FedEx's demand for psychiatric analysis of Captain Estabrook, its ongoing directive that Captain Estabrook submit to psychological treatment, and its repeated removal of Captain Estabrook from flying status, and all other discriminatory personnel action described therein.

18. Complainant reserves the right to amend his complaint and objections to the Secretary's Findings upon review of evidence and testimony obtained through future discovery.

19. Complainant preserves his right to discovery and will immediately initiate all such processes, methods and rights afforded by this action and as permitted by law.

WHEREFORE, cause having been shown, Complainant Estabrook prays for an order against Respondent FedEx as follows:

- A. For an Order directing FedEx to rescind its directive for Captain Estabrook to undergo any further mental health evaluation or treatment;
- B. For an Order directing FedEx to suppress, remove and expunge all disciplinary proceedings, medical and psychiatric evaluations and treatment histories concerning Captain Estabrook from FedEx personnel files, including all contracted medical agents' records;
- C. For an Order directing the removal and expungement of all references to psychiatric evaluation and treatment in all government records, including but not limited to, the Federal Aviation Administration;
- D. For an Order directing FedEx to cease and desist from all discriminatory conduct toward Captain Estabrook;
- E. For an Order awarding Captain Estabrook the costs of this action, including payment of reasonable attorney's fees;
- F. For an Order granting such additional relief as the Secretary of Labor, or other decision maker in this process, deems proper and just; and
- G. For an Order granting full compensatory damages including compensation for pain, suffering and emotional distress due to this adverse action in an amount that will deter Respondent from contemplating retaliatory actions against its employees in the future.

Dated: White Plains, New York
August 12, 2014

SEHAM, SEHAM, MELTZ & PETERSEN, LLP

By: Lee Seham /s/

Lee Seham, Esq.
445 Hamilton Avenue – Suite 1204
White Plains, NY 10601
Tel. (914) 997-1346

Attorney for Complainant
Captain Mark Estabrook

TO: Chief of Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street, NW, Suite 400
Washington, DC 20001-8002
Tel: (202) 693-7452
Fax: (202) 693-7365

cc: Federal Express Corporation
3620 Hacks Cross Road, Bldg. B – 3d Floor
Memphis, TN 38125

Kurt A. Petermeyer, Regional Administrator
Occupational Safety and Health Administration
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W., Room 6T50
Atlanta, GA 30303

**BEFORE THE
UNITED STATES DEPARTMENT OF LABOR**

MARK ESTABROOK,)	
)	
Complainant)	
)	
v.)	COMPLAINT
)	
FEDERAL EXPRESS CORPORATION)	
)	
Respondent.)	
)	
)	

Complainant Captain Mark Estabrook, by his attorneys, Seham, Seham, Meltz & Petersen, LLP, as and for his Complaint states as follows:

NATURE OF THE CASE

1. Complainant Estabrook files this complaint against Federal Express Corporation ("FedEx") pursuant to 49 U.S.C. § 42121, based on FedEx's discriminatory treatment and retaliatory discipline in response to the complainant's protected activity. Complainant Estabrook seeks affirmative action to abate the violation (including, but not limited to, the cessation of discriminatory conduct and the rescission of retaliatory discipline and directives related to his mental health); reinstatement to his former position, including restoration of his compensation and all other terms, conditions, and privileges associated with his employment; all compensatory damages to which he is entitled under the statute; and reimbursement of all costs and expenses, including attorney's fees, related to this action.

PARTIES

2. Complainant Estabrook is a pilot currently employed by Respondent FedEx at his pilot domicile located in Memphis, Tennessee.

3. Respondent FedEx is an "air carrier" as that term is employed in 49 U.S.C. § 42121.

COMPLAINANT'S PROTECTED ACTIVITY

Protected Activity Under 49 U.S.C. § 42121(a)(1), (2) and (4) – Laredo Departure

4. On April 10, 2013, Captain Estabrook refused to depart on a FedEx flight because of a severe and solid line of thunderstorms between his departure airport Laredo (LRD) and scheduled arrival airport Memphis (MEM). The airport tower, in fact, refused to issue a takeoff clearance because Memphis Center directed a hold on all inbounds.

5. In retaliation for his safety-based determination as Pilot-in-Command pursuant to 14 C.F.R. §§ 91.3(a), 91.13(a), and as further defined by the Company's own Flight Operations Manual (FOM) and pertinent Federal Aviation Regulations (FARs) – Respondent FedEx commenced a disciplinary investigation of Captain Estabrook.

6. Respondent FedEx's retaliatory disciplinary investigation caused Captain Estabrook to file AIR 21 complaint number 861872 with the United States Department of Labor on April 29, 2013. (Exhibit A).

7. When Respondent FedEx subsequently terminated its disciplinary proceedings, Captain withdrew his AIR 21 action on or about May 2, 2013. (Exhibit B).

8. Upon information and belief, Complainant Estabrook's communication to Respondent FedEx of his determination to act in good faith compliance with applicable federal law relating to air carrier safety, and his subsequent complaint pursuant to 49

U.S.C. § 42121 in defense of such action, were contributing factors in the unfavorable personnel actions alleged in this complaint.

Protected Activity Under 49 U.S.C. § 42121(a)(1) – Safe Cargo Practices

9. On August 9, 2013, Captain Estabrook sought to bring to FedEx's attention that its policy of publishing live tracking information relating to packages and aircraft in transit violated its obligations under federal law relating to air carrier safety in that the Respondent's policy had the effect of facilitating and maximizing the criminal destruction of cargo, aircraft, and human lives, by granting terrorists the ability to carefully select the timing of detonation.

10. Captain Estabrook had previously communicated these concerns to Respondent FedEx in his capacity as Security Chairman for the FedEx MEC Air Line Pilots Association (ALPA), the certified pilots' labor union for FedEx pilots in 2002. Complainant Estabrook desisted from his efforts to challenge FedEx's unsafe practices when he received an unfavorable response from his employer.

11. On August 3 and 4, 2013, however, Complainant Estabrook obtained various media reports concerning how al-Qaeda in the Arabian Peninsula (AQAP) had developed a strategy of planting explosives in packages carried by US-flag cargo carriers. On October 29, 2010, such explosive devices were discovered on both FedEx and UPS planes. Officials in the United States and Great Britain determined that part of AQAP's strategy was to carefully time the detonation of the explosives in order to maximize damage. The New York Times reported that AQAP relied on the package tracking feature on the cargo carriers' website to plan for the detonation of these devices in a manner that

would create the greatest damage.

(http://www.nytimes.com/2010/11/02/world/02terror.html?_r=1&src=twrhp) In fact, terrorists in this incident shipped several “test” packages on UPS and FedEx prior to the shipment of the actual bombs in order to gain real-time tracking data for planning the optimum timing of detonation, just as Complainant Estabrook had predicted and reported to FedEx management in 2002.

12. On August 4, 2013, Captain Estabrook requested a meeting with Respondent FedEx for the purpose of discussing security issues that he previously had raised as the FedEx MEC ALPA Security Chairman. Respondent’s System Chief Pilot and Managing Director/Flight Operations Captain William McDonald agreed on August 7, 2013, to arrange a meeting between Complainant Estabrook and FedEx management representatives; however, he also immediately removed Estabrook from flight status.

13. On August 9, 2013, Complainant Estabrook met with FedEx management representatives – FedEx legal counsel Robert Tice, Manager A300/310 Fleet Operations Captain Rob Fisher, and FedEx Vice President of Security Todd Ondra – and communicated his concern that the Respondent’s policy of publishing live tracking information relating to packages and aircraft in transit violated its obligations under federal law relating to air carrier safety in that the Respondent’s policy had the effect of facilitating and maximizing the potential criminal destruction of cargo, aircraft, and human lives, by granting terrorists the ability to carefully select the timing of detonation.

14. In communicating his air carrier safety concerns, Captain Estabrook was acting in good faith to identify the Respondent’s violations of federal law relating to air carrier safety, including the Respondent’s duty to (a) “[p]rovide for the safety of persons and

property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft,” 49 C.F.R. § 1544.103(a)(1); (b) use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that: “[p]revents the carriage of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item in cargo onboard an aircraft,” 49 C.F.R. § 1544.205(c)(1); (c) “[p]reven[t] or dete[r] the carriage of any unauthorized persons, and any unauthorized explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft. 49 C.F.R. § 1544.205(a). In addition, under Respondent FedEx’s federal mandated security program, Captain Estabrook, as an in-flight security coordinator, is directed: if you see something, say something. 49 CFR §§ 1544.101, *et seq.*

RESPONDENT’S RETALIATORY RESPONSE
TO COMPLAINANT’S PROTECTED ACTIVITY

15. At the meeting on August 9, 2013, Respondent FedEx's representatives made no direct response to the safety-related concerns raised by Captain Estabrook. Instead, FedEx counsel Robert Tice asserted that Captain McDonald suspected Captain Estabrook of posting messages on an internet bulletin board under the name of “Mayday Mark,” whose postings indicated that “Mayday Mark” was a pilot who had suffered a Temporary Ischemic Attack (TIA) or stroke. Tice then explained to Complainant Estabrook that FedEx was obligated to investigate whether Estabrook was “Mayday Mark” in order to ensure that Estabrook was physically fit to fly.

16. FedEx representatives had in their possession numerous pages of highlighted postings originating from the individual who identified himself as “Mayday Mark” and

asked pressing questions concerning their contents. During the entire course of the August 9th meeting, FedEx's representatives raised no other basis for questioning Captain Estabrook's medical status other than their suspicion that Estabrook was "Mayday Mark."

17. At all times, Captain Estabrook denied that he was "Mayday Mark" and, after a lengthy discussion of the facts relating to the "Mayday Mark" postings, FedEx's representatives accepted Estabrook's denials.

18. Shortly after Estabrook's August 9th meeting with FedEx representatives, Captain Fisher advised Captain Estabrook that he would be immediately returned to flying status.

19. Nevertheless, on the evening of August 9, 2013, Captain Fisher telephoned Complainant Estabrook and advised him that FedEx Security Director Todd Ondra insisted that Estabrook's flying status remain suspended until he submitted to a psychiatric evaluation. When Estabrook asked Captain Fisher why FedEx Security was demanding a psychiatric evaluation despite FedEx's determination earlier in the day that he was being returned to flying status, Fisher responded "all they said was is that you know too much."

20. Captain Estabrook has at all times relevant to this proceeding been in possession of a First Class Medical Certificate. Throughout his entire flying career, he has never been denied the issuance of a First Class Medical Certificate. In fact, two aeromedical examiners issued medical opinions in opposition to FedEx's directive that Estabrook undergo psychiatric evaluation. (Exhibit C and D).

21. Respondent FedEx has persisted in its demand that Complainant Estabrook submit to psychiatric evaluation, but has never provided a reasonable basis for this

demand. Captain Estabrook has complied with FedEx's directive that he undergo a psychiatric examination with the understanding that he would be terminated for insubordination if he did not. Captain Estabrook underwent a psychiatric evaluation by Dr. George S. Glass on September 11, 2013. FedEx's aeromedical advisor Dr. Thomas Bettes is now directing Complainant Estabrook to obtain psychological treatment. A contributing factor for FedEx's directive ordering psychological treatment is the Complainant's protected activity as described in this Complaint.

22. In demanding that Complainant Estabrook submit to psychiatric evaluation, FedEx violated contractual protocols that require FedEx to (a) only seek a medical examinations of a pilot where it has a "reasonable basis" to do so; (b) where such a "reasonable basis" exists, to refer the matter to FedEx's aeromedical advisor for his determination regarding the necessity of a medical examination; and (c) where the pilot's own aeromedical advisor disputes the necessity of a medical examination, to resolve the dispute by referral of the matter to a third medical doctor who acts as a tie-breaker.

23. Complainant Estabrook's protected activity as described in this Complaint was at minimum a contributing factor, and, upon information and belief, the primary factor, in Respondent FedEx's demand for Soviet-style psychiatric analysis of Captain Estabrook, its ongoing directive that Captain Estabrook submit to psychological treatment, its continuing refusal to reinstate Captain Estabrook to flying status, and all other discriminatory personnel action described herein.

WHEREFORE, cause having been shown, Complainant Estabrook prays for an order against Respondent FedEx as follows: