

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

LARRY F. FISHER,
Appellant,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Agency.

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)
) DOCKET NUMBER
) DC-1221-07-0640-w-1
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)

) DATE: July 5, 2007
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DECLARATION OF DOUGLAS L. BARRETT

I, Douglas L. Barrett, declare under penalty of perjury pursuant to 28 U.S.C. ' 1746 that, to the best of my knowledge, information and belief, the following statements are true and correct:

1. I am currently employed by the United States Environmental Protection Agency ("EPA" or "Agency") as Director of the Finance Center in Research Triangle Park, North Carolina ("RTP"). I have held this position since May 29, 1994, and have been employed with the EPA since May 1974. Appellant, Larry Fisher, interviewed me and hired me into EPA and was my supervisor for a short time thereafter. Prior to that, I was employed with the Veterans Administration for approximately 18 months. I have an Associates Degree in Accounting from Fayetteville Community College in Fayetteville, NC. This was supplemented by additional business and accounting courses at University College at the University of Maryland and 35 years of on-the-job experience in Federal financial management. In my current position I serve as Mr. Fisher's second line supervisor.

2. This declaration is based upon my direct and personal knowledge of the events leading up to my decision to suspend Larry Fisher for four days for Offensive Conduct/Language and Disrespectful Conduct/Communication to a Supervisor, as well as my review of pertinent documents.

3. On the morning of October 10, 2006, Ms. Gloria Owens came into my office. Ms. Owens, Chief of the Contract Payment Center, is a supervisor in the RTP Finance Center. She was very upset and clearly shaken. She stated that she had gone to Larry Fisher's office and that he had called her a "bitch" and a "liar." She said this was

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witnessed by Joe Shellabarger who was present at the time. She only stayed in my office a very brief time and did not discuss the event in detail. She left quickly to return to her office. My intention was to give her some time to calm down and I planned to discuss the event in more detail with her later. However, she left me a phone message that she was going home sick. I did not expect her back that day.

4. I had a brief meeting with Joe Shellabarger, also on October 10, to get his perspective on what had happened. He was shocked at how Larry had responded to Gloria and felt his actions were totally inappropriate. I asked him to send me an email describing the event. He provided this to me.

5. Mr. Fisher's first line supervisor, Ms. Maryann Keith, was on annual leave that week so, in her absence, I had to deal with the situation directly. After my meeting with Joe, I went to Larry Fisher's office and asked him to come into my office to talk. He admitted that he had called Ms. Owens a "liar" and a "bitch." I made it clear that his behavior was not appropriate and he had crossed a line. I told him his conduct was so over the top that he had basically tied my hands and that some administrative disciplinary action would be necessary. He said he would apologize to Gloria. Other than that, he maintained that she was untruthful and he could not trust her. I tried to focus the discussion on how someone at his level should have handled the situation if he had concerns about the accuracy of data Gloria might have given him. Regardless of what data Gloria might have given him, I said that he certainly bore responsibility for taking an ownership role in performing his duties related to processing accounts payable. I made no headway with him in this discussion and he suggested a meeting with the three of us. His purpose for the proposed meeting was to apologize to Gloria and, in his words, to demonstrate she was untruthful. Mr. Fisher's language on this occasion was not an isolated event. Mr. Fisher frequently uses profanity, such as the F word, in his normal conversation. He has done so on many occasions in one-on-one discussions in my office. I always asked him not to do so since people outside my office could hear it. He would always cover his mouth and say okay. I have also counseled Mr. Fisher numerous times about his lack of tact in dealing with people. He would always try to laugh these matters off by saying he would try to be more tactful like me. These issues were not funny to me. He knew it but seems to be incapable of making serious changes in his people skills.

6. Much to my surprise, Gloria returned to the office a couple of hours later. After I found that she was back at work, I went to her office to discuss the matter further. I told her that I thought some action was necessary and that Larry was wrong in what he had done. She told me that she didn't want to be any part of it that she wanted to move on. She said she believed Larry was on the edge. She stated she believed he possessed guns and she didn't want him coming into the office looking for her. She told me I could do whatever I felt was appropriate but she really did not want to be involved in any way with Mr. Fisher. She clearly seemed fearful at this point in time.

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7. I was out of the office the next morning (October 11) and got in at approximately 12:30. I had a meeting from 1:00-2:00 and after that meeting I saw emails that Larry and Gloria had sent out. Larry sent out the first email at 10:37 AM to me with a copy to Gloria and Joe Shellabarger. The subject was "For the Record." In this email he admitted making the statements and said he would apologize. He then went on to discuss "Gloria's inability to tell the truth." He further stated, "I suggest that both you and Gloria obtain more specialized education in the field of accounting. Then, perhaps, Gloria would be more comfortable and competent in explaining what does and what does not constitute an accounts payable. I also suggest more supervisory training for the both of you. Lies, deceit, manipulation, and intimidation is not an appropriate way to handle your employees."

8. Considering the events that had just taken place the previous day, I felt Mr. Fisher's email very inappropriate and ill-advised. If he wanted to send something to me that was one thing, but sending this to Gloria and Joe, I felt, was clearly an effort to further inflame the situation which is exactly what it did. Ms. Owens sent me an email at 10:44 AM and another at 10:51 AM saying that she was discussing this with her husband and would be hiring an attorney. She went on to say that she was afraid for her life.

9. At 11:26AM, Gloria sent an email to me with a copy to my manager, Milton Brown, and to the RTP Labor Relations Specialist, James Reno. In this email, Ms. Owens outlined what had occurred the previous day from her perspective. She closed the email by stating, "I have no confidence that this situation will be resolved and I'd like to restate that I am afraid for my life at work. I will be seeking the assistance of an attorney." She then took off sick to go to the doctor and as she stated, "time needed to recover from verbal abuse at work."

10. I received Joseph Shellabarger's email outlining the events he witnessed at 3:38 PM on October 11. Among other things, Joe's email contained the following statement: "I am sure there must be some history here that I am not aware of that would make Larry react the way he did, but I have never felt more uncomfortable in a business situation, than I did in his office. The tone of voice was very stern and disrespectful. What took me back was the accusatory tone he used with a manager that I would never use with a peer and never think of using with a manager for fear of being fired. I do not know if talking about Larry's wife had him fired up but the profanity was uncalled for, no matter what the situation. I worked for IBM for 24 years and was a manager three times and had never experienced a situation like this. Hopefully, I did not get Larry upset and in turn caused him to react to Gloria like this, because I do not have any explanation for the way Larry reacted in this situation."

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11. On October 12, 2007, at 9:13 AM, I sent Larry an email directing him not to have any further communications with Ms. Owens. In the unlikely event he required any information from her, he should direct his inquiry to his supervisor or, in her absence, to me. I did not want him to inflame the situation any further. Certainly I felt that a face to face meeting for him to apologize was out of the question.

12. I received a copy of Mr. Fisher's October 23, 2007, email entitled "Government Accounting Sweat Shops." It was addressed to the Comptroller General, the EPA CFO, and me. It was a rambling dissertation of inaccuracies and unfounded allegations that have no relationship to reality. In my opinion, the only purpose for this document was to deflect attention from his conduct and attempt to shield him from disciplinary action by claiming to be a whistleblower. Mr. Fisher has been saying much the same thing for years and I know of no one who has ever taken him seriously. While he may strongly believe these things as his vision and his opinions, they are much the same things he has been saying for years. He simply disagrees with management's decisions and policies regarding implementation of the financial management systems and feels that he has a better idea for how to operate the government's financial accounting system. He is frustrated that management at EPA and at the Central Agencies have not chosen to adopt his suggestions. I view Mr. Fisher as disgruntled as well as disrespectful, defamatory and caustic in the manner and tone of his emails expressing his opinions. However, to the best of my knowledge no EPA manager or any manager in the Central Agencies has viewed him as a "whistleblower." There has never been any finding by anyone to support his conclusions. In fact there are Government-wide workgroups that work on issues such as the standard general ledger and Financial Management Lines of Business. There is also the Federal Accounting Standards Advisory Board (FASAB) that establishes generally accepted accounting principals for federal entities. Agencies have to comply with FASAB standards and are audited against these standards. EPA has an annual financial statement audits performed by the independent EPA Inspector General ("IG"). There is no reason for the IG to deceive anyone. The IG concluded in their FY-2006 Financial Statement Audit as follows: "We rendered an unqualified, or clean, opinion on EPA's Consolidated Financial Statements for fiscal 2006 and 2005, meaning that they were fairly presented and free of material misstatement."

13. On October 25, 2006, Mr. Fisher's immediate supervisor Ms. Maryann Keith issued Mr. Fisher a notice of proposed suspension. Her proposal included two charges: (1) Offensive Conduct/Language, and (2) Disrespectful Conduct/Communication to a Supervisor. She recommended a four calendar day suspension.

14. On October 31, 2006, I received Mr. Fisher's response to me on the proposed four day suspension. Mr. Fisher stated that this was a 30 second incident in which he made an inappropriate remark. He stated he had offered to apologize and discuss Mr. Owens issues with the truth. He then went on to state that he felt the suspension was retaliation

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and outlined a host of reasons for his opinion. He stated that (9) accountants had been systematically eliminated over the past 10 years and that he was the last one remaining. I have no idea who the (9) accountants are that he is referring to since I don't recall taking any adverse actions on any accountants on the staff since I became Director on May 29, 1994. I also have numerous accountants on the staff currently so he is clearly not the "last one remaining." He also discussed a host of historical incidents that took place before I came to my job and of which I have no direct knowledge. None of these historically perspectives were relevant to the proposed suspension and would certainly have no bearing on my final decision.

15. Mr. Fisher sent me an email on November 1, 2006, and asked for a meeting to clarify any questions I might have and to state further that he felt the four day suspension was unwarranted. I replied back that I had his statement and statements of the others involved. I informed him that I would be glad to meet with him if he had additional information he wished to provide. I told him I would be out of the office after that day not returning until November 20, 2006. He sent a reply on November 2, 2006, in which he stated he was disappointed in Joe Shellabarger's statement. He stated that Joe had offered to help him any way he could. He said Joe had found it quite humorous (as he did) that Gloria feared for her life. He made reference to a possible assignment for Gloria Owens at Dorthea Dix mental hospital. He then went on to make critical comments towards me. He stated that Joe should never cross me and that he could forget about any future at EPA. He then cited a supposed disagreement that he claims I had with Gloria Cherry a former employee. He said that the whole deal had been orchestrated. Mr. Fisher copied Joe Shellabarger on this email reply, which was totally inappropriate. If anything, this appeared to be an effort to intimidate Joe who already felt uncomfortable having to be involved in this situation at all. In my opinion, this was very poor judgment on Mr. Fisher's part.

16. I replied back to Mr. Fisher's email that I would make my decision on the suspension when I returned to work. I further advised him that making a joke of Ms. Owens reaction to his conduct was inappropriate as was sending his email to Joe Shellabarger. I directed him to cease any further communication of this nature to subordinate employees.

17. Joe Shellabarger sent me an email on November 6, 2006 which I read when I returned to the office on November 20. He stated that any help he was offering Larry related to work and that Larry had misinterpreted this. He said Larry did leave him several voicemails which he did not return because he wanted no part of Larry's personal situation.

18. I returned to work on November 20, 2006, and was very backed up after being on vacation for two weeks. On November 27, 2006, I completed the Douglas Factors Evaluation, provided a copy to James Reno, and kept a copy for my records. I also met with James Reno to review the EPA conduct and discipline table. After completing my

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