

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ASTRONICS AEROSAT CORPORATION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275-E:2 I (a), Protected Reporting
RSA 275-E:2 I (b), Refusal to Participate in Illegal Activity
RSA 275-E:2 I (c) Participation in Investigation, Hearing, Inquiry,
Court Action
RSA 275-E:3 Refusal to Participate Execute Illegal Directive

Employer: Astronics AeroSat Corporation, 60-62 Route 101A, Amherst NH 03031

Date of Hearing: September 22, 2015

Case No.: 50303

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant alleges that the employer retaliated against him and illegally terminated his employment on April 25, 2014, because he reported product defect and test failures to his supervisor, refused to participate in falsifying inspections, reports, and inspection requirements, and reported these violations to federal agencies, including the FAA.

He requests, as relief for this action, back pay in the amount of \$71,680.00, medical benefits in the amount of \$5,600, and a pay increase of 3% at \$2150 to 7% at \$5,017.60.

The employer denied they participated in any retaliatory action against the claimant. The employer argued the claimant walked away from his job after an altercation with his supervisor in which he swore at her, left work in the middle of a meeting, lied to human resources, and stole company property which required police involvement. They then processed the termination as an involuntary resignation.

FINDINGS OF FACT

The claimant worked for the employer from March 2014 through April 2014 as a full time Quality Control Inspector. The claimant worked with the employer between October 2013 and March 2014 as a contracted worker through a temp agency.

The claimant met with his supervisor Jodi Sutherland on a weekly basis to discuss issues related to aircraft parts for the entertainment systems assembled by the employer. The claimant made numerous reports to his supervisor that he believed parts were non-conforming, were not properly logged, and did not pass inspection. The claimant did not believe that his supervisor had taken any action regarding his concerns.

The claimant called out of work sick on April 21, 2014. Although he called out sick, he attended a Red Sox game in Boston the same day. The employer requested the claimant change his request from a sick day to a vacation day.

The claimant was involved in a verbal altercation with his supervisor, Jodi Sutherland on April 23, 2014 during which he swore at her. The claimant e-mailed Kimberly Campbell in Human Resources about the argument with Ms. Sutherland and left work early that day.

The claimant called out of work on April 24, 2014 via e-mail that stated "I will be out today".

The claimant returned to work on April 25, 2014. He met with Kimberly Campbell later that day. Prior to meeting with Ms. Campbell, the claimant told his co-worker Tina that he thought he was going to be fired.

The claimant discussed the argument with Jodi Sullivan during the meeting with Ms. Campbell. He also reported a workers compensation injury to his hand. The claimant did not discuss the problems with parts he reported to Ms. Sutherland.

Ms. Campbell initiated the process for reporting a workers compensation claim. The claimant gave varying accounts of when and how his hand injury occurred. He told Ms. Campbell that he had paperwork that would better explain what happened and left the meeting to get the paperwork. Instead of getting paperwork, the claimant collected his work issued laptop and left the building.

Ms. Campbell went to look for the claimant because he did not return to the meeting. She found the claimant in his truck in the parking lot talking to another employee. Ms. Campbell asked the claimant to return to the building to finish the meeting and processing of his workers compensation claim. The claimant refused. Ms. Campbell asked the claimant to return the laptop if he was leaving the premises. The claimant refused and advised he needed to "clean it". Ms. Campbell again asked the claimant to return the laptop or she would call the police. The claimant alleges he told Ms. Campbell he was going to contact the FAA, refused to return the laptop and drove away.

Both the claimant and Ms. Campbell called the police. After the police arrived on the scene, the claimant returned the laptop to the employer. The employer advised the claimant he was not to return to the premises until further notified.

The employer terminated claimant via letter on April 29, 2014. They processed the termination as an involuntary resignation because he disobeyed the directive to return company property, lied about why he left the meeting on April 25, 2014 with Ms. Campbell, left during the April 25, 2014 meeting regarding the workers compensation injury, and walked away from his job on April 25, 2014 when he left the building with company property in his possession.

Throughout his testimony the claimant gave inconsistent dates and accounts about what happened the week of April 21 through April 25, 2014, and varying accounts and inconsistent dates about his workers compensation injury.

The claimant filed a complaint with the EEOC on March 25, 2015, with the FAA on March 25, 2015, with the US DOL on March 26, 2015 and OSHA on March 26, 2015, over a year after his termination from the employer.

DISCUSSION AND CONCLUSIONS

As required by Appeal of Mary Ellen Montplaisir 147 N.H. 297 (2001), this Department is required to apply a "mixed motive analysis" on the evidence presented. Because of the circumstantial nature of the evidence alleged by the claimant, the analytical framework of a "pretext analysis" is appropriate. Under this analytical framework, the claimant has the initial burden of establishing a *prima facie* case of unlawful conduct/retaliation. This requires the claimant to show:

1. he engaged in an act or acts protected by the statute;
2. he suffered an action proscribed by the statute (termination); and
3. there was a causal connection between the protected acts he engaged in

The establishment of a *prima facie* case creates a presumption that the employer unlawfully retaliated against the claimant. The burden of proof then shifts to the employer to rebut the claimant's assertions with evidence that their action was taken for legitimate, non-retaliatory reason(s). This burden of proof is only one of production. The claimant retains the burden of proof to persuade. In response to the employer's rebuttal, the claimant has the opportunity to show that the proffered legitimate, non-retaliatory reason for the action was not the true reason for the unlawful conduct/retaliation, and that his assertion was the true reason for the unlawful conduct/retaliation. The claimant can show this by establishing that the employer's proffered reason for the action is either not credible, or by directly showing that the action was more likely motivated by retaliation in response to his protected act/s.

The claimant fails to establish he was engaged in acts protected by the statute. The claimant reported his perceived concerns with parts to the employer, as were his duties as a quality control inspector. The claimant did not present credible testimony or evidence that he told the employer he would report these complaints to the FAA or make

complaints to other agencies. The claimant did not present any credible testimony or evidence to show the employer asked him to falsify data, omit inspections, or bypass the inspection process.

The claimant fails to establish a causal connection between his termination and his reported concerns regarding parts and inspections to the employer. The claimant told his co-worker that he thought he was going to be fired prior to meeting with Ms. Campbell and reporting his workers compensation claim. The claimant did not present credibly that he indicated to the employer that he intended to file a complaint with the FAA. Further, the claimant did not file any complaints with the FAA or any other agency until a year after he was terminated from employment. The claimant did not present credible evidence or testimony that the employer asked him to falsify data, omit inspections or bypass the inspection process.

Throughout his testimony the claimant gave inconsistent dates and accounts about what occurred the week of April 21 through April 25, 2015, and inconsistent dates and accounts about his workers compensation injury. Therefore, the claimant fails to establish a prima facie case of illegal retaliation/termination.

Even if the claimant had established a prima facie case of illegal retaliation or termination, the employer proved that their actions were motivate by legitimate non-retaliatory reasons, and not because of the claimant's alleged reports.

The employer provided credible testimony and evidence to show that the claimant's termination was based on the verbal altercation with Jodi Sutherland on April 21, 2014, his conduct during the meeting with Ms. Campbell on April 25, 2014, when he left the meeting and the building on April 25, 2015 prior to the workday ending, the removal of the laptop from the premises despite directives not to do so, and the subsequent police involvement.

The Hearing Officer finds the employer showed the reasons for the claimant's termination from employment on April 29, 2014 were motivated by legitimate, non-retaliatory reasons, and not because the claimant filed reports with the FAA or other agencies.

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer's proffered legitimate, non-retaliatory reasons for the claimant's termination were not the true reasons for these actions.

DECISION

Based on the testimony and evidence presented, as this Department finds that the claimant failed to prove by a preponderance of the evidence he that suffered retaliation for his engagement in protected acts, it is hereby ruled that the Whistleblower's Claim is invalid.

Danielle N. Albert
Hearing Officer

Date of Decision: October 19, 2015
DNA/kdc