

VII. INDEX TO APPENDICES

APPENDIX I

APPENDIX I

5 C.F.R. 752.404(g) states:

Title 5: Administrative Personnel

Part 752-ADVERSE ACTIONS

Subpart D-Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§752.404 Procedures.

(g) Agency decision. (1) In arriving at its decision the agency will consider only the reason specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official and any medical documentation

**reviewed under paragraph (f) of this
section.**

VII. INDEX TO APPENDICES

APPENDIX J

ELIZABETH AVILES-WYNKOOP v. DEPARTMENT OF DEFENSE

Docket # DC-315H-16-0327-B-1

Brief and Compensatory Damages and Exhibits

Summary Page

Case Title : ELIZABETH AVILES-WYNKOOP v. DEPARTMENT OF DEFENSE

Docket Number : DC-315H-16-0327-B-1

Pleading Title : Brief and Compensatory Damages and Exhibits

Filer's Name : Elizabeth Aviles-Wynkoop

Filer's Pleading Role : Appellant

Details about the supporting documentation

#	Title/ Description	Mode of Delivery
1	Briefing and Compensatory Damages	Uploaded
2	Briefing and Compensatory Damages	Uploaded
3	Briefing and Compensatory Damages	Uploaded
4	Briefing and Compensatory Damages	Uploaded
5	Briefing and Compensatory Damages	Uploaded
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11	Briefing and Compensatory Damages	Uploaded
12	Briefing and Compensatory Damages	Uploaded
13	Briefing and Compensatory Damages	Uploaded
14	Briefing and Compensatory Damages	Uploaded

Pleading Interview	3
Briefing and Compensatory Damages	4
DoD Organizational Chart	5
Briefing and Compensatory Damages	6
DHS job offer	8
Briefing and Compensatory Damages	9
Exhibit F Appellant	16
Briefing and Compensatory Damages	17
Briefing and Compensatory Damages	18
Exhibit G Caitlin Aviles-Wynkoop	21
Briefing and Compensatory Damages	22
Briefing and Compensatory Damages	23
Exhibit G Patrick Aviles-Wynkoop	25
Briefing and Compensatory Damages	26
Briefing and Compensatory Damages	27
Briefing and Compensatory Damages	28
Closing Arguments	45
Briefing and Compensatory Damages	46
Briefing and Compensatory Damages	47
Compensatory Damages	70
Briefing and Compensatory Damages	71
Briefing and Compensatory Damages	72
Certificate of Service	73

ELIZABETH AVILES-WYNKOOP v. DEPARTMENT OF DEFENSE

Docket # DC-315H-16-0327-B-1

Brief and Compensatory Damages and Exhibits

Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

Enter Online

2. Please enter text of your pleading.

See Attached Documents under Briefing and Compensatory Damages dated 03/17/2017.

3. Does your pleading assert facts that you know from your personal knowledge?

Yes

4. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

Secretary of Defense
Deputy Secretary of Defense



US Gov.org

Military Departments



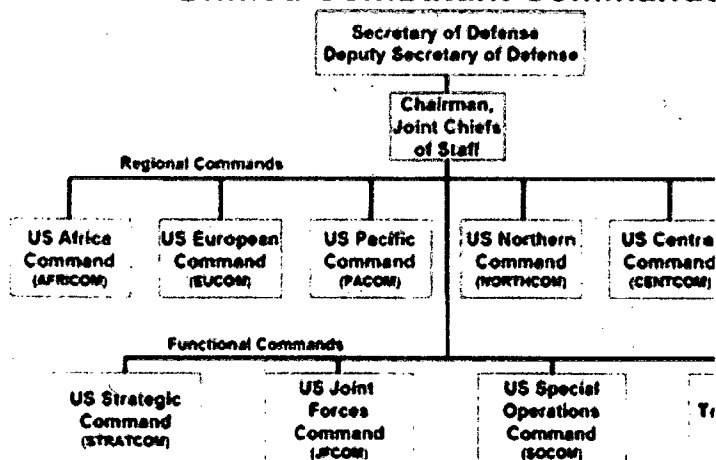
The organizational chart of the Department of Defense is structured as follows:

- Secretary of Defense**
 - Deputy Secretary of Defense**
 - USD (Policy)**
 - ASD (Armed Services Affairs)**
 - USD (Comptroller)**
 - USD (Personnel & Readiness)**
 - POUSO (PAF)**
 - General Counsel**
 - ASD (Operations & Information Integration)**
 - Director Defense Research & Engineering**
 - Director Administration and Management**
 - ATCO (Assistant Secretary of Defense for Operations Programs)**
 - USO (Acquisition Technology & Logistics)**
 - DUSSO (Logistics & Material Readiness)**
 - DUSSO (Acquisition & Technology)**

• Combat Support Agency

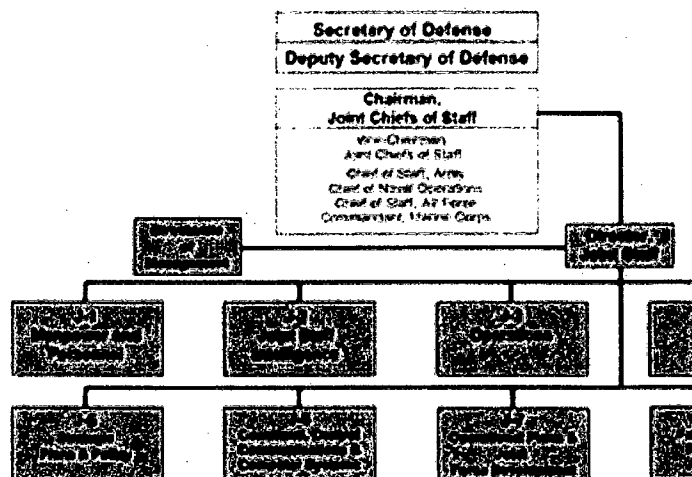
* **Parental Support Agency**

Unified Combatant Commands



DoD Combatant Commands (PDF)

Joint Chiefs of Staff



DoD Joint Chiefs of Staff (PDF)

SECURITY PROCESS: Pre-Employment Notice (PEN) for: Aviles-Wynkoop, Elizabeth VIN:NUS-16-7933 at DHS Chief Information Officer

Inbox x

HRSO <HRSO@hq.dhs.gov>

7/27/
16

to me, Deborah, Eidi

Good morning Ms. Aviles-Wynkoop,

Welcome to the Department of Homeland Security Headquarters (DHS HQ). We would like to congratulate you on your new tentative selection. Please complete the steps listed below in order to finalize the security process for your new position:

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY: TIME SENSITIVE MATERIAL.

1. Complete and submit Standard Form SF-86, "Questionnaire for National Security Positions" in electronic format, by accessing e-QIP (electronic Questionnaire for Investigation Processing), which is a secure system deployed by the U.S. Office of Personnel Management (OPM). This website is designed to retain personnel security investigative forms. **Your e-QIP account has been established and you should log on the system as a new user, even if you have accessed the system in the past using the following link <http://www.opm.gov/investigations/e-qip-application/>.** The SF-86 requires 10 years of data. Please ensure all certification signature forms at the conclusion of the questionnaire are signed using the new "Click-To-Sign" capability.
2. Please go through the online forms carefully, reviewing each section before submitting. If you have technical issues with e-QIP, please contact the DHS Office of Security by phone at **202-447-5010** or via e-mail at OfficeOfSecurity@HQ.DHS.GOV.

SUBMISSION INFORMATION:

Once you have completed the above steps, the full security paperwork package must be received by 4 PM, Wednesday, August 3rd. If not received, you will not be given further consideration and this will be reflected as a declination of the position on your part.

Please consolidate all items listed below into one attachment, encrypt with a strong password and email to: **HRSO@HQ.DHS.GOV**. Please send the password to the attachment in a subsequent e-mail. **Note: All documents that require signatures must be signed and dated. All incomplete security packages will be rejected.**

Security Package items:

- (1) DHS 11000-9, DHS Credit Release Form
- (2) Form OF-306 Declaration for Federal Employment
- (3) Copy of Your Resume

Do not hesitate to contact me if you have any questions or need assistance at HRSO@HQ.DHS.GOV.

Attachments:

- (1) DHS Form 11000-9 "Credit Release Form"
- (2) OF- 306, Declaration for Federal Employment
- (3) e-QIP Instructions
- (4) e-QIP Help Guide
- (5) Click-To-Sign Instructions

Respectfully,

Stuart Chappell
Human Resources Specialist
Department of Homeland Security-HQ OCHCO
Human Resources Management and Services (HRMS)

(202) 357-8220 Office

(202) 763-3939 Blackberry

Stuart.Chappell@HQ.DHS.GOV

****How was your service? Feel free to complete the new HRMS customer survey by clicking here: [HRMS Customer Survey!](#)** *First time users may need to click link twice to activate. For help with the survey email HRMS.Business.Analytics@hq.dhs.gov*

"Confidentiality Notice: This e-mail message, including any attachments, is intended only for the person(s) or entity(ies) to which it is addressed and contains information that may be confidential, legally protected, privacy relevant, proprietary in nature or otherwise protected by law from disclosure. If you received this message in error, you are hereby notified that reading, sharing, copying or distributing this message, or its contents, is prohibited. Please telephone or reply to me immediately and delete all copies of the message."

From: Tavares, Eidi

Sent: Wednesday, July 27, 2016 10:03 AM

To: 'Avileswynkoop1@gmail.com' <Avileswynkoop1@gmail.com>

Cc: HRSO <HRSO@HQ.DHS.GOV>; Candidate_Letters <Candidate_Letters@HQ.DHS.GOV>; Krumaker, Deborah <Deborah.Krumaker@HQ.DHS.GOV>

Subject: Pre-Employment Notice (PEN) for: Aviles-Wynkoop, Elizabeth VIN:NUS-16-7933 at DHS Chief Information Officer

Dear Elizabeth Aviles-Wynkoop:

Congratulations! This is a Pre-Employment Notification from the Department of Homeland Security (DHS). You have been selected for the series 343 Management & Program Analyst position that you applied for at the Chief Information Officer. This position is being offered to you at the annual salary of \$101,361 (GS 13/4 salary based on the Washington DC area). Full performance level potential to grade: 14.

Before we can finalize any formal offer of employment, you must be cleared for Entry on Duty by the HC Security Officer, and, if applicable, granted a Secret clearance as a condition of placement/retention for this position.

The Office of Security at DHS has been informed of your selection. Since you do not hold an active clearance, they will send you an introductory email shortly to begin the process to clear you.

Again, congratulations on your selection for a DHS Headquarters position. Feel free to contact me, if you require additional information or need assistance.

Sincerely,

6 Attachments

DECLARATION OF ELIZABETH AVILES-WYNKOOP

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I held the position of a GS-0343-13 step 4 Management Analyst with the Department of Defense, Washington Headquarters Services assigned to the Pentagon from approximately June 2015 until January 4, 2016 when the government terminated me from my job.

2. On August 28, 2015, I was sitting at my desk when two Department of Defense Police Officers came to my desk with Ms. Ensley. Ms. Ensley asked me, for my DoD Badge and for my Government telephone. I was then given a letter from Ms. Ensley in which she wanted me to acknowledge receipt of letter. When I said that I did not want to sign the document, Ms. Ensley asked the Pentagon Police Officers to witness that I wouldn't sign the letter. They didn't even give me the courtesy of telling me the news in private but at my desk. Ms. Ensley with the Pentagon Police Officers told me that I had to immediately leave the premises. I was barely allowed 5 minutes to find a box and gather my personal belongings before they escorted me the entire way out of the Pentagon past the metro station. I can only describe my reaction as pure shock. Being informed that I was being removed from the building by Pentagon Police and then being walked out of the Pentagon the entire way to the metro station by armed police was the most humiliating experience of my life. I couldn't react because I felt so numb. While I was being walked out of the Pentagon, everyone who we passed on the walk to the metro was staring at me like I was a criminal who committed some heinous crime.

3. From the moment the government walked me out of the Pentagon until now, my life has been in limbo and I have lived in a permanent state of anxiety and fear. I have become a bitter and angry person. I was able to provide a comfortable life for my children before this, but

now I am constantly worried that we will be homeless and hungry and about my children's well-being. I worry about how my children are handling their emotions and whether it is affecting their education, which will carry with them for the rest of their lives.

4. While I was on administrative leave from August 28, 2015 through January 4, 2016, I was required to call both of my supervisors, Carol Ensley and Jerry Russell, every day. They instructed me per the Letter that I received, that if I failed to call, I would not continue to receive pay. One of the supervisors, who I was required to call daily, Jerry Russell, had numerous times a full office voicemail and when I could not leave a message, to let him know that I had called for that day, I had to contact him on his Government cell phone. When I contacted Jerry Russell on his Government Cell Phone which I texted him, that I tried to leave a voice message on his Government Office phone, that I was texting him on his Government Cell Phone, to document that I had done my duty to call him and then I followed up with an email documenting that, I did my due diligence to do what I was required, to call him on that particular day. I was extremely anxious that they would accuse me of failing to call in and that I would lose my pay. Even before I was fired, I was scared about when or if it was going to happen and was terrified about what I would do without my paycheck.

5. I am the first generation of my family to have such a prestigious job. My parents who both immigrated to this country only have a 3rd and 5th grade level education. I started working for the government as a GS-3 Clerk Typist in Rhode Island and moved to the Metropolitan Washington, D.C. area to seek advancement in the Federal Government. I could not have been more proud of the fact that I worked my way up through the ranks to the GS-13 level and I know that my parents who worked so hard to provide for me were proud of my accomplishments. I have

always encouraged my children to work for the Federal Government and think of us as a public servant family. DoD has taken this pride away from me and made me bitter and angry

6. I was defined by going to work Monday through Friday. I was proud of my ability to provide for my children even though I am a single mom. I have lost my sense of self-worth. I have lost everything that made me, Elizabeth. Going through this experience of being walked out of the Pentagon and being fired has played games on my mentally.

7. I have had to reach out to friends to borrow money and get help. I am a proud person and it is debilitating to ask for hand-outs and help.

8. Through my job with the Department of Defense, I had medical insurance that covered me and my two children who are both in College. I never knew when my insurance coverage was going to end. I only found out that my health insurance was cancelled in November 6, 2016, when my doctor informed me that the insurance company had declined coverage on a bill. Since then, I have not been able to afford health insurance. My daughter Caitlin Aviles-Wynkoop had insurance for a small period of time through the University of the District of Columbia ("UDC") while she was enrolled there. Other than that time, I have also been unable to afford health insurance for my two children.

9. As a result of losing my job, I am constantly worried and have experienced sleeplessness and hair loss. When I go to sleep, I'm constantly fighting the individuals that have caused me to lose my job. I wake up tired and sweating all over. This is due to reliving my firing over and over again, as a rape victim. I am depressed. I started to grind my teeth and can't seem to stop because I can't keep myself from thinking about the termination and my money problems when I am trying to go to sleep. My weight has fluctuated. Sometimes I have no appetite and can't eat anything and other times I don't even realize that I am eating and can't stop. I have

experienced muscle spasms in my back and neck as a result of the stress. I was prescribed 350 mg of Carisoprodal (Muscle Relaxers) to be taken twice a day, to help with the muscle spasms. I started taking the medicine shortly after I was walked out of the Pentagon in August 28, 2015. I only take the pills sparingly because I do not have enough money to refill the subscription any more.

10. As the result of a lack of money and/or health insurance, I have not had therapy as I should have to follow-up on the arthroscopic surgery I had on my knee. I suffer from asthma and have not went to routine appointments at the allergist. I should have a albuterol for my nebulizer, steroids, and albuterol inhalers, but can't afford them. I worry so much that I get debilitating headaches and have to lay down to try to stop the pain in my head. I have a herniated discs in my back and they have bee agitated by this ordeal. I am constantly worried, and go out of my way to be careful, that I don't do anything to agitate the discs and nerves in my back because I won't be able to afford medication or treatment if I exacerbate my back problems.

11. I would have went to a therapist for my depression, anxiety, stress, and fear if I was not worried about how I would pay for the co-pay given my impending termination and now termination. It is definitely not possible now that I do not have insurance.

12. I cannot describe how much I have been worrying about my kids since the termination. I prided myself on setting a good example for my children. That was taken away from me. I am not being the mother I am supposed to be. I feel that I am a disappointment to both of them because I was accused of horrible things, fired, and have no money.

13. When I was still getting paid, I was able to supplement my son's income by buying his groceries, paying for his car insurance and upkeep, ad giving him cash when he needed it. Now my son has to try to help me with the bills while he is still a full-time college student. I worry that

my kids and I will be homeless and won't have food. We have had the electricity at my house turned off. We have had our phones, which I need to help search for a job, turned off. I let my daughter drive in a car with nearly bald tires for almost a year because I couldn't afford new tires. I worried about her safety driving with those tires. My son did not tell me because he knew I would be upset, but he stopped putting money into his TSP account a few months ago so that he would have more money to help take care of me and our bills. He bought better tires for me with his last paycheck. It breaks my heart to watch my kids struggling like this.

14. My son Patrick is in his last semester of college. I recognize that college can be a stressful time, but my son has been under so much more stress since I was walked out of the Pentagon and then fired. It has taken a toll on him. He is a type-A personality and it is driving him crazy to not be able to be in control of his financial security especially because he is working so hard. He has been frustrated and irritated as a result of what has happened to me. I know that he has paid some bills late and am worried about how this will affect his credit and ability to get a job with the federal government after he graduates. I constantly worry about his ability to handle this adversity. You never know how a child will handle adversity and I can't help but worry what he might do. I am worried that he might start drinking or do any of the crazy things young men do when they are upset or depressed.

15. Patrick picks at his body when he is under stress. After I was walked out of the Pentagon and he knew that I was facing possible termination, he picked his ear and scalp so badly that he got an infection for which he had to see an ear, nose, and throat doctor and a dermatologist. Although I was worried about my son, I yelled at him to stop because I was on the verge of losing my job and health insurance and knew that we would not be able to afford more medical expenses. This ordeal with Patrick getting his ear and scalp infected took over 8 months to get things back

to normal with him. This doesn't mean that this won't occur again tomorrow. This is why I'm very watchful of what is going on with Patrick and I try to read body language to help with his stress and not add to any additional expenses.

16. My daughter requires medical care that I am not able to afford. She should have had follow-up care for her surgeries to open her nasal passages and to repair a torn muscle and the hip dysplasia with which she was born. While she was able to have the surgery on one hip, she should have it done on her second hip. I cannot afford for her to have the necessary consultation with the doctor let alone for her to have the surgery. She should have rehab on the hip that was operated on as well as for her back problems of a bulging disk, but I cannot afford that for her. I know she has pain with which rehab therapy might help. It kills me to know that my kids are having medical problems that cannot be fixed because I no longer have health insurance.

17. My daughter Caitlin is very emotional and suffers from ADHD, anxiety, and depression. Her conditions have worsened since I was walked out of the Pentagon and fired. She has panic attacks more frequently than before. She has mood swings and is angry all of the time. I know that physical activity such as kickboxing or working out at the gym have helped her in the past, but I cannot afford them for her. The stress we all feel about money combined with worrying about me has impacted her grades at school. She planned to transfer to Capitol Technology University after this semester, but I worried that she will not be admitted because of the decline in her grades.

18. These years while my kids are in college are the last few years that I have before they are full grown adults. I am missing out on the happy memories and experiences that I should be having with my children. My relationship with my children has been ruined. We are not as close as we used to be. When we do talk, we fight because we are all so stressed and worried about

money. We used to do social things together, but now my son only talks to me if he absolutely has to. I know my daughter doesn't want to go home because she thinks I am a bitch since I was walked out of the Pentagon. Caitlin has gotten so upset about it all that she's cried and told me that she hates me.

19. My son's birthday is March 17. I know he wants to have a party, but I am unable to buy him a gift or give him money for a party. I was unable to do anything for my daughter Caitlin's birthday last month. We were unable to have Christmas presents last December. I am not able to take care of my children as I believe a mother should do while they are in College. My son has tried his best to help me with the bills. No child in College should have to worry about the stuff my kids have to worry about.

20. My ability to have relationships with other people has been negatively affected by the termination and the emotions I feel. My parents look down upon me negatively because I was walked out of the Pentagon and was fired. I don't even try to date anyone because it is too hard to explain what I am going through let alone the fact that I cannot afford the cost of dating.

21. I have been looking for another job since I was walked out of the Pentagon. I have always been proud of what I was able to accomplish without a college education. But, I have been unable to find a permanent job. I have applied to well over one hundred jobs in the federal government and in the private sector and have went on about 20 interviews. I am finding that although the federal government grandfathered me into the contracting series without a college education, the private sector does not want to hire anyone without a college degree. Additionally, neither the federal government nor the private sector wants to hire me because of my lack of being able to pay my bills which impact my credit rating and debt make me undesirable especially for jobs that require a security clearance. For example, I was hopeful that I would get hired for a job

with the Department of Homeland Security, but I was told that I was a Criminal or Dishonest Conduct: Your credit bureau report (CBR) accessed on August 1, 2016 disclosed multiple unpaid debts and an open judgment. Please refer to the highlighted information on your enclosed CBR report. This is so degrading. I am an honest old-fashioned worker who has worked my way up through the ranks as a government employee and now I can't find a job as a Contract Specialist or a Management Analyst or a Program Analyst.

22. As part of my job search, I have incurred out-of-pocket costs including transportation costs to interviews (gas, parking, and/or metro) and the costs of copying documents such as my resume. I estimate these costs to be approximately \$200.00.

23. Medical bills that I incurred either because I needed to pay out-of-pocket for expenses for medical care for the problems I developed as a result of being walked out and fired and/or medical expenses I have incurred as a result of not having health insurance, is available upon request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date

Elizabeth Aviles-Wynkoop

college education, the private sector does not want to hire anyone without a college degree. Additionally, neither the federal government nor the private sector wants to hire me because of my lack of being able to pay my bills which impact my credit rating and debt make me undesirable especially for jobs that require a security clearance. For example, I was hopeful that I would get hired for a job with the Department of Homeland Security, but I was told that I was a Criminal or Dishonest Conduct: Your credit bureau report (CBR) accessed on August 1, 2016 disclosed multiple unpaid debts and an open judgment. Please refer to the highlighted information on your enclosed CBR report. This is so degrading. I am an honest old-fashioned worker who has worked my way up through the ranks as a government employee and now I can't find a job as a Contract Specialist or a Management Analyst or a Program Analyst.

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23. Medical bills that I incurred either because I needed to pay out-of-pocket for expenses for medical care for the problems I developed as a result of being walked out and fired and/or medical expenses I have incurred as a result of not having health insurance, is available upon request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

5/17/2017
Date


Elizabeth Aviles-Wynkoop

DECLARATION OF CAITLIN AVILES-WYNKOOP

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am the daughter of Elizabeth Aviles-Wynkoop. I am twenty (20) years old and am a student at Northern Virginia Community College. I am a GS-4 intern during the summer and winters when I am not taking classes at the U.S. Army Corps of Engineers.

2. Although my father paid child support until I turned eighteen (18) years old pursuant to court order, he has not contributed in any way to me since then. I stay with my brother in his efficiency in southwest DC Monday through Thursday while I am in class. I stay with my mother at her house in St. Leonard, Maryland from Thursday night through Sunday night. In addition to the mortgage and utility payments, my mother pays for all of my expenses including food, gas, car insurance, cell phone, etc.

3. Prior to my mother's termination, I was enrolled on her health insurance plan at no additional cost to me. I lost my health insurance as a result of my mother's termination. While I was enrolled at University of the District of Columbia ("UDC") I had to pay to be included on their health insurance because I did not know when my mom's insurance was going to be cut off and I had to have insurance to cover my hip operation. To the best of my recollection, the insurance cost around \$800-\$1000.

4. I had surgery to open up my nasal passages in approximately November 2015. I should have went to an appointment after 6 months to verify that it healed correctly, but was unable to do so because I did not have health insurance or the money to pay for the appointment out-of-pocket.

5. I had surgery on my left hip in March 2016 because I was born with hip dysplasia and had a labial tear on a muscle that needed to be repaired. I was not able to complete my rehabilitation for the hip following the surgery (or for a bulging disc in my back) because I did not have insurance. I should have went to a follow-up appointment to evaluate how my hip has healed, but was unable to do so because I do not have health insurance or the money to pay for the doctor visit out-of-pocket. I need to have surgery on my right hip, but am unable to do so because I do not have health insurance.

6. As a result of the termination we are suffering financially. There are times when there is barely any food to eat. We have had our power and phones turned off. There are times when I have put normal expenses on my credit card such as food, gas, our dog's medication, and one of my mom's bills. As a result of not being able to pay the bills, the credit card was turned off and I have bad credit.

7. My computer that I need for college is 6 years old and is broken. I need a new one, but we can't afford it.

8. I previously suffered from ADHD, anxiety and depression. The stress we have been under since the termination has made the effects of my conditions go from a 5 to a 50. I am so stressed out that my body basically gives up. I used to have an anxiety attack once every few weeks. Since my mom's termination I am in a constant state of panic. I have difficulty sleeping because I have knots in my back from worrying so much about whether we can pay our bills or whether we will lose power again and because of the pain from my hip and not finishing my rehabilitation.

9. I have found in the past that kickboxing or working out at a gym has helped with my anxiety and depression. But we can't afford either of those things.

10. My grades have suffered as a result of the stress and worry that I am constantly under. I have difficulty focusing at school. I planned to transfer to Capitol Technical College after this semester, but I am worried I will not be able to do so because of my grades.

11. A side-effect of my anxiety is that I am a hoarder. Hoarding helps me redirect my panicking and depression by letting me focus on items that I like to collect such as comic books, comic memorabilia, gaming memorabilia, etc. My inability to fulfill my tendency to hoard because we don't have any money has also exacerbated my anxiety and depression.

12. My relationship with my mom has deteriorated since she was put on administrative leave and terminated. She is constantly stressed, angry, and irritated because she is not working and does not have any money. I know she is worried about me and my brother and feels like she is a horrible mother. She tries to hide it from me, but I can tell that she is depressed. I can tell she is exhausted. She is always tired and never seems happy. My mom can't talk about what happened when she was walked out of the Pentagon and fired without getting very upset and crying.

13. Before the bad things happened at my mom's work, she was more energetic and would do enjoyable things with me and my brother like going to the mall or getting pizza. We don't spend family time together anymore. Now, when the three of us are in the same room together, it turns into an explosive argument. We constantly argue about money and bills and food. Everyone is more irritable since my mom lost her job. Everything is cyclical. We all feel like our lives are out of control and spiraling worse. Our lives changed drastically on the days my mom was walked out of her job and fired.

14. When I am home with my mom since she was walked out and fired, her temper is hair-trigger. She can turn nasty very fast. As a result, it makes me not want to spend any time with her. My brother speaks with me and my mother as little as possible since her termination.

This has made my mom even more irritable. She gets very angry if she does not know what he is doing. She talks about how she worries about how my brother is going to pay his bills.

15. My mom loved her job. She would work really long hours because she was proud of the work that she did at the Pentagon. The termination hurt her ego and self-confidence.

16. The termination has affected my social relationships with my friends and family. I am not always pleasant to be around these days and we don't have money to do social things with other people.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date

Caitlin Aviles-Wynkoop

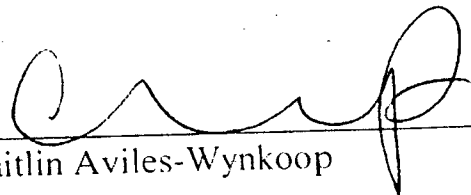
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15. My mom loved her job. She would work really long hours because she was proud of the work that she did at the Pentagon. The termination hurt her ego and self-confidence.

16. The termination has affected my social relationships with my friends and family. I am not always pleasant to be around these days and we don't have money to do social things with other people.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

5/16/17
Date


Caitlin Aviles-Wynkoop

DECLARATION OF PATRICK AVILES-WYNKOOP

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am the son of Elizabeth Aviles-Wynkoop. I turn twenty-two (22) on Friday, March 17, 2017 and am currently a senior at George Washington University. While I have held a position with the Federal Aviation Administration since October 2015, I am on an intern salary and only earn approximately \$32,000 per year.

2. Prior to my mother's termination, I was dependent on her to supplement my income while I am in college. Among other things, my mother paid my car insurance and car maintenance and bought me groceries. In addition, she gave me cash on an as needed basis. Additionally, I was enrolled on my mother's health insurance plan at no additional cost to me. Because my father has not contributed to my financial assistance since I turned eighteen (18), the obligation to assist me fell entirely on my mother.

3. When my mother was terminated from her employment, she was no longer able to contribute to my financial assistance. Since the termination, I have been constantly concerned about paying my bills and rent on time and on several occasions my rent payment was late. I have been forced to live on my credit cards at times and incurred interest charges as a result of my inability to pay the full balance each month. I have also incurred overdraft fees from my bank as a result of not having enough money. There were many occasions when I was worried about whether I would be able to afford my transportation costs to GW University. I worry every month, all month long, about whether I will have enough money to get through the end of the month.

4. In approximately February 2017, I had to stop paying money into my TSP because I needed the money to pay my daily expenses and to give to my mother.

5. I lost my health insurance as a result of my mother's termination and have been unable to afford replacement coverage.

6. As a result of my mother's termination, I tried to help as much as I could with her expenses and those of my younger sister for whom my mother is also responsible. This only contributed further to my own financial problems. Our family simply does not have enough money to cover our expenses.

7. I have been worried about my mother ever since she was terminated. My mother was extremely upset over her termination. She has been constantly angry since the termination. It has affected her personality and her relationship with me negatively. We are both constantly stressed and worried about money and argue. As a result, I barely talk to my mother or spend time with her in comparison with how frequently I used to speak and spend time with her.

8. As a result of my stress over money and my inability to participate in activities with my friends and family because I could not afford them, I have been angry and depressed since my mother's termination. In addition to the damage the termination has caused to my relationship with my mother, I know that this has negatively impacted my relationships with my family and friends.

9. I toss and turn in night and can't sleep as a result of the stress and worry I have had since my mother was terminated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

03/16/2017

Date

Patrick Aviles-Wynkoop
Patrick Aviles-Wynkoop

Virginia's
Community College

in sent

1 of 3,333

Compose

Inbox (53,573)

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Notes

MSPB Case DC-315H-16-0327-B-1 Elizabeth Aviles-Wynkoop vs Department of Defense B

Inbox

People +2

Patrick Aviles-Wynkoop
to: elizabeth.wynkoop@natenelson.com

5:17 PM 10 minutes ago

Please see attached documents for MSPB Case DC-315H-16-0327-B

13 Attachments

CERTIFICATE OF

Closing Argumen

Briefing Signature

compensatory da

Compensatory st

Exhibit to MSPB

Exhibit D - OnD Or

EXHIBIT E - DHS

EXHIBIT F - APPE

EXHIBIT F - APPE

EXHIBIT G - Cath

avileswynkoop1@

Bill Jackson

csa29227@gmail

efgea

Heidi Butakiewicz

natenelson

natenelson

Patrick Aviles-Wyn

patrick.aviles.wyn

pvaviles02

3/17/2017

+

CERTIFICATE OF SERVICE

I certify that a copy of the attached document was forwarded the parties on March 17, 2017 as indicated below: Appellant's closing argument and compensatory damages

Ms Elizabeth E Pavlick, Agency counsel—email to: Elizabeth.E.Pavlick.civ@mail.mil

Department of Defense

Assistant General Counsel

Pentagon Force Protection agency

1155 Defense Pentagon agency

Room 2E 1035

Washington, DC 20301

Nate Nelson on March 17, 2017

Before the

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

ELIZABETH AVILES-WYNKOOP

Appellant

DOCKET NUMBER

DC-315H-16-0327-B-1

v

DEPARTMENT OF DEFENSE

Agency

Date: March 17, 2017

APPELLANT'S CLOSING ARGUMENT

On January 4, 2016, the Agency removed Elizabeth Aviles-Wynkoop. For the reasons below, Ms. Aviles-Wynkoop argues that the removal was illegal for three reasons.

The Agency Violated Aviles-Wynkoop's Due Process Rights

As Ms. Aviles-Wynkoop was not serving a probationary period at the time of her removal, she is entitled to the due process protections provided to Career Federal Employees, see 5 USC 7511- 7513. The core of due process is the right to notice and a meaningful opportunity to be heard. *LaChance v. Erickson*, 522 US 262 (1998) (citing *Cleveland Board of Education v. Loudermill*, 470 US 532, (1985)). Due process mandates that notice be sufficiently detailed to make the reply opportunity meaningful. *Barresi v. USPS*, 65 MSPR 656 (1994).

The notice of proposed termination issued on October 27, 2015 by Carol Ensley, Chief, and Acquisition Management, is fatally flawed and deprived Ms. Aviles-Wynkoop of due process. The notice characterizes the removal as a

termination during probation, thereby misleading Ms. Aviles-Wynkoop to believe that she had only “limited pre-termination procedural rights.” This statement deprived Ms. Aviles-Wynkoop of a meaningful opportunity to respond to the notice because probationary employees may challenge a termination only for marital status and partisan political reasons. As Ms. Aviles-Wynkoop was not a probationary employee at the time of her removal, she was entitled to clearly stated charges with notice that she could dispute those charges as well as the aggravating factors in the selection of the penalty of removal; “Moreover, aggravating factors on which the agency intends to rely for imposition of an enhanced penalty, such as a prior disciplinary record, should be included in the advance notice of charges so that the employee will have a fair opportunity to respond to those alleged factors before the agency’s deciding official.” *Douglas v. Veterans Administration*, 5 MSPR 280 (1981). She received no such notice.

Separately on January 4, 2016, Jerry Russell, Deputy Chief, Business Resource Center issued the decision to remove. In making his decision to remove Ms. Aviles-Wynkoop, Russell acknowledges he relied on several factors not contained in the proposal notice:

1. That Ms. Aviles-Wynkoop's misconduct created a hostile working environment within the office.
2. That Ms. Aviles-Wynkoop's conduct caused several coworkers to submit formal complaints.
3. That Ms. Aviles-Wynkoop's emails were both negative and inflammatory.
4. That Ensley had attempted to progressively counsel Ms. Aviles-Wynkoop regarding her conduct.
5. That Ms. Aviles-Wynkoop occupies a position with fiduciary responsibilities.
6. While stating that he considered her length of "total Federal service," he gives no indication what he believes that service length to be.
7. He equates her misconduct to terms used in the Agency's penalty table: impertinence, insolence disrespectful conduct toward a supervisor, and intimidating or aggressive behavior.

Russell's reliance on penalty factors not disclosed to Ms. Aviles-Wynkoop in the proposal notice violates her due process rights to defend herself. *See Ward v. USPS*, 2010-3021 (Fed. Cir. 2011)

The Agency has Failed to Prove Any of Its Charges

On page 4 of the notice of proposed termination, Ms. Ensley refers to Ms. Aviles-Wynkoop's request for clarification as to who is her supervisor by stating that such a request was "insubordination." The elements of a charge of insubordination are the willful and intentional refusal or obey an authorized order of a superior, which the superior is entitled to have obeyed. *See Redfearn v. Labor*, 58 MSPR 307 (1993). The proposal notice describes an incident in which Ms. Ensley tells Ms. Aviles-Wynkoop that in the future she is to inform her of any absences, but there is no claim that Ms. Aviles-Wynkoop disobeyed that order. Ms. Ensley has not identified any order she gave that Ms. Aviles-Wynkoop refused to obey.

Separately, the Agency has not established that Ms. Ensley was indeed Ms. Aviles-Wynkoop's supervisor and thereby entitled to have her order obeyed. According to her position description, Ms. Aviles-Wynkoop was employed in the Resource and Supplier Management Division of the Agency and the immediate

supervisor of that position is identified as Jennie Blakeney, Chief, Resource and Supplier Management Division. Ms. Ensley is identified as occupying the position of Chief, Acquisition Management. The Agency has failed to explain how an order from Ms. Ensley to Ms. Aviles-Wynkoop is authorized. In addition, the location of the position according to Ms. Aviles-Wynkoop's position description explains why Ms. Aviles-Wynkoop would be requesting clarification as to who actually is her immediate supervisor. Such a request cannot be fairly described as "inappropriate" as Ms. Ensley has described it in the notice of removal.

Following the discussion of "insubordination" on page 4 of the October 27, 2015, notice, there is an unlabeled paragraph that appears to be the charges on which Ms. Elsey bases her proposed removal:

Specifically, you have demonstrated a pattern of discourteous behavior towards contractors, fellow employees, and management; repeatedly communicated issues outside the appropriate EITSD chain of command and continually berated the capabilities and experience of your fellow government employees.

It is well established that when an Agency charges in the narrative as it has here, joining several discrete acts with the conjunctive “and,” it must prove all elements of the singular charge to have the charge sustained. *See Brott v. GSA*, 2011 MSPB 52. In support of this charge, Ms. Ensley references four attached documents:

1. On August 26, 2015 email (**Reference f**, attached to the proposal notice) in which Ms. Aviles-Wynkoop requests clarification of who is her supervisor. That email reads in its entirety, “Carol, I requested to see your SF50 that you are my supervisor, which no one has been able to furnish. I spoke to Jerry Russell and that's who I'm reporting to. Thanks! Elizabeth”. This email is not outside the chain of command, berates no one, and is not discourteous. Therefore, this attachment does not support the charge.
2. An undated unsigned “Observations” document (**Reference g**, attached to the proposal notice), author unknown, that states little that can be related to the charge other than “one of the employees expressed concern, to both me and Mr. Russell, that the employee’s conduct is continually threatening and abrasive.” The document provides no indication who the “me,” “employees,” or the “employee” are. It is unclear, confusing, and somewhere beyond double-hearsay, seems to have no clear termination

point, and comes nowhere near a preponderance of evidence that any misconduct occurred.

3. **Reference h**, attached to the proposal notice is a memorandum that places Ms. Aviles-Wynkoop on administrative leave. It contains no description whatsoever of any misconduct by anyone.
4. On August 13, 2015, Ms. Aviles-Wynkoop sent an email to Ms. Ensley and Jerry Russell (**Reference i**, attached to the proposal notice). In characterization, it is a lengthy description of concerns that Ms. Aviles-Wynkoop has about the work situation. It discusses a single contractor (a Mr. Fawcett), two fellow employees (Candace Nole and Tina Jackson), and someone otherwise unidentified as Robin Roberts. There is no indication that she is discussing anyone in management as the charge specifies. There is no indication that this email was directed inappropriately outside her chain of command (as Ms. Ensley claims to be Ms. Aviles-Wynkoop's immediate supervisor and Russell is apparently Ms. Ensley's supervisor in the chain of command).

Most importantly, nothing in any of these documents relied on by the Agency in support of its charges can be characterizes as scolding or criticizing someone angrily

or violently, an accepted definition of the charged misconduct of berating. As for the adverb used in the charge “continually,” the Board has recognized that such a description requires that an act occur more than two or three times. *E.g., Thomas v. USPS*, 116 MSPR 453 (2011). These documents relied on by the Agency do not establish anything occurred “continually.”

The remainder of the notice of proposal is impossible to decipher. Is the Agency attempting to add additional charges to those described above? Is it discussing aggravating penalty factors? What does it mean when it says “consistently” and “inappropriately” relative to other conduct? Not only has the Agency failed to prove its charges by a preponderance of the evidence, it has so poorly described the acts on which it is basing its removal that Ms. Aviles-Wynkoop has been deprived of the due process opportunity to have a meaningful opportunity to respond to the proposed removal.

The Agency Has Committed Whistleblower Reprisal

Among other things, a Whistle Blower is a federal employee who discloses what she reasonably believes to be a violation of law, regulation, or rule. *LaChance*

v. White, 174 F.3d 1378 (Fed. Cir. 1999). The Agency's removal is based in part specifically on Ms. Aviles-Wynkoop's August 13, 2015 email. In that email, Ms. Aviles-Wynkoop disclosed her concerns a) that contractors working in the office had unauthorized access to sensitive information regarding the contracting process, b) that a specific contractor was illegally involved in the source selection process, and c) that the Cyber Security Office was using contractors for work after the contract had expired, among other regulatory improprieties, all in violation of the Federal Acquisition Rules.

Given Ms. Aviles-Wynkoop's Whistle Blowing, at a minimum, the Agency should be held to prove its charges and penalty selection at the clear and convincing level rather than at the lower preponderance level. More fundamentally, a removal based in large part on Whistle Blowing activity must be set aside if the Agency's evidence to support the removal is weak, the action officials have a strong motive to retaliate, and the Agency is unable to identify similarly-situated employees who are not Whistle Blowers who were treated as unfavorably as was the Whistle Blower. *Carr v. SSA*, 185 F.3d 1318 (1999). Each of these three factors are present in this case.

The Agency Has Failed To Deny or Address The Whistle Blowing Charges

On November 7, 2016, the Appellant filed a motion to amend her appeal to include charges of Whistle Blowing activity that is protected conduct. The Agency was served a copy of this motion. This motion alleged specific Whistle Blowing charges. On November 14, 2016, the Judge issued an order for the Appellant to fully address and explain the Affirmative Defenses. On November 30, 2016, the Appellant filed a brief with the Board fully addressing and explaining the Affirmative Defenses. The Agency was served with a copy of this brief that was titled” **APPELLANT’S AFFIRMATIVE DEFENSES**” It is significant to note that the charges contained in the November 7, 2016 and November 30, 2016 briefs were never denied by the Agency. In other words, the Agency has not stated that the charges are not true. The Agency has until March 17, 2017 to deny or address these charges because the record will close on this date. During a conference call on March 8, 2017 with the Judge and all parties present, the Agency Counsel made a statement to the effect that the Whistle Blowing charges had to be filed with the Office of Special Counsel. The

Judge politely told Counsel for the Agency that MSPB had authority to adjudicate Affirmative Defense Cases. This is proof that the Agency's Representative never read or became familiar with MSPB regulations 5 C.F.R 1201 which contains all of this information. During the conference call, the Agency's Representative was very disrespectful to the Appellant and the Appellant's Counsel. The Agency Counsel did not know that the Appellant had a right to be on the phone call without an announcement. When the Agency Counsel discovered that the Appellant had heard every derogatory statement that was made by the Agency's Representative, the Agency's Counsel then made a foolish request to the Judge to the effect " Judge instruct Mr. Nelson to announce whenever his client is on the phone." The Judge simply replied that the Appellant had a right to be on the phone. There is no doubt that the Agency's Representative was upset because the Appellant heard the false derogatory statements that she had made about her. When the Judge asked the Agency Counsel about the status of settlement, the Agency's Representative falsely replied that the Appellant has created havoc everywhere she has been. This is false because the only place the Appellant ever worked was the Washington Headquarters Service under the Department of Defense. The Judge specifically stated " so you talked to all of those Agencies" Agency Counsel continued her path of deceit and misrepresentation by repeating herself that the Appellant has created havoc

everyplace she has been. This is false because the Department of Defense has more than 105 agencies under their umbrella as verified by an organization chart see appellant's **exhibit D**. The Appellant was very upset about this issue and this significantly increased her emotional distress and adds to the damages.

When the judge referred to the Appellant's Representative as Counsel, the Agency's Representative took offense to this. The Judge calmly stated that Mr Nelson is competent. We know that the Agency's Representative does not read or understand MSPB regulations, and she does not read or understand the dictionary either. Counsel is defined as "one who gives advice". The Agency's Representative incompetence and lack of knowledge is only exceeded by her arrogance. There is no need for anyone to be disrespectful to another person. I have always treated my opposing Counsel and Representatives with dignity and respect. The Judge should not have had to remind the Agency Representative that the Appellant's Counsel was competent because she lost a jurisdictional hearing to someone who she views is not on her same level.

It is significant to note that the Judge made every effort to assist in settling this case. The Judge made it perfectly clear the Agency would have a very difficult time in overcoming the probative and merits issue. The Appellant's Counsel also wanted to settle the case. Here is a person who knows very little about Board law, and she just lost a significant jurisdictional issue, the Agency Counsel had the brazen audacity to tell the Judge that she disagreed with his points of law because the Agency had an excellent case based on the merits. The Judge was right when he said that the Appellant's Representative became frustrated with the Agency's Representative when she unwisely resisted every attempt for settlement. More significantly, there is no sane person in America who would tell a judge that she knows more about the law than the judge knows. This is what frustrated the appellant's representative more than anything else. The agency representative was arrogant and disrespectful because she does not know Federal or Board law as evidenced by losing the jurisdictional case. Thanks to the Agency's Representative, settlement now is impossible. My client has been devastated and significantly emotionally harmed by the conduct of the Agency's Representative. My client wants bar charges filed against Counsel for the Agency. Whenever a client feels this way, settlement is never possible. The Appellant's Counsel even reached out to the Agency and tried to discuss settlement. The Agency Counsel refused to return my phone call or discuss

settlement with me. My client believes that the Agency's Counsel has committed serious bar violations that has had an adverse impact on her by unnecessarily delaying her return to work. There is little doubt that a competent Counsel would have resolved this issue much sooner. Competent Counsel or Representatives know when they have a good case or not. According to the American Bar Association, Rule 1.1 Competence, A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. According to A-4, it specifically states that Attorneys should not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation of the truth.

It was reported that the Agency's Representative came from the private sector. If a private sector lawyer takes a job with the Federal Government, then it is the lawyer's responsibility to become familiar with Federal and Board Law if they practice before the Board. It is the private sector arrogance that has greatly contributed to this situation. The under estimation of any opponent is not good. If the Agency Counsel had read the MSPB regulations, she would have discovered that there was a section called waiver of ex parte communications that could have been a significant benefit to her. Maybe she will read the regulations the next time she has a case before the

board. It is now clear that the agency counsel was not prepared to handle this case, and she displayed her lack of knowledge before the judge and appellant. Her arrogance and disrespect for others makes it almost impossible for her to learn anything. Her lack of representation will cause the agency to pay a significant price.

Conclusion

The Agency has violated Ms. Aviles-Wynkoop's due process rights in two different ways. In addition, it has failed to prove the charges against her. And finally, it has engaged in Whistle Blower Reprisal. Ms. Aviles-Wynkoop asks that the Board reverse the removal, order that she be reinstated with back pay with interest, that she be awarded 8 Million Dollars in Compensatory Damages for the harm she suffered due to the Whistle Blower Reprisal, and that both Ms. Elsey, Mr. Russell, Mr. Victor Shirley and Mrs. Lytwaive L. Hutchinson be referred to the US Office of Special Counsel for investigation and possible prosecutorial action because of their involvement in this removal.

Under the provisions 1201. 111, section (c) the Administrative Judge has the authority to grant Interim relief to Appellants who are the prevailing parties. The

Appellant is requesting interim relief, and all back pay with interest be paid within 30 days of the decision.

The Appellant is requesting that her security clearance be fully restored and the Agency provide a detailed explanation as to why it was interfered with?

The Appellant is requesting that the Judge sanction and prevent the Agency's Counsel from practicing before the Board until she has demonstrated that she has taken courses to help her understand Board and Federal law, or have obtained training from the Federal Law training group that specialize in MSPB practitioner training. Since the Judge is an Attorney, and the Agency Counsel is an Attorney, according to the canon of ethics, when any Attorney witness that the integrity of the profession is being harmed or disgraced by an incompetent Attorney, then the competent Attorney must take an action to address the situation. The Agency Counsel has certainly introduced harm to injure the integrity of the profession. If the Judge takes an administrative action, then I will Advise my client not to file a bar charge. Something has to be done. It is the Agency's supreme arrogance and disrespect for others that have got us to this point. The Appellant's Counsel does

not want to file a bar complaint or harm the Agency's attorney bar license if it is not necessary. I have compassion for people. We had a National Representative who displayed gross incompetence before the Board, and the judge wrote a letter to our agency. That person is no longer a National Representative. Attorneys and National Representatives must be held to at least minimum standards in order to protect the people who they represent because there is absolutely no appeal for those who receive gross incompetent representation. Finally, if the agency does not deny or properly address the affirmative defense charges, then under the provisions of Section 1201.43 Sanctions (b) failure to defend, then the judge can rule in favor of the appellant. The appellant is requesting that you rule in favor of the appellant if this section is violated. The appellant does not believe that the agency has the skill and knowledge to understand that the evidence for the affirmative defenses was provided by the agency and the agency must rebut the appellant's submissions.

Submitted by, The Appellant's Representative

Nate Nelson

March 17, 2017

not want to file a bar complaint or harm the Agency's attorney bar license if it is not necessary. I have compassion for people. We had a National Representative who displayed gross incompetence before the Board, and the judge wrote a letter to our agency. That person is no longer a National Representative. Attorneys and National Representatives must be held to at least minimum standards in order to protect the people who they represent because there is absolutely no appeal for those who receive gross incompetent representation. Finally, if the agency does not deny or properly address the affirmative defense charges, then under the provisions of Section 1201.43 Sanctions (b) failure to defend, then the judge can rule in favor of the appellant. The appellant is requesting that you rule in favor of the appellant if this section is violated. The appellant does not believe that the agency has the skill and knowledge to understand that the evidence for the affirmative defenses was provided by the agency and the agency must rebut the appellant's submissions.

Submitted by: The Appellant's Representative

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

ELIZABETH AVILES-WYNKOOP

Appellant

DOCKET NUMBER

DC-315H-16-0327-B-1

v

DEPARTMENT OF DEFENSE

Agency

Date: March 17, 2017

APPELLANT'S CLAIM FOR COMPENSATORY DAMAGES-
8 MILLION DOLLARS

Now comes the Appellant to submit her claim for compensatory damages.

According to section 1201.204 of the Board's authority, the Appellant must state an amount for damages. The Appellant is requesting that she be awarded 8 Million Dollars for the following reasons:

The Whistle Blower Protection Enhancement Act took effect on December 27, 2012. For the first time, this process gave MSPB Judges the authority to award compensatory damages to proven Whistle Blowers without a cap or limit. Intentional discrimination cases are capped at \$300,000. For years, the Pentagon and Department of Defense (DoD) Managers have punished and retaliated against good and hardworking employees, who told their Managers, that their hired Contractors were not doing their jobs, and getting paid the maximum dollars. Instead of disciplining the Contractors, who were not doing their jobs, Agency Officials disciplined the Whistle Blower with the maximum administrative sanction possible (termination without due process). By unfairly disciplining the Whistle Blower, and not holding the Contractors accountable for doing their jobs, and paying the Contractors for not working, the Washington Post published an article pertaining to a GAO Audit that the tax payers were the victims of a 125-

Billion-dollar scam that was contributed to the Government's Fraud, Waste, and Abuse of Authority.

THE U.S. SUPREME COURT HAS NOTED WITH RESPECT TO EMOTIONAL DISTRESS DAMAGES THAT" GENUINE INJURY IN THIS RESPECT MAY BE EVIDENCED BY ONE'S CONDUCT AND OBSERVED BY OTHERS." CAREY v. PIPHUS, 435 U.S. 247, 264 n. 20(1978).

Here, we are addressing Emotional Distress Damages. Emotional Distress Damages are available even when the Appellant has not sought medical treatment. When the Agency terminated the Appellant's employment, her medical benefits were also terminated. The Eighth Circuit has held that a Plaintiff's own testimony may be adequate to support such an award and the testimony of family and friends is also probative. *Kucia v. Southeast Arkansas Community Action Corp.*, 284 F. 3d 944, 947 (8th Cir. 1999). *Morse v. Southern Union Co.*, 174 F. 3d 917, 925 (8th Cir. 1999) (affirming \$100,000 emotional distress award where family members

corroborated plaintiff's testimony). In any discrimination case, the Appellant is going to suffer damages that don't produce a receipt or that are difficult to quantify or fix a dollar amount to. This is called Non-Pecuniary Compensatory Damages.

Kim v. Nash Finch Co., 123 F. 3d 1046, 1065 (8th Cir. 1997) (award of \$100,000 affirmed where Plaintiff, his wife and his son testified regarding anxiety, sleeplessness, stress, depression, headaches and humiliation). An unjust removal is the equivalent to an economic execution. During the Appellant's employment with the Agency, and after employment with the Agency, the Appellant suffered with continued and ongoing headaches that were directly related to the job. The Appellant was in constant fear of being unjustly removed because of her Whistle Blowing activities. With no job, and no income, the Appellant's children began to suffer. The Appellant suffered additional stress because she had to find a way to feed her children, provide shelter, and continue their education without interruption.

At night, it was almost impossible for the Appellant get a good night of sleep. As time, progressed, the Appellant became a nervous wreck because the children

could not understand why she was not working. Things became so bad that the children had to find jobs in order to eat and have shelter. The Appellant was forced to take every dime the children made in order to help pay the mortgage and eat. This nonsense continued for more than one year with very little relief in sight. It was reported that Appellant's before MSPB have less than 2% of prevailing.

The Appellant slipped into a state of depression and anxiety because she could no longer provide for her family and she had to take money from her children. The Appellant was forced to borrow money from her family and friends that created additional stress. The situation between the Appellant and her daughter became very serious because her daughter began to blame the Appellant for this entire incident. The Appellant's daughter recently had a hip operation, however, the Appellant's daughter can't get the follow up procedures she needs because the Appellant does not have any health insurance. The Appellant's mental state has regressed to the point that she needs immediate psychological intervention.

Both of the Appellant's children have provided written documents that fully confirms the Appellant's Emotional Distress Claims. See Appellants **Exhibit G**. At the very minimum, the Appellant has clearly proved that a \$200,000 damage award

can be supported. If one read the attached sworn statements from the appellant, and her two children, then this will prove without a question of doubt that a substantial compensatory damage award is required. See Appellants **Exhibit F** – Sworn Declaration for Appellant.

WHY THE APPELLANT IS ASKING FOR 8 MILLION DOLLARS IN COMPENSATORY DAMAGES

When an Agency exceeds the normal expectation of decency, and go to the extreme to punish and retaliate against an employee who was reporting that the Agency Contractors were not doing their jobs, this does not give an Agency the right to deprive the employee of the right to work for other Federal Agencies. It is true that the Appellant did decline a settlement that was drafted in bad faith by the Agency. The Appellant is accusing the Agency of willfully archiving and interfering with her Security Clearance in order to block her from obtaining employment at other Federal Agencies. The Appellant was deeply humiliated and

embarrassed when other prospective Agencies informed her that she had a clearance problem. Specifically, on July 27, 2016, the Appellant received an e-mail from The Homeland Security Division that specifically stated," Good morning Ms. Aviles-Wynkoop, Welcome to the Department of Homeland Security Headquarters (DHS). We would like to congratulate you on your new tentative selection."

This notice further stated the matter was pending security. This was a GS-14 position. The only thing that prevented the Appellant from getting this job was that the Agency illegally interfered with her security clearance. This e-mail is attached as the Appellant's **Exhibit E**.

It is the Agency and Counsel for the Agency who have clearly demonstrated egregious misconduct and a complete lack of knowledge about Federal Law and Board Law. It is the unethical practice of law and ignorance of basic procedures that have contributed to the request for 8 Million Dollars. There are certain attorneys and others, who should not practice before the Board because they have not prepared themselves for this task. An Agency can't survive or do what is right if they have Attorneys or Representatives, who are significantly incompetent and lazy. This is a deadly combination that will doom any Agency. There is no doubt

that those who are competent in Board Law knows what defines incompetent counsel or representatives. Here, for the first time in the Appellant's Representative long career, he could not imagine he would be introduced to an Attorney who actually made a contribution to an appellant's claim for compensatory damages by acting unprofessional and unethical.

**THE APPELLANT BELIEVES THAT THE AGENCY COUNSEL
HAS COMMITTED BAR VIOLATIONS THAT HAVE
ADVERSELY AFFECTED HER CASE**

According to the American Bar Association, Rule 1.1, competence—competent representation requires the legal knowledge, skill. Thoroughness, and preparation reasonably necessary for the representation. According to A-4, it states that lawyers should not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

On March 8, 2017, the Judge conducted a conference call between the parties to discuss settlement and progress of the case. Since Counsel for the Agency did not contact Counsel for the Appellant, the Appellant's Counsel contacted the Agency and proposed a settlement. Counsel for the Agency failed to contact the Appellant's Representative prior to March 8, 2017, as she was instructed by the Judge.

On March 8, 2017, when the Judge asked the Agency's Representative about the settlement progress, the Agency Representative said settlement was not possible. When the Judge asked the Agency's Representative had she contacted other agencies at the Pentagon, the Agency's Representative falsely stated that the Appellant had created havoc in all of the Agencies. The Judge knew this was a false statement. This is also a bar violation because her statement is an element of fraud, dishonesty, and misrepresentation of the truth. It appears the Agency Counsel did not want to do the work. It should be noted that the only place the Appellant ever worked at the Pentagon was under Washington Headquarters Service (WHS), which falls under the Department of Defense (DoD). The Department of Defense located at the Pentagon has more than 105 Sub Agencies that could have been contacted for the purpose of settlement. The Appellant's

Representative is attaching Appellant's Exhibit E, which is an Organization Chart of the Department of Defense Agencies. In other words, this case could have been easily settled because the Agency's incompetent Counsel lost the jurisdiction case. In essence, most shop stewards know if an Agency lose a jurisdictional case based on a Probationary Issue, then the Agency can't advance a procedurally defective case. The Agency Counsel does not know this. When the Judge tried to help the Agency Counsel by telling her that she may have a difficult time in prevailing (solely based on the law), in a stunning and very foolish move, the Agency Counsel began to argue with the Judge, and stated, "I disagree with you Judge" because the Agency has an excellent case based on the merits. The Appellant was on the phone when the Agency Counsel made these unwise remarks and statements not based on facts. If the Agency Representative had just kept her mouth closed at this point, she could have prevented further significant damage.

The Agency Representative clearly demonstrated that she had not even read MSPB Regulations 5 C.F.R. 1201 by asking the Judge to instruct the Appellant's Representative to announce whenever the Appellant is on the phone. The Judge told the Agency's Representative that the Appellant had a right to be on the phone.

It did not stop here. The most egregious violation of the American Bar Association Rule 1.1 in which it requires attorneys to have the legal knowledge, skill, and preparation reasonably necessary for the representation. On March 8, 2017, during a telephone conference with the Appellant and Counsel for the Appellant, the Agency asked the Judge should the Appellant have filed her affirmative defenses with the Office of Special Counsel. The Judge politely told the Agency's Representative that an Appellant could file Whistle Blowing charges with the Board. This is proof that the Agency's Representative did not read 5 C.F.R. 1201 because all of this information is contained in this regulation. The Agency Counsel was unprepared to represent the Agency, and she did not possess the skills to do so at this time (automatic bar violation witnessed by a Federal Administrative Law Judge) to handle the Representation. It is now apparent that the Agency Counsel misled the Agency into believing they had an airtight case when they did not. Instead of being a lawyer who is supposed to provide legal advice, the Agency Counsel became a cheerleader of wrongdoing. This process severely hurt and harmed the Appellant because incompetent counsels caused this case to drag out for more than 1 year when it should have been resolved within 120 days. The current counsel was not the only blame in this area. The Appellant's family was

forced to suffer without any income for a much longer period because the agency did not know the law in this area, and they were engaging in a campaign of reprisal and retaliation. They were trying to maintain their illegal enterprise of awarding themselves personal contracts in direct violation of the law.

**THE EGREGIOUS INCOMPETENCE AND
MISCONDUCT OF THE AGENCY'S COUNSEL HAS
PREVENTED THE AGENCY FROM ADDRESSING THE
APPELLANT'S AFFIRMATIVE DEFENSE CHARGES.**

Thus far, there is nothing in the file which specifically states "this is the Agency's response to the Appellant's affirmative defenses". In fact, the Agency has not even denied the affirmative defenses. This is because the Agency's Representative thought Whistle Blowing charges had to be filed with the Office of Special Counsel. If these charges are not addressed by March 17, 2017, then under section 1201.43 section (b) of the regulations, the Judge has the authority to rule in favor

of the Appellant for the Agency's failure to defend the charge. The Appellant is requesting that the Judge employ this sanction if the Agency's Counsel does not properly address the affirmative defense charges. There is absolutely no legal excuse as to why the affirmative defense charges are not addressed after the Judge made it clear that the Board had jurisdiction.

**THE AFFIRMATIVE DEFENSE CHARGES WERE
FILED ON NOVEMBER 7, 2016 AND
NOVEMBER 30, 2016 RESPECTIVELY**

On November 24, 2015, the Appellant submitted a DoD Hotline complaint (2015 50924133951093) in which she detailed her disclosure to Victor Shirley that a personal service contract for Blonda Griffith was illegal. It is completely illegal to award a personal service contract to a Government employee. It was estimated that this contract was around \$150,000.00. The Appellant reported that these types of contracts were routinely awarded on a friendship basis. The Appellant made it

clear that this was an illegal activity and it had to stopped. When the Appellant inquired as to why the IG had not investigated her complaint, the IG told her there were certain high ranking SES officials they could not investigate. This now has to be reported to Congress. If the IG can't investigate complaints about SES officials committing crimes and abusing their authority, then why have an Agency IG that can't conduct investigations against these officials. Thus far, the Agency has not denied any of these charges.

There is no doubt that the Appellant was terminated and retaliated against because of her Whistle Blowing activities. The Appellant was reporting to upper management and to the Inspector General that the Agency was in direct violation of refusing to hold their Contractors accountable for their work as mandated by the Inspector General's Department of Defense Report No. DoDIG-2014-099 dated August 13, 2014. At one point, pertaining to an E-mail dated August 12, 2014 (Carol Ensley), the Agency referred to the Independent Contractors as the Appellant's Coworkers. An Independent Contractor is not a Federal Government Employee's Coworker when the Federal employee is responsible for monitoring the Contractor's performance. Pertaining to the August 13, 2014 report, the IG found and ruled that the Washington Headquarters Services Acquisition

Directorate (WHS AD) Contracting Officials did not properly solicit, award, or manage nine task orders, valued at \$155.1 million dollars. The report further stated, "As a result, one task order DoD potentially wasted \$271,358 and spent 2.4 million more than expected." During the Appellant's brief career, she constantly complained to upper management and others that the Contractors were not doing their jobs, and no one was holding these individuals accountable for their work, which was in direct violation of the August 2014 IG report. The Appellant was filing e-mails and written complaints to management and others that the Contractors were not doing their jobs, and getting paid. The Appellant then reported that the Contractors and Agency Officials were acting in concert with each other for the purpose to engage in a campaign of lies and false information against her for the sole purpose of preventing her Whistle Blowing activities. One Contractor falsely claimed that the Appellant pointed her finger at him- even though the Appellant had a proven record of not talking to the Contractors. The Appellant did not address the Contractors because she reported their alleged improper conduct directly to upper management and others.

**THE APPELLANT HAS A CONFIRMED DOCUMENTED
RECORD OF REPORTING FRAUD, WASTE AND
ABUSE OF AUTHORITY BY WHS OFFICIALS:**

Between July 6, 2015 to and July 31, 2015, the Appellant was assigned to review award documents as to how the Contractors were paid, and the justification for the pay. This when the Appellant discovered some serious issues were going on with no monitoring being done with the contractors' performance but yet they were being paid to their full amount with absolutely no supportive documentation. When the Appellant reported this Fraud, Waste, and Abuse to management, management accused her of causing trouble. There is one Contractor in particular called NetCentrics in which the Appellant informed the Agency that this Contractor was not performing. The Appellant specifically informed Mrs. Lytwaive L. Hutchinson, the named Director, JSP, and Deputy OSD Chief Information Officer, that NetCentrics were not performing which translates to them getting paid, and not doing their job. Mrs. Hutchinson bears the ultimate responsibility for the success or failure for the Information Technology at WHS. It is noted that the Branch Chief

for IT, from the Office of Military Commission, notified Mrs. Hutchinson that NetCentrics were not performing.

**NETCENTRICS FAILS TO PERFORM A MAJOR
CONTRACT IN CUBA AND THEY ARE AWARDED
ADDITIONAL CONTRACTS FOR MORE THAN \$50
MILLION DOLLARS:**

NetCentrics was awarded a contract that ranged between 2 and 4 million Dollars to install a secure internet system in Cuba, Guantanamo Bay. After the Appellant and others clearly put the Agency on notice that the Contractor was not performing, WHS officials made a decision not to do nothing, and permit NetCentrics to get paid for the contract. An inquiry revealed that WHS officials and Mrs. Hutchinson have a long history of not monitoring their contractor's performance (in direction violation of their own policies and mandates from the Inspector General's Department of Defense Report No. DoDIG-2014-099 dated August 13, 2014) thus

permitting the tax payers to be defrauded for Millions of Dollars. When good employees complain, and report this type of activity, they are promptly put on Administrative Leave and unjustly terminated. It has been reported that these dishonest and corrupt Agency Officials also attacked the good employee's security clearance in order to prevent her from gaining employment at any other Agency that requires a security clearance. It appears that the CIA and FBI may have been involved in the Cuba issue for good reasons. The bottom line here is that NetCentrics did not install a secure internet system at Guantanamo Bay, they were paid for not doing the work, and they were awarded additional contracts for \$50 million Dollars. This is the breakdown:

September 2015: Awarded \$18.06 million US Army

July 4, 2015: Awarded \$7.5 million DoD Federal CT

July 2, 2015: Awarded \$25.39 million DoD Federal CT

Total----- More than \$50 million

When the Appellant's Counsel filed this report with the UNITED STATES MERIT SYSTEMS PROTECTION BOARD on November 30, 2016, and as of this date, the Agency has not denied or addressed the charges. The Agency has until March 17, 2017 to deny or address the charges. After this date, the assigned Judge has the authority to rule in the favor of the Appellant without a further contest. The Appellant is requesting full Reinstatement with back pay and interest to include reimbursement for all Attorney Fees. The Appellant is requesting 8 Million Dollars in Compensatory Damages. In Whistle Blowing cases, the Administrative Law Judge does not have a cap on compensatory damages. Other Judges are usually capped at \$300,000 dollars. 8 Million Dollars in compensatory damages is not excessive when you review the confidential affidavits from family members and others who observed the horrific emotional and psychological damage that was done to the appellant and her family members just because she reported Fraud, Waste, and Abuse of authority to the IG and others without success. The Appellant's Credit Rating has been destroyed, her savings has been depleted, she had to borrow money from family and friends. Her children were injured for no good reason, her lights and electricity were cut off, and many days, the children had very little to eat. The children suffered emotional damage from worrying about their mother. The daughter had to have hip surgery but could not get the follow up

care because the health care insurance was terminated. Imagine having surgery and get the mandatory follow up care. Grades in school were affected. This was a disaster and horrific experience for this family. The appellant is a single parent and all of this stress fell on her. The entire family is in desperate need of professional help. This is a very sad situation. The appellant was granted a tentative job to a GS 14 pending a security clearance background check. It was reported that Agency Officials prevented this job by interfering with her security clearance. There is no question that the Agency went into full retaliation mode to injure the Appellant for life. This type of inhumane conduct must be punished. Agency Officials must be put on notice that there is a significant price to pay for the Unlawful Retaliation Against Whistle Blowers. If it were not for Whistle Blowers, there is no question that the Government's Fraud, Waste, and Abuse of Authority would sky rocket into trillions of dollars. Look at what is happening now. This abuse has been reported to be in excess of 125 Billion Dollars. The Appellant's Affidavits of her children in support of the emotional distress claims are attached as Exhibit F. The children's affidavits give a true picture of this situation. The Appellant's affidavit to emotional stress is listed as exhibit G. It is our Federal union officers who discovered this fraud, waste, and abuse of authority. This pursuit of justice will not stop at the United States Merit Systems Protection. This case simply proves that

congress can't give management officials the unfettered authority to do what is right. History has proven that absolute power can't be trusted. All power must have checks and balances. The federal government unions are the check and balance for Federal agencies. This report and submission proves that unscrupulous government contractors (without monitoring) will bankrupt our country because they are motivated by personal greed and not loyalty to our country. The significant difference between a career employee and a contractor is the career employee only wants to make a decent salary, serve his country, and retire. The career employee is evaluated every six months and he can't rip the government for millions of dollars without doing the work. If the career employee fails to perform, he can be terminated from employment within 30 days. The contractor in most cases are temporary employees with no retirement in sight (the legal way) and most of them are primarily interested in how much money they can get off the top with only performing the minimum or substandard work. If the contractor fails to perform, then it is possible they can be rewarded with an additional 50 million dollar contract for not doing the first job, like net centrics.

THE APPELLANT'S INVESTIGATION OF THIS MATTER

DISCOVERED HOW THE TAX PAYERS GOT RIPPED OFF FOR MORE

THAN 125 BILLION DOLLARS DUE TO FRAUD, WASTE, AND ABUSE OF AUTHORITY.

The problem here is that before any contractor gets paid, executive management must inspect the work and then verify the work was completed according to specifications. All of this verification must be put on a form called Material Inspector Receiving Report DD 250. If all government contracting agencies complied with this form, then it would be less fraud and waste. No contractor should not get paid until this form has been verified. This is what the appellant was reporting, the form DD was not being completed, and the contractors should not get paid. A confidential source told me that the agency had a practice of not completing the forms and paying the contractors. This is a direct violation of the acquisition contracting regulations and Federal Law. Confidential sources told me that management would ask the contractor if the work had been completed, and the contractor would always say yes, and the contractor was paid.

It was revealed that high ranking managers and Senior Executive Service officials established an Inspector General Department that could not investigate them.

When the appellant filed a claim against the SES officials with the IG, the IG told the appellant that they could not investigate SES officials, and she would have to file her complaint with the office of special counsel. The problem here is that most employees have never heard of the office of special counsel, and they would not know how to file this type of complaint.

The third and most significant issue of fraud, waste, and abuse of authority of the tax payer's money is that whenever the major Inspector General investigates and determines that the Department of Defense SES and managers have violated the acquisition laws and federal laws pertaining to contractors by failing to monitor and hold the contractors accountable for their work, there is absolutely no penalty or accountability involved against these high-ranking management officials. Just look at the past IG and GAO reports of major violations such as Net Centrics 50 million dollars being awarded when they did not complete the first contract, another violation of 155 million dollars with no penalty or accountability, and finally, 125 Billion dollars of fraud, waste and abuse of authority. The Department of Defense is the only agency in the government that is never held accountable for their waste of the tax payer's money. Union officials are tax payers also, and they want this fraud and waste to end. The American tax payers will be upset when they

hear about this abuse of power. If there was no penalty for robbing banks, then banks would get robbed all of the time. Right now, there is no penalty or accountability for the Department of Defense fraud and waste of the tax payer's money. This practice will continue unless congress and law enforcement intervene.

If the MSPB awards a favorable ruling on the appellant's whistle blowing charges, then my complete investigation will be forwarded to District 14, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES FOR REVIEW AND FURTHER PROCESSING. The government must hire more employees who want to do the job the right way, and not take bribes and personal contracts. The DD 250 form is attached.

Submitted by the appellant's representative,

Nate Nelson

Date: March 17, 2017

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Submitted by the appellant's representative,

UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

WASHINGTON REGIONAL OFFICE

ELIZABETH AVILES-WYNKOOP

DOCKET NUMBER

Appellant

DC-315H-16-0327-B-1

v

DEPARTMENT OF DEFENSE

Date: March 17, 2017

Agency

APPELLANTS Exhibit File as FOLLOWS:

Exhibit D – Organizational Charts goes with CLOSING ARGUMENTS

Exhibit E – Homeland Security Job Offer goes with COMPENSATORY
DAMAGES

EXHIBIT F – DECLARATIONS FROM Elizabeth Aviles-Wynkoop goes with
COMPENSATORY DAMAGES

Exhibit G – Declaration from Caitlin Aviles-Wynkoop and Patrick Aviles-
Wynkoop goes with COMPENSATORY DAMAGES

Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	Brief and Compensatory Damages and Exhibits	e-Appeal / e-Mail
James Vietti Agency Representative	Brief and Compensatory Damages and Exhibits	e-Appeal / e-Mail
Elizabeth E. Pavlick, Esq. Agency Representative	Brief and Compensatory Damages and Exhibits	e-Appeal / e-Mail

I agree to send a printed copy of the electronic pleading with attachments to non-e filers by the end of next business day, as follows:

Name & Address	Documents	Method of Service
Nate Nelson Appellant Representative 1709 Halcun Drive Petersburg, VA 23803 USA	Brief and Compensatory Damages and Exhibits	US Postal Mail