

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

WILLIAM J. WARNOCK,  
Appellant,

v.

DEPARTMENT OF JUSTICE,  
Agency.

DOCKET NUMBER  
DC07528710007

DATE: OCT 19 1988

Robert E. Deso, Esquire, Washington, D.C., for the  
appellant.

Gerald L. Elston, Esquire, McLean, Virginia, for the  
agency.

BEFORE

Daniel R. Levinson, Chairman  
Maria L. Johnson, Vice Chairman

OPINION AND ORDER

The agency has petitioned for review of the July 2, 1987, initial decision that reversed its suspension action. The appellant responded and has cross-petitioned for review. For the reasons set forth below, the Board GRANTS the agency's petition, DENIES the appellant's cross-petition, REVERSES the initial decision, and SUSTAINS the agency's action.

BACKGROUND

The appellant was suspended for thirty days from his position as a GS-13 Physical Security Specialist with the U.S. Marshals Service based on the charge of falsification of a material fact in connection with his employment. Specifically, the agency charged the appellant with submitting a Personal Qualifications Statement (SF-171) and a Security Investigation Data for Sensitive Position form (SF-86) on which he listed a 1977 Bachelor of Science degree from Pacific Southern University of Seattle, Washington. In the notice of proposed suspension, the agency asserted that the appellant's claimed college degree was fraudulent and that he knew that it was fraudulent when he entered it on his employment forms.<sup>1</sup> In proposing a thirty-day suspension, the agency explained that the appellant's intentional falsification of his employment forms was considered to be serious misconduct that raised significant questions about his personal integrity and trustworthiness, especially in view of the sensitive nature of his position. After considering the appellant's written reply to the proposal notice, the agency's deciding official found that

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<sup>1</sup> The proposed suspension was the result of an agency investigation that revealed, inter alia, that: (1) The appellant had purchased the degree for \$200.00; (2) the degree came complete with a "college transcript" purporting to list the appellant's grades for courses that he had never taken; (3) the address listed by the appellant as that of the "university" was actually that of an answering service; (4) the school had no staff, faculty members, or administrators who could be contacted; and (5) the "university" was neither licensed nor accredited by the State of Washington.

the charge was supported by a preponderance of the evidence and warranted the appellant's suspension.

The appellant appealed his suspension to the Board's Washington, D.C., Regional Office. After a hearing, the administrative judge reversed the agency's action. The administrative judge first found that the appellant's degree from Pacific Southern University was in fact a bogus degree and that the appellant knew or had reason to know that the degree had no value. Citing *Riggin v. Department of Health and Human Services*, 13 M.S.P.R. 50, 52-53 (1982), the administrative judge then found that the appellant had exhibited the requisite intent to support a falsification charge because his inclusion of the bogus degree on his employment forms constituted misrepresentation with a reckless disregard for the truth or with a conscious purpose to avoid learning the truth. She nevertheless concluded that the charge could not be sustained because the agency had specifically charged the appellant with falsifying a "material fact," and the bogus degree had not been shown to have had any significant effect on the agency's employment selection process.

#### ANALYSIS

An agency is not required to establish that it detrimentally relied upon an employee's falsification of an employment document in order for a charge of falsification to be sustained.

In its petition for review, the agency contends that it was under no obligation to prove its reliance on the

appellant's falsification of his employment forms in order to have the charge sustained upon appeal.<sup>2</sup> We agree.

An agency is not required to establish that it detrimentally relied upon an employee's falsification of an employment document in order for a charge of falsification to be sustained. See *Russell v. Equal Employment Opportunity Commission*, 11 M.S.P.R. 90, 92 (1982). A showing of intentional falsification with the purpose of defrauding the government is sufficient to support such a charge, since proof of such intent and conduct ordinarily evidences a lack of trustworthiness in the employee, warranting the imposition of a disciplinary action. *Id.*

In the instant case, the administrative judge found that the college degree claimed by the appellant was "bogus," and that the appellant had entered that information on his employment forms with knowledge of the degree's fraudulency or with a reckless disregard for the truth. She then went on to find that no "material fact" had been falsified by the appellant because the agency had not relied

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<sup>2</sup> In his cross-petition for review, the appellant disputes the validity of the administrative judge's finding that his college degree was "bogus." The appellant proffers no new and material evidence with his petition, however, and establishes no errors in statutory or regulatory interpretation by the administrative judge. His mere disagreement with the administrative judge's findings, credibility determinations, and conclusions does not provide the Board with a basis for further review. See *Weaver v. Department of the Navy*, 2 M.S.P.R. 129, 133-34 (1980), *aff'd*, 669 F.2d 613 (9th Cir. 1982) (*per curiam*).

to the detriment on the fraudulent degree.<sup>3</sup> That determination, in turn, was grounded upon testimony from the agency official who had hired the appellant indicating that the college degree had held little, if any, importance in the overall selection process.

The Board has held, however, that false information on an employee's form which relates to an employee's prior experience, education, and employment is "material," since it relates directly to the qualities expected of that individual in his job. See *Webb v. Veterans Administration*,

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<sup>3</sup> The administrative judge relied on a May 29, 1986, memorandum from the Office of Personnel Management (OPM) suggesting appropriate agency responses for dealing with the use of bogus degrees by employees or job applicants. See Appeal File, Tab 4, Subtab 3. In that memorandum, OPM distinguished between instances of degree falsification that constitute fraud against the agency and those where fraud is not shown, and provided that where "[t]he bogus degree was not likely to have substantially influenced the selecting official's decision, no fraud occurred." *Id.* However, the administrative judge's reliance on that provision was misplaced, as the appellant here was not charged with fraud. In any event, the fact that the appellant's bogus degree may not have been "material" to the agency's decision to employ him does not mean that the agency was incorrect in considering the falsification as serious misconduct or in taking appropriate disciplinary action based on that misconduct. Indeed, OPM's memorandum goes on to state that "[e]ven in instances in which the bogus degree claim was not material in the initial employment decision, when the individual is in a sensitive position . . . agencies should seriously consider whether that person should continue in the position." *Id.*

9 M.S.P.R. 164, 166 (1981).<sup>4</sup> Moreover, hindsight by an agency official is not dispositive as to whether the employee would in fact have been hired in the absence of the false information on the employment form. See *DeAngelis v. Office of Personnel Management*, 28 M.S.P.R. 456, 458 (1985). In addition, the fact that the agency admits that it did not rely on the false information from the employee does not mean that a falsification charge based upon that false information cannot be sustained. *Id.* As a result, while the Board agrees with the administrative judge's findings relative to the fact of appellant's fraudulent degree and to his demonstrated intent to falsify and/or reckless disregard for the truth, we are unable to find that the agency's lack of reliance on the false information would preclude sustaining the charge of falsification.

The appellant's intentional falsification of his employment forms constituted serious misconduct warranting disciplinary action. In this regard, we note that the agency's "Standard Schedule of Disciplinary Offenses and Penalties" recommends a penalty of reprimand to removal for falsification, misstatement, and exaggeration or concealment of a material fact in connection with employment or

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<sup>4</sup> See also *Warner v. Department of the Navy*, 4 M.S.P.R. 364, 367 (1980); *Cadena v. Department of Justice*, 3 M.S.P.R. 304 (1980) (misrepresentation on an employment application is considered material where it falsely attributes to the employee experience that would appear to qualify him for the position that he is seeking; the agency need not detrimentally rely upon the information for the falsification to be deemed material).

promotion. See Appeal File [redacted], Subtab 4. Here, the agency's deciding official [redacted] considered all of the relevant circumstances surrounding the appellant's misconduct, but was unable to find any basis for mitigating the penalty. *Id.*, Tab 4, Subtab 6. The Board finds no reason to disturb the agency's selection of a thirty-day suspension. See, e.g., *Webb*, 9 M.S.P.R. at 166 (Board sustained employee's removal based on charge of having made misstatements on his SF-171, finding that such an action promoted the efficiency of the service).


#### ORDER

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

#### NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington, D.C. 20439. The court must receive the petition no later than thirty days after you or your representative receives this order.

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.