



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for October 24, 2014

The U.S. Court of Appeals for the Federal Circuit issued a precedential decision in the following case:

Petitioner: Thomas G. Wrocklage

Respondent: Department of Homeland Security

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2013-3159](#)

MSPB Docket No.: CH-0752-11-0752-I-1

Issuance Date: October 21, 2014

Stipulation Procedure

Disclosures Under the Privacy Act

Penalty Analysis

The appellant, a Customs and Border Protection Officer, believed that two travelers were wrongfully charged with failing to declare certain food items. He took home a copy of the Treasury Enforcement Communication System (TECS) report that reflected the fine issued to the travelers, which had details about the travelers, including one of the traveler's social security number, date of birth, address, and license plate number. He then sent an e-mail to the agency's Joint Intake Center stating that he believed that the two travelers should not have been charged. He also copied a congressional staffer on the e-mail, and attached a copy of the TECS report. Hours after sending the e-mail, he realized that he sent the TECS report to the congressional staffer, and immediately contacted her. He asked her to delete the e-mail prior to reading it, and she did so. He then self-reported his error to the Joint Intake Center. Based on his report, the agency initiated an investigation into his transmission of the report to the staffer, and in the investigation it was

discovered that he sent a copy of the report printed by one of his co-workers. The agency asked him how he got a copy of that specific copy of that report, and stated that he did not recall, but he surmised that he must have mixed up his copy of the report with his co-worker's copy. As a result of his actions, the agency removed him, stating that he improperly possessed TECS information, made an unauthorized disclosure of TECS information, and demonstrated a lack of candor during the investigation. The appellant appealed his removal to the Board, but the administrative judge upheld the charges, and the Board affirmed.

Holding: The Court vacated the Board's decision for two of the charges and remanded the appeal for a new penalty determination.

1. The Court held that the appellant's stipulations to underlying facts regarding a charge do not equate to stipulating to legal conclusions to be drawn from those facts. The appellant's stipulation to the underlying facts did not mean that he waived the right to argue a separate legal conclusion.
2. The appellant's transmission of the TECS report did not constitute an unauthorized disclosure in violation of the privacy act because the congressional staffer deleted the e-mail before ever reading it. The Court declined to make a determination as to whether his transmission constituted a protected disclosure under the Whistleblower Protection Act.
3. The Court reversed the Board's decision sustaining the charge of lack of candor. Based on the facts of the case, the Court found that substantial evidence did not support the charge.
4. The Court vacated the penalty of removal and remanded the matter for reconsideration of the penalty. The Court stated that the penalty of removal could not be sustained based solely on the charge of improper possession of TECS information.

Federal Register Notices:

The Board issued its final rule on VA SES appeals on October 22, 2014.
<http://www.gpo.gov/fdsys/pkg/FR-2014-10-22/pdf/2014-25212.pdf>

- The MSPB did not issue any precedential decisions this week

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