

PRESS RELEASE

FedEx ORDERED SECURITY WHISTLEBLOWER TO PSYCHIATRIC EXAM

WHITE PLAINS, NY – MAY 31, 2017 – A former decorated U.S. Air Force E-3A AWACS Aircraft Commander who tracked Russian Bear bombers over the North Atlantic Ocean during the Cold War, chased Columbian cocaine traffickers in the Gulf of Mexico and surveilled combatants during the Iran-Iraq War in the Persian Gulf, is now battling FedEx Express management over Federal Aviation Administration (FAA) security regulations.

Captain Mark Estabrook, an Airbus 300 captain based in Memphis, Tennessee, is suing Federal Express Corporation under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) over his employer's attempts to discredit and silence him after he requested to speak with company founder Fred Smith regarding al-Qaeda terrorist threats.

Estabrook was ordered by FedEx management to undergo a psychiatric examination by Dr. George Glass in Houston, Texas, after Estabrook attempted to communicate security violations in 2013 through then FedEx Chief Pilot Bill McDonald. The violations concerned the airline's obligation to prevent and deter the carriage of explosive devices on its aircraft.

Estabrook was his union's Security Committee Chairman following 9-11, and asked company executives and FAA Administrator Jane Garvey in 2001-2002 to cease publication of package and aircraft tracking data on the internet because terrorists would exploit the data to time the detonation of bombs in order to maximize targeting, damage, casualty and propaganda values.

"Publication of real time package and aircraft tracking data actually encourages and incentivizes al-Qaeda terrorists to use FedEx aircraft as guided missiles," said Lee Seham, counsel for Captain Estabrook. "FedEx has the option to opt out of publishing their pilots' real time position, altitude, heading, airspeed and flight identification number, but they choose to release that FAA air traffic control data to companies that republish it on the internet."

FedEx officials were aware of Estabrook's repeated warnings immediately after 9-11, but Estabrook testified that Federal Express Senior Vice President of Air and Ground Freight Services William Logue informed the airline captain in April of 2002 "marketing trumps security." The union security chairman had just asked management representatives in the room to raise their hand if they felt America was at war with al-Qaeda. Everyone in the room raised their hand. He was met with silence when he then asked if Winston Churchill would have authorized publishing real time aircraft position data for Hitler's Luftwaffe in World War II.

In mid-September of 2010, al-Qaeda made two separate shipments of books to Chicago on UPS and FedEx aircraft in a dry-run attempt to collect real time tracking data from the internet. But for the actual airbill numbers collected by Saudi intelligence agents later in October 2010, and subsequent interception of the actual bomb shipments, al-Qaeda's Anwar al-Awlaki and Ibrahim Hassan al-Asiri would have successfully detonated bombs over the northeastern United States.

On August 3-4, 2013, Estabrook was reading about the 2010 printer bombs incident when he stumbled across media reports of the "dry run" incidents a month prior to the actual bomb shipments. As Richard Clarke, former chief counter-terrorism adviser on the U.S. National Security Council, said: "The dry run is always important to al-Qaeda. In this case they wanted to follow the packages using the tracking system." Estabrook knew this was the security threat he had warned FedEx and FAA officials about it 2001 and 2002, and he felt compelled to revisit the

issue with FedEx CEO Fred Smith and wrote a quick email to his Chief Pilot requesting a phone conversation with Fred. He then turned his cell phone off as most FedEx pilots do to mitigate the effects of fatigue from back-side-of-the-clock flying and called it a night.

On August 5, 2013, FedEx Chief Pilot Bill McDonald placed Estabrook on Not Operationally Qualified (NOQ) status, which effectively grounded the pilot from flying or traveling on the airline's cockpit jumpseats. When Estabrook woke up, he checked his flight schedule for an upcoming trip to Panama only to find he had been removed and grounded. He later learned through email that he had been scheduled for a August 9, 2013 meeting with FedEx management representatives Rob Fisher, Airbus Fleet Captain; Rob Tice, Lead Counsel Labor Relations Law; and Todd Ondra, Managing Director of Aviation Security.

At the meeting Estabrook argued that FedEx was failing to meet its obligations to prevent and deter the placement of bombs on its aircraft. Management representatives did not respond to any of Captain Estabrook's security concerns, but Tice suddenly tried to elicit an admission from him that he had suffered an unreported stroke. Estabrook strongly denied the medical accusation, which would have been the same as admitting a felony, since pilots must reveal all medical conditions to their Aero Medical Examiners (AME) and give FedEx cause for his termination. Rob Fisher placed Estabrook back on flying status and he returned to his home in Austin, Texas upon conclusion of the less than 1-hour meeting.

Later the same evening, Estabrook received a phone call from Fisher advising that the director of aviation security was placing him back on NOQ status and sending him to a psychiatrist for an examination. Incensed, Estabrook demanded to know why. Fisher responded, "all they said was is that you knew too much."

Estabrook obtained the services of aviation lawyer Alan Armstrong in Atlanta, Georgia, who immediately demanded FedEx counsel Rob Tice retract any accusations that Estabrook suffered a Temporary Ischemic Attack (TIA), withdraw Fisher's order for his client to undergo a psychiatric evaluation and comply with FedEx's published representations that it follows the "*if you see something, say something*" security reporting protocols of the Department of Homeland Security (DHS) and Transportation Security Administration (TSA).

FedEx legal ignored Armstrong's demands and Captain Estabrook ultimately submitted to a stressful and invasive psychiatric examination by Dr. George Glass in Houston, Texas, on, ironically, September 11, 2013, since his employer threatened disciplinary action up to and including termination for insubordination if he failed to comply. Dr. Glass failed to issue a diagnosis, but recommended Estabrook for therapy in his report to Dr. Thomas M. Bettes of Harvey Watt & Company, FedEx's aeromedical advisor.

Estabrook then retained the law firm of Seham, Seham Meltz & Petersen shortly before filing an AIR-21 whistleblower lawsuit against Federal Express Corporation on October 3, 2013.

Dr. William E. Green, III, of Columbia, South Carolina, a board certified psychiatrist well known in the aviation community and acting in a rebuttal tie-breaking capacity, reported in his follow-up examination of Estabrook that: "I did not see any evidence of abnormal thinking or mood symptoms, and also feel he is psychiatrically stable and displays no evidence of any coexisting psychiatric disorder which would interfere with his ability to safely operate aircraft. I also strongly disagree with some of the medical opinions of Dr. Glass in that I do not see any evidence of 'depression or hypomania,' and that he was truly trying to raise these issues more as safety and security issues and not in an effort to raise trouble or cause problems at work."

Estabrook eventually returned to flying after a stressful four-month grounding, threat of termination and successful completion of a shortened flight simulator evaluation.

Administrative Law Judge Scott R. Morris' extraordinary findings of 16 May 2017 effectively held that FedEx initiated a psychiatric examination without reasonable cause and improperly directed Dr. Bettes to authorize a psychiatric examination without prior medical review or consultation with Estabrook's AME.

The ALJ found that there was "no credible evidence" supporting key factual allegations upon which FedEx's decision was taken and that the company had attempted to "cloak its decision" to require the Complainant to undergo a psychiatric analysis with a "disingenuous approach," and that FedEx "treads on thin ice by offering such a flimsy justification for referring Complainant to a mental evaluation in this case."

The ALJ concluded that FedEx's "treatment of Complainant resembles ... an over-reaction in response to Complainant's demonstrated knowledge of security issues..." and strongly criticized FedEx management by ruling that:

“The quickest way to chill the open dialogue in the area of aviation security is to place a person’s livelihood at stake for speaking up. Respondent referenced the *Germanwings* incident in support of its argument for deference in the manner it proceeded. The cases differ in several important respects. Namely, no evidence exists that suggests Complainant or his treating physician withheld information from Respondent about his mental health. Sending someone for a mental health evaluation merely because his statements are odd or because one “knew too much” is a slippery slope that must be guarded against. Respondent treads on thin ice by offering such a flimsy justification for referring Complainant to a mental evaluation in this case. Complainant was well justified to raise his concerns and object to Respondent’s actions,”

but then failed to place liability on Federal Express.

In a hyper-technical legal argument, ALJ Morris ruled that *only* the FAA can interpret its regulations and that the FAA obviously isn't concerned that republishing real time package and aircraft-tracking data on the internet violates FedEx's responsibility to prevent and deter the carriage of bombs. Captain Estabrook believes the practice incentivizes terrorists to place bombs on FedEx aircraft.

“Instead of preventing all airlines from using psychiatric tactics to silence whistleblowers, this decision actually encourages the abusive and painful practice,” said Seham. “Washington should sit up and take notice of this case. The security, safety and employment implications of this decision are staggering. This is not the Soviet Union.”

Captain Estabrook is appealing the ALJ's decision based, in part, on the U.S. Supreme Court decision *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1221 (2015) where “In each case, the Judiciary is called upon to exercise its independent judgment and apply the law.”

CONTACT:

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
199 Main Street - Seventh Floor
White Plains, New York 10601
Tel: [\(914\) 997-1346](tel:(914)997-1346) Fax: [\(914\) 997-7125](tel:(914)997-7125)
Email: ssmpls@aol.com Website: <http://www.ssmplaw.com/>

DOL CASE NO: 2014-AIR-00022