Kraig J. Marton #3816
David N. Farren #007384
**JABURG & WILK, P.C.**
3200 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
(602) 248-1000
Attorneys for Defendant John S. Carr

**SUPERIOR COURT OF ARIZONA**

**MARICOPA COUNTY**

| | |
|---|---|
| JOHN GILDING, a married man,<br><br>Plaintiff,<br><br>v.<br><br>JOHN S. CARR, a married man, JOHN DOES I-V and JANE DOES 1-V, inclusive; and ABC ASSOCIATION I-V, inclusive,<br><br>Defendants. | Cause No: CIV2007-016329<br><br>**RULE 12(b)(2) MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICITON**<br><br>(Assigned to the Honorable Thomas Dunevant, III)<br><br>(Oral Argument Requested) |

Pursuant to Rule 12(b)(2), Arizona Rules of Civil Procedure, Defendant John S. Carr ("Carr") moves to dismiss this case for lack of personal jurisdiction. This motion is supported by the following Memorandum, the attached Declaration of John S. Carr, and the Court's entire file in this matter. This case should be dismissed because Carr has no ties to Arizona and should not have been sued here.

## MEMORANDUM

### I. INTRODUCTION AND FACTS

Defendant Carr is a retired air traffic controller who, at all relevant times, has lived in Ohio. (Declaration of John S. Carr, the "Carr Declaration," at ¶2). From September 1, 2000, until September 1, 2006, he served as the President of the National Air Traffic Controllers Association (the "Union"). (Id. at ¶3). Plaintiff Gilding is also an air traffic controller who, at the time of the Linda Peterson incident described below, was a management employee supervisor at Phoenix Sky Harbor International Airport. (Id. at ¶4).

In January 2000, Gilding was accused by a female air traffic controller, Linda Peterson, of sex discrimination and harassment in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). (Carr Declaration ¶5). Her charges went to a hearing before an EEOC Administrative Law Judge, who, on November 4, 2004, found Gilding guilty as charged. (Id.). That decision was affirmed on appeal to the EEOC by order dated September 25, 2005. (Id.; a true and correct copy of the EEOC's decision affirming the ALJ's decision is attached as Exhibit 1 to the Carr Declaration.). Unfortunately, the outcome for Ms. Peterson was far worse than it was for Gilding. She had committed suicide before the final order was entered in her case. (Id. at ¶6).[1]

While he was the Union's President, Carr and other Union officials posted periodic "updates" of news of interest to Union members on the Union's BBS – an Internet based "bulletin board." (Carr Declaration ¶7). Some weekly updates of interest concerned Gilding and the Linda Peterson matter. (Id.). On December 5, 2005, when he was still Union President, he created an Internet "Web log" (a "blog"), called "The Main Bang," on my computer at work. (Id. at ¶8). The blog is passive, which means that Carr could post information and commentary, but that people who read it could not engage in interactions with the posted information. (Id.).

Carr retired in February 2007. (Carr Declaration ¶8). In March 2007, after his retirement, he continued to operate the blog he had started while he was Union President from his home in Ohio. (Id. at ¶9). Although at the time, he enabled a function called "commentary" that allows readers to post opinions or comments about his commentary, the blog is still passive because it still does not allow readers to engage in any interactive process with it. (Id.). Carr does not charge or receive fees from persons who access the blog. (Id.). It is like an Internet diary of his views about FAA and Union issues. (Id.).

The blog can be accessed by anyone who knows about it or who can find it, but is meant primarily for persons who are in or are affiliated with the Union and discusses

[1] These facts are provided to the Court for background and context. They do not require adjudication or a determination of truth in defense of Gilding's defamation complaint. The truth of what Carr has been accused of disseminating and other substantive defenses to the complaint, although not waived and expressly reserved, are not at issue here for purposes of dismissal for lack of personal jurisdiction and therefore do not require this Court to convert Carr's 12(b)(2) motion to a motion for summary judgment.

topics and issues that would be of interest to that national membership. (Carr Declaration at ¶10). The Union currently has a national membership of about 15,000 members around the country. (Id. at ¶11).

On July 30 and 31, 2007, Carr was contacted by Bob Marks, a San Diego air traffic controller, about a rumor that Gilding, who had been transferred to Los Angeles after the Linda Petersen incident, was being transferred back to Phoenix to again supervise air traffic controllers. (Carr Declaration ¶12). He edited copy provided by Mr. Marks and collaborated with him on two stories about the Gilding/Linda Petersen incident and the EEOC's findings against Mr. Gilding, which were posted on his blog on July 30 and 31, 2007. (Id.; true and correct copies of these stories are attached as Exhibit 2 to the Carr Declaration. Gilding has now sued Carr in Arizona for defamation and related claims.

Carr has been a resident of Ohio at all relevant times, has never been a resident of Arizona, and has never done any business in Arizona or has had employees, agents or business associates in Arizona. (Carr Declaration at ¶13). He owns no property or assets of any kind in Arizona. (Id. at ¶14). He has never even been to Arizona, except for several occasions years ago when he was acting as the Union's President with regard to matters unrelated to the Gilding/Linda Peterson matter and except for social visits that also have has nothing to do with such matters. (Id. at ¶15).

The only conceivable contacts with or connections that Carr has had with Arizona have nothing with this case or the Gilding/Linda Peterson matter. About a week prior to posting the subject stories on his blog on July 30 and 31, 2007, Carr received an email from Mark Sherry, a Union member in San Francisco, suggesting that he contact Union representatives in Phoenix about the rumor that Gilding was being transferred back to Phoenix. (Carr Declaration at ¶16A). Carr either spoke to or emailed Jerry Johnson, a Phoenix Union representative, who sent him (Carr) a June 22, 2007, letter confirming the rumor. (Id. at ¶16B). Carr references the letter in the July 30 and 31, 2007, blog stories. (Id.). There also may have been one or more telephone conversations or emails exchanged with Phoenix Union representatives in which Carr was asking for confirmation that the letter was "real." (Id. at ¶16C). It was. (Id.). Gilding has not alleged that any of

these emails or telephone conversations is a basis for the defamation and related claims he has filed against Carr. They aren't.

Given the obvious public and political content of the speech at issue and the truth of such matters as an absolute defense, Gilding has failed to even state an actionable claim for defamation or any related cause of action. As an initial matter and as a matter of law, however, Gilding's Complaint must be dismissed for lack of personal jurisdiction because Carr has no minimum contacts with the State of Arizona and has taken no purposeful actions expressly aimed at Arizona.

## II. LEGAL ARGUMENT

On a motion to dismiss for lack of personal jurisdiction, the plaintiff assumes "the burden of establishing that jurisdiction is proper." *In re Consolidated Zicam Product Liability Cases*, 212 Ariz. 85, 89, 127 P.3d 903, 907 (App. 2006); *Coast to Coast Mktg. Co. v. G & S Metal Prods. Co.,* 130 Ariz. 506, 507, 637 P.2d 308, 309 (App.1981). The plaintiff may not rest on the bare allegations of his complaint, but must "come forward with facts supporting personal jurisdiction." *In re Consolidated Zicam Product Liability Cases*, 212 Ariz. at 89-90, 127 P.3d at 907-08, *citing MacPherson v. Taglione,* 158 Ariz. 309, 311-12, 762 P.2d 596, 598-99 (App. 1988). If the plaintiff makes a prima facie showing of jurisdiction, the defendant then has the burden of rebuttal. *Id.*

Arizona courts may exercise either general or specific jurisdiction over nonresident defendants. *In re Consolidated Zicam Product Liability Cases*, 212 Ariz. at 90, 127 P.3d at 908. General jurisdiction applies when a defendant has "substantial" or "continuous and systematic" contacts with Arizona. *Id.*; *Rollin v. William V. Frankel & Co.,* 196 Ariz. 350, 352-53 ¶ 9, 996 P.2d 1254, 1256-57 (App. 2000). Gilding does not appear to claim, nor could he possibly claim, that Carr has anything like the substantial or continuous and systematic contacts with Arizona that would be required to assert general jurisdiction in this case.

Arizona courts may also assert specific personal jurisdiction over nonresident defendants to the extent permitted by the Due Process Clause of the U.S. Constitution. *In re Consolidated Zicam Product Liability Cases*, 212 Ariz. at 90, 127 P.3d at 908, *citing*

Ariz.R.Civ.P. 4.2(a) and *A. Uberti and C. v. Leonardo,* 181 Ariz. 565, 566, 569, 892 P.2d 1354, 1355, 1358, *cert. denied,* 516 U.S. 906, 116 S.Ct. 273, 133 L.Ed.2d 194 (1995). "Due process is satisfied if (1) the defendants performed some act or consummated some transaction with Arizona by which they *purposefully availed themselves* of the privilege of conducting activities in this state; (2) the claim arises out of or results from the defendants' activities related to Arizona; and (3) the exercise of jurisdiction would be reasonable." *Id.* (emphasis added). This is the traditional, *International Shoe* minimum contacts test that courts have applied for nearly the past 60 years.

"The 'purposeful availment' requirement of the minimum contacts test ensures that [defendants] will not be hailed into a jurisdiction solely as a result of 'random,' 'fortuitous' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'" *In re Consolidated Zicam Product Liability Cases*, 212 Ariz. at 90, 127 P.3d at 908, *quoting Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). "Jurisdiction is only proper if the defendants may reasonably anticipate that their conduct and connection with Arizona may subject them to its jurisdiction." *Id.* "Moreover, the plaintiffs' cause of action must arise out of or relate to the defendants' contacts with Arizona." *Id.* "If the non-resident defendant[s'] forum-related activities 'are not sufficiently connected for [the] court to conclude that the plaintiff[s'] claim arises out of' those activities, dismissal is warranted." *Id., citing Chandler v. Roy,* 985 F.Supp. 1205, 1212 (D.Ariz. 1997) ("arising out of" test is met if, "but for" the contacts between the defendant and the forum state, the cause of action would not have arisen.).

**A. <u>Jurisdiction in Internet Website Cases</u>**

The same due process minimum contacts analysis applies in Internet website cases. The primary concern is that, regardless of the multistate or even international reach of our use of this modern technology, one should not be subject to jurisdiction anywhere in the world simply by using the Internet. Regardless of the technology's reach, due process still requires something more than simply being "on the Internet" as an adequate jurisdictional basis for being hailed into any court anywhere by someone who also uses the Internet.

1 Our Arizona Court of Appeals, Arizona District Court and Ninth Circuit Court of
2 Appeals, in a case arising out of Arizona, have addressed these cyberspace jurisdictional
3 concepts.

4 1. *Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 996 P.2d 1254 (App.
5 2000). In *Rollin*, Arizona investors who purchased stock through Arizona brokers sued
6 the brokers and New York NASDAQ "market makers" – i.e., independent dealers who
7 post stock prices and place orders for securities listed on the NASDAQ stock exchange.
8 The market makers moved to dismiss for lack of personal jurisdiction. The Arizona Court
9 of Appeals affirmed the trial court's order dismissing them on that basis because, it held,
10 posting market quotes on the NASDAQ stock exchange did not satisfy the due process
11 requirement of purposefully availing oneself of the privilege of conducting activities in
12 this state. 196 Ariz. at 357, 996 P.2d at 1261.

13 The *Rollin* plaintiffs had argued that Arizona could acquire specific jurisdiction of
14 the market makers because they had "posted stock quotes" on the Internet that they knew
15 were "accessed by over 5,000 broker-dealers representing buyers throughout the United
16 States, including Arizona," and thereby "intentionally offer[ed] their product to Arizona
17 residents . . . by electronically transmitting their asking price to and accepting orders from
18 the computer screens of the brokers located throughout [Arizona]." 196 Ariz. at 355, 996
19 P.2d at 1259. The Court rejected that argument and its underlying premise that posting
20 stock quotes on the Internet is a legitimate basis for asserting personal jurisdiction over
21 the posted information's source. *Id.* Simply put, posting the information in New York for
22 access by brokers around the country, including Arizona, "does not equate to a *purposeful,
23 focused distribution* of their stock quotes to customers in Arizona or to any other
24 particular state." *Id.* (emphasis added).

25 In the course of its analysis, the *Rollin* Court assumed, for the purpose of argument,
26 that NASDAQ market quote postings were analogous to an Internet website. It relied on a
27 number of cases that have held, or at least suggested, that "use of the Internet, without
28 more, does not constitute purposeful availment for specific jurisdiction purposes," noting:

> Courts in such cases have found personal jurisdiction lacking when a
> nonresident defendant's Internet connection to the forum state is passive and

> non-interactive. For example, in *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir.1997), the Ninth Circuit, applying Arizona law, held that Arizona did not have jurisdiction over a Florida company whose only contact with Arizona was a minimally interactive web page that was "limited to receiving the browser's name and address and an indication of interest-signing up for the service [was] not an option, nor did anyone from Arizona do so [, and] [n]o money changed hands on the Internet from (or through) Arizona." The court reasoned that basing personal jurisdiction "on an essentially passive web page advertisement" "would not comport with traditional notions of what qualifies as purposeful activity invoking the benefits and protections of the forum state." *Id.* at 420.

196 Ariz. at 356, 996 P.2d at 1260.[2] Based on these analogous cases, the Court observed that electronically posting stock quotes which could be accessed and viewed in Arizona was "more akin to passive Internet activity than to interactive conduct, open solicitation, or 'doing business' on the Internet." *Id., citing Bensusan Restaurant Corp. v. King,* 937 F.Supp. 295, 301 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997) (creating a website, like placing a product into the stream of commerce, "may be felt nationwide – or even worldwide – but, without more, it is not an act purposefully directed toward the forum state") *and E-Data Corp. v. Micropatent Corp.,* 989 F.Supp. 173, 177 (D.Conn. 1997) (fact that nonresident Internet advertising had potential to reach and solicit Connecticut residents was insufficient to confer jurisdiction).

2. Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414 (9th Cir. 1997). In *Cybersell,* the case cited by the Arizona Court of Appeals in *Rollin* in support of its decision (see indented quotation above), an Arizona corporation sued a Florida corporation that had advertized on the Internet and allegedly infringed the Arizona corporation's trademark.

---

[2] The Court contrasted these cases with other Internet-related cases that have not involved the same passive use of the Internet to post opinions or information, but have involved contacts or "intentional, directed solicitation" *for commercial gain* aimed at the forum state. *See* 196 Ariz. at 355, 996 P.2d at 1260, *citing, e.g., CompuServe, Inc. v. Patterson,* 89 F.3d 1257 (6th Cir. 1996) (discussed below in connection with the *Cybersell* case); *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F.Supp. 161, 165 (D.Conn. 1996) (nonresident corporation purposefully availed itself of forum state by "direct[ing] its advertising activities via the Internet" to that state); *TELCO Communications v. An Apple A Day,* 977 F.Supp. 404, 407 (E.D.Va. 1997) (website advertisement, solicitation and press releases in forum state conferred jurisdiction).

The Arizona District Court dismissed for lack of personal jurisdiction, and the Ninth Circuit affirmed because the Florida corporation's use of the plaintiff's mark on its website was not an act purposefully directed to the Arizona plaintiff. 130 F.3d at 420.

The *Cybersell* case was the Ninth Circuit's first opportunity to consider "when personal jurisdiction may be exercised in the context of cyberspace." 130 F.3d at 417. The Court began it analysis by reviewing two cases in the Second and Sixth Circuits that it described as "opposite ends of the spectrum." *Id.* In the first case, *CompuServe, Inc. v. Patterson,* 89 F.3d 1257 (6th Cir. 1996), the nonresident Texas defendant had a contract with the Ohio plaintiff to sell his computer software to the plaintiff's subscribers through use of the plaintiff's website. Jurisdiction in Ohio was found based on the defendant's contractual relationship with the plaintiff, by which he had "knowingly reached out" to the plaintiff's forum state for financial gain, and the fact that their dispute arose from that relationship. *Cybersell, Inc.*, 130 F.3d at 417. This is what can be called the commerce and contracts end of the spectrum.

In the second case, *Bensusan Restaurant Corp. v. King,* 937 F.Supp. 295 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997), the nonresident Missouri defendant, who created a "general access web page" to advertise his business, was sued by a New York plaintiff in New York The Second Circuit affirmed dismissing the case for lack of jurisdiction and, in doing so, explicitly distinguished the use of a "passive web page, which just posted information," from the contractual basis for asserting jurisdiction in the aforementioned *CompuServe* case:

> [W]hereas [in *CompuServe*] the Texas Internet user specifically targeted Ohio by subscribing to the service, entering into an agreement to sell his software over the Internet, advertising through the service, and sending his software to the service in Ohio, [the Missouri defendant] has done nothing to purposefully avail himself of the benefits of New York. [Defendant], like numerous others, simply created a Web site and permitted anyone who could find it to access it. Creating a site, like placing a product into the stream of commerce, may be felt nationwide – or even worldwide – but, without more, it is not an act purposefully directed toward the forum state.

*Cybersell, Inc.*, 130 F.3d at 417-18. This is the passive, non-interactive use of a website end of the spectrum.

The *Cybersell* Court held: "[S]o far as we are aware, no court has ever held that an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff's home state. . . . Rather, in each, there has been '*something more*' to indicate that the defendant *purposefully (albeit electronically) directed his activity in a substantial way* to the forum state." 130 F.3d at 418 (citation omitted; emphasis added). This "*something more*" needed to indicate that a defendant has purposefully directed his activity in a substantial way to the forum state has now been defined as an "*express aiming*" at the forum state, a topic that is further discussed below with regard to Internet tort cases.

The Ninth Circuit later clarified that what it meant by the "*something more*" that is required to indicate that a defendant has "purposefully (albeit electronically) directed his activity in a substantial way to the forum state." In *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000), the Court held that, based on the U.S. Supreme Court's "*Calder* effects test" (discussed below), "*something more*" means that the defendant has "*expressly aimed*" his activity in a substantial way to the forum state.

As *Cybersell* itself indicates, "an internet domain name and passive website alone are not 'something more,' and, therefore, alone are not enough to subject a party to jurisdiction." *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006).

3. <u>Forever Living Products U.S. Inc. v. Geyman, 471 F.Supp.2d 980 (D.Ariz. 2006)</u>. In *Forever Living Products U.S. Inc. v. Geyman*, the Arizona District Court relied on these Ninth Circuit cases when, upon granting a motion to transfer the case to another district, it expressed "little doubt" it lacked jurisdiction over some or all of the nonresident defendants. 471 F.Supp.2d at 984. Plaintiffs had sued the nonresident defendants for defamation and intentional interference based on an allegedly defamatory inquiry about them posted on an Internet website. *Id.* at 982. The Court had little trouble finding that the Arizona plaintiffs' assertion of jurisdiction over these defendants was borderline frivolous, stating: "These are just a few of the [Ninth Circuit] cases contained in a wide body of case law stating the same principle: Allegedly tortious conduct on a passive website will not vest jurisdiction in a forum merely because the Defendant knows that the alleged victim of the alleged wrong resides in that forum." *Id.* at 984. Because of

1 its obvious impact and application to the defamation claims made by Gilding against Carr
2 in this case, *Forever Living Products* will be discussed in more detail below.

3 **B. Jurisdiction in Internet Defamation Cases**

4 The controlling precedent here, of course, is the Arizona District Court's decision
5 in *Forever Living Products U.S. Inc. v. Geyman*, 471 F.Supp.2d 980 (D.Ariz. 2006),
6 briefly discussed above. There, the nonresident defendants had sued the Arizona plaintiff,
7 Forever Living Products (FLP), in Washington, alleging a copyright infringement. 471
8 F.Supp.2d at 982. Defendants' counsel had posted an allegedly defamatory inquiry about
9 FLP on an Internet website, *ww.scam.com*, that was accessible in Arizona. *Id.* at 982-83.

10 The *Forever Living Products* Court granted a defense motion to transfer the case to
11 Washington and, in doing so, concluded in no uncertain terms that there was "little doubt"
12 it lacked personal jurisdiction over some or all of the defendants. 471 F.Supp.2d at 984.
13 It relied on the same Ninth Circuit decisions cited and discussed in the preceding sections,
14 including *Cybersell* and *Bancroft & Masters*, to support that conclusion:

15 > The Ninth Circuit has well developed case law regarding personal jurisdiction based on contacts through the internet. This circuit has concluded that something more than mere advertisement or solicitation on the internet is necessary to indicate that a Defendant purposely, albeit electronically, directed his activity in a substantial way to the forum state. *Cybersell, Inc. v. Cybersell, Inc.,* 130 F.3d 414 (9th Cir.1997); *see also Bancroft & Masters, Inc. v. Augusta National Inc.,* 223 F.3d 1082 (9th Cir.2000); *Metropolitan Life Ins. Co. v. Neaves,* 912 F.2d 1062 (9th Cir.1990). . . . These are just a few of the cases contained in a wide body of case law stating the same principle: Allegedly tortious conduct on a passive website will not vest jurisdiction in a forum merely because the Defendant knows that the alleged victim of the alleged wrong resides in that forum. *See Pebble Beach Co. v. Caddy,* 453 F.3d 1151, 1158 (9th Cir. 2006).

16 17 18 19 20 21 22

23 471 F.Supp.2d at 984. The wide body of case law stating this principle includes *Medinah*
24 *Mining, Inc. v. Amunategui*, 237 F.Supp.2d 1132, 1135 (D.Nev. 2002) (discussed in the
25 *Forever Living Products* case, noting that "the Ninth Circuit as well as the majority of
26 jurisdictions, have rejected the holding that merely posting information on an otherwise
27 passive website is sufficient" to confer jurisdiction); *Mallinckrodt Medical, Inc. v. Sonus*
28 *Pharmaceuticals, Inc.*, 989 F.Supp. 265, 272-73 (D.D.C. 1998) (same regarding allegedly

defamatory posting on an AOL electronic bulletin board); *Barrett v. Catacombs Press*, 44 F.Supp.2d 717, 729 (E.D.Pa. 1999) (defamatory statements posted on interactive website were minimal, and therefore insufficient to confer jurisdiction); *Sublett v. Wallin*, 94 P.3d 845, 853 (N.M.App. 2004) (stating that an acceptable jurisdictional basis "at a minimum, requires a degree of interactivity on the site" and that a "passive website, which merely provides information and offers no opportunity for interaction" ordinarily is insufficient); and *Jewish Defense Organization, Inc. v. Superior Court*, 72 Cal.App.4th 1045, 1060, 85 Cal.Rptr.2d 611, 625-26 (Cal.App. 1999) (no jurisdiction over defendant solely because of allegedly defamatory statements posted on a passive website).[3]

The grave dilemma in asserting jurisdiction when the alleged defamation is posted on a passive Internet website is the undesirable, and clearly unreasonable, specter of being hailed into court anywhere in the world. While that specter may sometimes be palpable in a commercial use of the Internet for financial gain, merely posting information or personal commentary in a passive, noncommercial use of the Internet is nearly always unpalpable, and constitutionally distasteful. *See Weber v. Jolly Hotels*, 977 F.Supp. 327, 333 (D.N.J. 1997) (jurisdiction based on an Internet website would mean "there would be nationwide (indeed, worldwide) personal jurisdiction over anyone and everyone" and would not be consistent with traditional personal jurisdiction case law).

Defamation actions are especially susceptible to this modern day threat to traditional due process safeguards because, in such cases, the alleged harm to a plaintiff's reputation will almost always occur where the plaintiff resides. As one court bluntly put it: "There is

---

[3] At first blush, a prior Arizona District Court case, authored by the same judge, appears contrary to the Court's ruing in *Forever Living Products U.S. Inc. v. Geyman*. In *EDIAS Software International, L.L.C. v. BASIS International Ltd.*, 947 F.Supp. 413 (D.Ariz. 1996), also a defamation case, it had said that a defendant "should not be permitted to take advantage of modern technology through an Internet Web page and forum and simultaneously escape traditional notions of jurisdiction." *Id.* at 420. The Ninth Circuit in *Cybersell* questioned that statement, however, and noted that *EDIAS Software* involved more than use of the Internet alone, including visits to Arizona, sales made to Arizona customers and a business relationship with the plaintiff. *Cybersell*, 130 F.Supp.2d at 419; *see also Medinah Mining, Inc. v. Amunategui*. 237 F.Supp.2d at 1137 (stating that *EDIAS Software*, having preceded *Cybersell*, is "legally precarious" and no longer good law).

no nationwide jurisdiction for defamation actions . . . and the advent of the Internet and Internet service providers such as AOL does not change that fact." *Mallinckrodt Medical, Inc. v. Sonus Pharmaceuticals, Inc., supra*, 989 F.Supp. at 273.

Accordingly, a majority of courts, including Arizona's state and federal courts, have rejected the notion of nationwide jurisdiction in defamation cases based solely on the situs of the alleged harm. The Ninth Circuit has held that merely posting information on the Internet is insufficient to confer jurisdiction without "'*something more*' to indicate that the defendant *purposefully (albeit electronically) directed his activity in a substantial way* to the forum state." *Cybersell, supra*, 130 F.3d at 418 (emphasis added). This "*something more*," in the context of the "*Calder* effects test," means that the defendant has "*expressly aimed*" his activity in a substantial way to the forum state. *Bancroft & Masters, Inc. v. Augusta Nat. Inc., supra*, 223 F.3d at 1087 (emphasis added). Further, the Arizona Court of Appeals has held that posting information on the Internet "does not equate to a *purposeful, focused distribution*" of that information "to customers in Arizona or to any other particular state" that is needed to confer jurisdiction. *Rollin v. William V. Frankel & Co., Inc., supra*, 196 Ariz. at 355, 996 P.2d at 1259 (emphasis added).

The Arizona District Court fully embraced these principles in *Forever Living Products U.S. Inc. v. Geyman*, when it very clearly said in an Internet defamation case: "Allegedly tortious conduct on a passive website will not vest jurisdiction in a forum merely because the Defendant knows that the alleged victim of the alleged wrong resides in that forum." 471 F.Supp.2d at 984. This is the majority rule and, realistically, the only rule that makes any constitutional sense.

## III. <u>THIS COURT MAY NOT ASSERT PERSONAL JURISDICTION OVER CARR BASED ON HIS USE OF A PASSIVE INTERNET BLOG.</u>

The jurisdictional facts have been provided to this Court by the Declaration attached to this motion. As set forth above and in his Declaration, Carr is an Ohio resident who, at all relevant times, has lived in Amhearst, Ohio. He has no property or assets of any kind in Arizona and has never even been to Arizona, except for several visits years ago when he was acting as the Union's President and for occasional social visits over the years. There very clearly is no basis whatsoever for claiming general personal

jurisdiction in this case based on "substantial" or "continuous and systematic" contacts with Arizona. *See Rollin v. William V. Frankel & Co.*, 196 Ariz. 350, 352-53 ¶ 9, 996 P.2d 1254, 1256-57 (App. 2000).

Nor is there legitimate basis to claim specific personal jurisdiction in this case based on any contact Carr has ever had with Arizona out of which Gilding's defamation claims made in this case.[4] The subject of Gilding's defamation claims made in this case are the two stories concerning the Linda Peterson incident that Carr posted on his passive Internet blog on July 30 and 31, 2007.

First, the cases in both state and federal Arizona courts on the subject of acquiring jurisdiction based on a defendant's use of a passive Internet website are abundantly clear: "Allegedly tortious conduct on a passive website will not vest jurisdiction in a forum merely because the Defendant knows that the alleged victim of the alleged wrong resides in that forum." *Forever Living Products U.S. Inc. v. Geyman*, 471 F.Supp.2d 980, 984 (D.Ariz. 2006); *accord*, *Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 996 P.2d 1254 (App. 2000) (use of Internet website "does not equate to a *purposeful, focused distribution*" of contacts with the forum state and, "without more, does not constitute purposeful availment for specific jurisdiction purposes") (emphasis added); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997) (advertising on the Internet is insufficient to subject the advertiser to jurisdiction in the plaintiff's home state; there must be "*'something more' to indicate that the defendant purposefully (albeit electronically) directed his activity in a substantial way to the forum state*") (emphasis added); *see also Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (this *"something more"* means "*expressly aimed*" his activity in a substantial way to the forum state) (emphasis added). There simply is no possible jurisdictional basis to hail Carr into an Arizona court for posting the allegedly defamatory stories on his Internet blog.

Second, as also set forth in his Declaration, the only conceivable only contacts Carr has had with Arizona that are in some way relevant to the subject of Gilding's defamation

---

[4] Claims related to defamation actions, such as Gilding's intentional infliction and other "piggy backed" claims, are generally subsumed in the defamation claim analysis and are treated in the same way. *See, e.g.*, *Citizen Publishing Co. v. Miller*, 210 Ariz. 513, 517, 115 P.3d 107, 111 (2005).

claims made in this case are the few pre-posting emails or telephone calls Carr admits he may have had with Phoenix Union representatives prior to posting the stories as the source of the blog's contents. None of any of these few contacts, however, was initiated by Carr, and none is either individually or collectively sufficient to meet the due process standard of, in the words of the Arizona Court of Appeals, a "*purposeful, focused distribution*" of contacts with this state, or, in the words of the Ninth Circuit, "'*something more [i.e., an express aiming] to indicate that the defendant purposefully (albeit electronically) directed his activity in a substantial way to the forum state.*" *See also Danis v. Ziff-Davis Pub. Co.*, 138 Ariz. 346, 349, 674 P.2d 900, 903 (App. 1983) (New York defendant's mailing a letter to plaintiff in Arizona was not a sufficient act to satisfy the requirement of minimum contacts where "[n]othing about the letter suggests that the [plaintiff] could anticipate being subjected to suit here"); *G.T. Helicopters v. Helicopters Ltd.,* 135 Ariz. 380, 661 P.2d 230 (App.1983) (telephone communications by non-resident into Arizona held not significant purposeful activity).

Furthermore, and more importantly, regardless of how many emails or telephone calls there may have been between Carr and anyone in Arizona, there is nothing to confer specific personal jurisdiction because Gilding's claims do not "arise[] out of or result[] from the defendants' activities related to Arizona," a required condition of specific personal jurisdiction. *See In re Consolidated Zicam Product Liability Cases*, 212 Ariz. 85, 90, 127 P.3d 903, 908 (App. 2006). Gilding does not, and clearly could not, claim that any communication Carr may have received from anyone in Arizona was wrongful or a basis of his claims brought in this Court.

## CONCLUSION

For all of the foregoing reasons, Defendant Carr requests that case be dismissed for lack of personal jurisdiction over him. Carr also requests an award of his attorneys' fees incurred in defense of this case pursuant to A.R.S. §12-341.01(c) and/or A.R.S. §12-349.

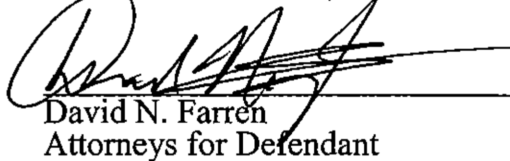
///

///

///

DATED this 31th day of October, 2007.

JABURG & WILK, P.C.



David N. Farren
Attorneys for Defendant

ORIGINAL filed with the
Clerk of the Court this 31st day
Of October, 2007;

**COPY** of the foregoing mailed
this 31st day of October, 2007 to:

Michael W. Pearson, Esq.
Robert D. Wooten, Esq.
CURRY, PEARSON & WOOTEN, PLC
814 West Roosevelt Street
Phoenix, Arizona 85007
Attorneys for Plaintiff

Kraig J. Marton #3816
David N. Farren #007384
**JABURG & WILK, P.C.**
3200 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
(602) 248-1000
Attorneys for Defendant John S. Carr

**SUPERIOR COURT OF ARIZONA**

**MARICOPA COUNTY**

JOHN GILDING, a married man,

Plaintiff,

v.

JOHN S. CARR, a married man, JOHN DOES I-V and JANE DOES 1-V, inclusive; and ABC ASSOCIATION I-V, inclusive,

Defendants.

Cause No: CV 2007-016329

**DECLARATION OF JOHN S. CARR IN SUPPORT OF RULE 12(b)(2) MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICITON**

(Assigned to the Honorable Thomas Dunevant, III)

I, John S. Carr, declare:

1. I am the Defendant named in this lawsuit filed by John Gilding in the Maricopa County Superior Court, State of Arizona.

2. I live in Amherst, Ohio. I have lived in Amherst since September 1, 2007. From September 2006 until August 31, 2007, I live in Avon, Ohio.

3. I am the former President of the National Air Traffic Controllers Association (the "Union"). I served in that position from September 1, 2000, until September 1, 2006.

4. To my knowledge, Mr. Gilding is an air traffic controller who, at the time of the Linda Petersen incident described below, was a management employee supervisor at the Phoenix Sky Harbor International Airport.

5. In approximately January 2000, Linda Petersen, a female air traffic controller, accused Mr. Gilding of sex discrimination and harassment. Her charges went to a hearing before an EEOC Administrative Law Judge, who, on November 4, 2004, ruled against Mr.

Gilding. The EEOC affirmed that decision on appeal according to a September 25, 2005, order, a true and correct copy of which I have attached as Exhibit 1 to this Declaration.

6. Unfortunately, it was reported that Ms. Petersen committed suicide before the final EEOC order was entered in her case.

7. While I was Union President, I and other Union officials periodically posted news and "updates" of news of interest to Union members on a Union Internet site which we called the BBS. The BBS is essentially an Internet based "bulletin board." Because the news regarding the charges Ms. Petersen had brought against Mr. Gilding were of tremendous interest to the Union's membership, these postings included news and updates concerning such matters.

8. I retired as an air traffic controller in February 2007. On December 5, 2005, when I was still Union President, I had created an Internet "Web log" (a "blog"), called "The Main Bang," on my computer at work. The blog was passive, which means that I could post information and commentary, but that people who read it could not engage in interactions with the posted information.

9. In March 2007, after my retirement, I continued to operate the blog I had started while I was Union President from my home in Avon, Ohio. At that time, I enabled a function called "commentary" that allows readers to post opinions or comments about my or others' commentary. The blog is still passive, however, because it still does not allow readers to engage in any interactive process with it.

10. The Main Bang can be accessed by anyone who knows about it or who can find it, but is meant primarily for persons who are in or are affiliated with the Union and discusses topics and issues that would be of interest to that national membership. I do not charge or receive fees from people who access the blog. The blog is like an Internet diary of my views about FAA and Union issues.

11. The Union currently has a national membership of about 15,000 members around the country.

12. In late June or early July 2007, Bob Marks, an air traffic controller in San Diego, called me and told me about a rumor that Mr. Gilding, who had been transferred to

Los Angeles after the Linda Petersen incident, was being transferred back to Phoenix to again supervise air traffic controllers. He wanted me to write about it in my blog. I said, write something and send it me. He did, and I edited it and collaborated with him on two stories about the Gilding/Linda Petersen incident and the EEOC's findings against Mr. Gilding, which I posted on my blog on July 30 and 31, 2007. True and correct copies of these stories are attached as Exhibit 2 to this Declaration.

13. I have been a resident of Ohio at all relevant times, I never been a resident of Arizona, I have never done any business in Arizona, and I have never had employees, agents or business associates in Arizona.

14. I own no property and have no assets located in Arizona.

15. I have never even been to Arizona, except for several occasions years ago when I was acting as the Union's President and except for occasional social visits over the years. None of these visits to Arizona were related to matters concerning Mr. Gilding or Ms. Petersen. For example, I just happened to travel to Tucson about a month ago to attend a friend's daughter's wedding.

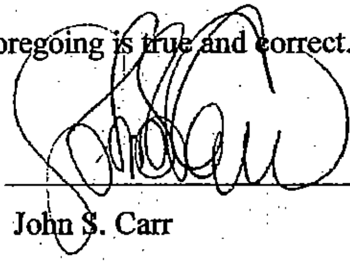
16. To the best of my knowledge and recollection, the only telephone calls or email communications I have had with anyone in Arizona that have had anything to do with this case or the subject of the July 30 and 31, 2007, blog stories happened just before I posted the stories on my blog. Specifically:

A. About a week before July 30, 2007, I received an email from Mark Sherry, a Union member in San Francisco, California. I don't remember whether I responded by telephone or by email, but, as I do recall, Mr. Sherry suggested that I contact Union representatives in Phoenix about a rumor that Mr. Gilding, who had been transferred to Los Angeles after the Linda Petersen incident, was being transferred back to Phoenix.

B. I either spoke to or emailed Jerry Johnston, a Phoenix Union representative about the rumor. Jerry sent me a letter dated June 22, 2007, confirming the rumor. I reference this letter in my July 30 and 31, 2007, blog stories.

C. There also may have been one or more follow-up telephone conversations or emails I could have had or exchanged with a Phoenix Union representative in which I asked for confirmation that the June 22, 2007, letter was real. I was told that it was.

I certify under penalty of perjury that the foregoing is true and correct.



John S. Carr

"EXHIBIT 1"

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

Estate of Linda Petersen,
Complainant,

v.

Norman Y. Mineta,
Secretary,
Department of Transportation,
Agency.

Appeal No. 07A50016

Agency No. DOT-6-00-6032

Hearing No. 350-2000-083

DECISION

Following its November 4, 2004 final order, the agency filed a timely appeal which the Commission accepts pursuant to 29 C.F.R. § 1614.405. On appeal, the agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding that the agency discriminated against complainant on the basis/bases of her gender (female). The agency also requests that the Commission affirm its rejection of the AJ's order of remedial relief. For the following reasons, the Commission reverses the agency's final order.

Complainant, an Air Traffic Controller employed at the agency's Phoenix Tower facility, filed a formal EEO complaint with the agency on January 18, 2000. She alleged that the agency had discriminated against her on the basis of sex (female) when:

(1) on July 8, 1999, her supervisor suspended her from working Local Control South tower after requiring her to take a verbal test;
(2) On August 18, 1999, her supervisor verbally reprimanded her in front of her peers in the cab;
(3) on September 2, 1999, her supervisor decertified complainant on the Local Control South; and
(4) on September 10, 1999, her supervisor issued a memorandum requiring complainant to take remedial training.

At the conclusion of the investigation, complainant was provided a copy of the investigative report and requested a hearing before an AJ.

Following a hearing, the AJ found that complainant established a *prima facie* case of discrimination based on gender and that she was subjected to discriminatory harassment. Specifically, the AJ found that complainant's supervisor (S) wanted complainant to repeat her training on the Local South tower even though she had completed 85 to 90% of her training successfully. He also found that complainant did not have any negative performance documented at the time she was decertified in July 1999 and she was the only controller required to take an impromptu verbal quiz. The AJ found that no other controller was decertified for the reasons outlined by S and that male controllers were not held to the same standards. Given these findings the AJ also found that the remedial training that the agency ordered complainant to take was discriminatory because it was based on criteria that was not applied equally to male employees.

The agency's final order rejected the AJ's decision. On appeal, the agency argues that the AJ erred by finding certain witnesses credible even though there was evidence that they had a personal bias against S. The agency argued that both male and female controllers did not like S's style but his style was equally demanding on both male and female controllers. The agency argued that complainant made more serious errors during her training which was the reason why S treated her differently from another controller who made only technical errors.

The agency argued that one of the witnesses on which the AJ relied gave an inconsistent statement regarding matters in the record. The agency argued that this was after-acquired evidence which should be considered and should require reversal of the finding of discrimination. The agency also argued that the AJ erred by finding another witness to be credible in this proceeding but not credible in another hearing involving another EEO complaint. The agency does not contest the AJ's award of remedies for the discriminatory conduct.

On appeal, complainant argues that the agency misstated the evidence and that the AJ's decision should be affirmed. She argues that the new evidence which the agency proffers should not be considered because there was no showing that it was not available during the hearing. Complainant contends that the AJ's credibility findings should be given great deference. She cites to the unrefuted testimony that S made derogatory remarks about women and their ability to perform as controllers. Complainant referred to the testimony of a controller/trainer who confirmed that S was condescending and intimidating towards complainant, that he treated her differently than he treated the male trainees and that the impromptu quiz he gave her was a "joke."

## ANALYSIS AND FINDINGS

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

*Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. *See Pullman-Standard Co. v. Swint*, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a *de novo* standard of review, whether or not a hearing was held.

After a careful review of the record, we are not persuaded by the agency's arguments and we see no reason to disturb the AJ's finding of discrimination. The findings of fact are supported by substantial evidence which demonstrated that S exhibited bias against complainant because of her gender. There was testimonial evidence from other air traffic controllers, which supported the AJ's finding that S made derogatory comments about complainant stating that "women controllers did not move traffic well" and "that's just what the tower needs, another woman controller who can't do the job." Another controller confirmed that S referred to complainant as "bitch" and "c**t" and that S never referred to complainant by her first name but instead called her "that woman."

Regarding this evidence, the agency argues on appeal that the testimony is unreliable because at least one of the air traffic controllers who testified, later, after the closing of the record in this matter, made an inconsistent statement. However, the evidence on which the agency relies is not persuasive. Moreover, we conclude that the agency failed to demonstrate that the claimed impeachment evidence was not available during the hearing process. As to the agency's "new" evidence of a witness' lack of credibility, which it did not present at the hearing, the Commission will normally not consider new evidence unless there is a showing that it was not reasonably available at that time. *EEOC Management Directive 110* Chapt. 9-15 (Rev. November 1999). Here, the agency has made no showing that the evidence of a witness' so-called inconsistent statement was not available during the hearing process. Even if the agency did make such a showing, the evidence the agency submitted on appeal is that of another employee stating what this witness told him. This is not evidence of the witness' inconsistent statement.

Additionally, the agency argues that the AJ failed to rely on evidence in the record tending to show that the witnesses were biased against S or other evidence that detracted from their credibility. All of the arguments and evidence regarding witness credibility were already fully considered by the trier of fact and there is no evidence that the AJ's view of the record is not supported by the record.[1]

Therefore, after a careful review of the record, including arguments and evidence not specifically discussed in this decision, the Commission reverses the agency's final order and remands the matter to the agency to carry out the remedial relief awarded. Since neither party contested the AJ's award of attorney's fees and other remedial action, and because the AJ's Order is consistent

---

[1]The agency's argument that the same AJ found a particular witness to be not credible in another EEO proceeding, would not warrant reversal where the record provides substantial support for the AJ's finding of discrimination.

with the law and our regulations, we direct the agency to take corrective action set forth by the AJ in his Order and as restated below.

ORDER (C0900)

Within 45 days of the date this order becomes final, the agency is ordered to take the following remedial action:

1. The agency will pay complainant's estate back pay represented by the difference between the salary she earned during the period of the harassment (July 1, 1999 to October 15, 1999) and the date that she was re-certified on the Local Control South position and awarded controller-in-charge (CIC) pay. Interest on the back pay shall be included in the back pay computation and back pay is limited to two years prior to the date that the discrimination complaint was filed.

2. The agency shall expunge from its records any adverse materials related to the discriminatory harassment, including documentation related to the decertification and remedial training.

3. The agency shall pay complainant's estate 160 hours of leave restoration which amounts to approximately $8,974.80;

4. The agency shall pay complainant's estate an award of reasonable attorney's fees in the amount of $54,093.13;

5. The agency will require its supervisors and managers at the Phoenix Tower facility to take 8 hours of training on the prohibitions against sexual harassment under Title VII;

6. The agency will consider taking disciplinary action against S for his conduct which was found to be discriminatory. The agency shall report its decision. If the agency decides to take disciplinary action, it shall identify the action taken. If the agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.[2]

---

[2] Commission regulations state that each agency shall take appropriate disciplinary action against employees who engage in discriminatory practices. 29 C.F.R. § 1614.102(a)(6). In promulgating this policy, the Commission clearly stated that it could not discipline or order the discipline of employees directly. 52 Fed. Reg. 41920, 41921 (October 30, 1987). Rather, the Commission stated that the requirement of corrective, curative, or preventative action permits the

The agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0900)

The agency is ordered to post at its Phoenix Tower facility copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (60) consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

ATTORNEY'S FEES (H0900)

If complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the agency. The attorney shall submit a verified statement of fees to the agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of this decision becoming final. The agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0501)

Compliance with the Commission's corrective action is mandatory. The agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective

---

Commission to recommend that disciplinary action be considered by the agency. *Id.* The Commission reaffirmed this policy in *Cassida v. Department of the Army*, EEOC Request No. 05900794 (September 14, 1990), in which it stated that it could not order an agency to take disciplinary action against a particular individual, but could order the agency to consider taking disciplinary action under appropriate circumstances. The implementation of 29 C.F.R. Part 1614 in 1992, and the implementation of the amendments to Part 1614 in 1999 have not altered the Commission's policy in this regard.

action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. The agency's report must contain supporting documentation, and the agency must send a copy of all submissions to the complainant. If the agency does not comply with the Commission's order, the complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. *See* 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File A Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. *See* 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0701)

The Commission may, in its discretion, reconsider the decision in this case if the complainant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or

2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. *See* 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. *See* 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The

Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. *See* 29 C.F.R. § 1614.604(c).

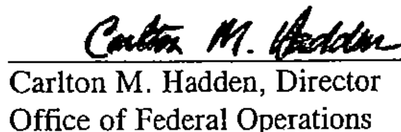
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0900)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z1199)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

SEP 2 1 2005

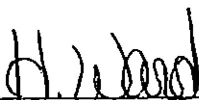
Date

## CERTIFICATE OF MAILING

**For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to complainant, complainant's representative (if applicable), and the agency on:**

SEP 21 2005

Date



Equal Opportunity Assistant

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**
**Office of Federal Operations**
**P.O. Box 19848**
**Washington, D.C. 20036**

**NOTICE TO EMPLOYEES**
**POSTED BY ORDER OF THE**
**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**
**An Agency of the United States Government**

This Notice is posted pursuant to an Order by the United States Equal Employment Opportunity Commission dated _______ which found that a violation of Title VII, 42 U.S.C. Section 2000 et seq., has occurred at this facility. Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, or DISABILITY or their EEO ACTIVITY with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

The Department of Transportation (hereinafter "the facility") supports and will comply with such federal law and will not take action against individuals because they have exercised their rights under law.

The facility has been found to have discriminated against an employee based on gender when she was subjected to harassment.

The agency has been ordered to calculate and pay back pay and restore lost benefits, expunge any records referring to or related to discriminatory conduct, require the complainant's supervisor and other management officials responsible for the harassment or for failing to correct the harassment, to undergo EEO training and consider disciplinary action and pay reasonable attorney's fees.

The facility will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

______________________________

Date Posted: ____________________ Posting Expires______________
29 C.F.R. Part 1614

“EXHIBIT 2”

# The Main Bang

« Whoops. They Did It Again | Main | A Fate Worse Than Death, Part Two »

July 30, 2007

## A Fate Worse Than Death, Part One

Stories abound of FAA mismanagement and incompetence, and any one of us can get tunnel vision under the kind of working environment the FAA has fostered under the lack-of-leadership and responsibility of one Marion C. Blakey.

I cannot possibly catalog all the wrongdoing for you as I only have a couple decades left on this earth, but I have found a calling in reporting to you those I can. Admittedly, some of the stories are more dramatic than others. Some of the stories make better tales than others. And some of the stories...well, they just hurt worse than others.

This is one of those stories. It will be told in two parts, today and tomorrow. After you read Part One, you are going to want to throw up. I urge you instead to forward it to friends, neighbors and others who still think you have it made, who still think it's just about the contract, who still think it's the employee's fault.

Let us pull back for a moment and put the last few years in perspective not just from our working environment but from the way the FAA is treating human beings. Real, live people with families, hopes, dreams, responsibilities, and in many cases children counting on us to make a living while providing the opportunity for a better life than we have.

Under the current Administrator, just to tick off a few points:

--imposed work and pay rules under an ignorant misapplication of law and Congressional intent that are an insult to every air traffic controller in the country, a misapplication of law that a wide, bipartisan majority of the Congress voted against last year and is hell-bent on overturning this year.

--our jobs have been trivialized to the point that she compared us to Maytag repairmen, sitting around getting paid with nothing to do. Marion Blakey has shown utter contempt for her workers in the press and in the Congress.

--academy pay was cut to less than $9 an hour, per diem payments (which let a person eat) were eliminated, and most travel expenses were placed on the backs of those least able to pay but most needed to give their all for this career.

--a dozen controllers were fired in the largest mass termination since the 1981 PATCO action. Their sin? Not checking ONE box correctly on a confusing form with over a hundred questions. And remember: this particular injustice was so grave, so egregious, so wrong, that when the FAA had finished putting on the finest case their money and lawyers could buy---

NATCA rested without calling a SINGLE witness or admitting a SINGLE piece of evidence. NATCA was confident that the FAA's witnesses had not only perjured themselves, but made the union's case for them. And when the smoke cleared, the arbitrator overturned the FAA's unjustified actions and put every single one of those men back to work with back pay.

Every.

Single.

One.

This was just before Christmas, 2005, and this righteous decision enabled our brethren to save homes, college educations, marriages, and have a well deserved but late Christmas. They were able to pull their lives back from the brink, to yank victory from the abyss the agency had thrown them into. After reading this story you will know---they were the lucky ones. Other employees who were mistreated,

September 2007

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | | | | | | |

About

Email Me

Recent Posts

More New Hire Woes
Deja Vu All Over Again, Again
NOTAM Madness
A Steaming Vent
Make A New Plan, Stan
Showtime!
Here We Go Again
Beating The Old Nag
Things I Can't Do
Even More Posters We'd Like To See

search

Popular Searches

yearly salary for... "George Petrovich" potomac Kansas City albuquerque center tampa developmental jtb ego Miami Tower Cab memphis jerry mcarthur flight service houston center linda peterson Miami ATCT mica fcs faa fs21 washington center phoenix foama Wal Mart Miami Tower fdub jacksonville get the flick jacksonville fumes shifflett consolidation john gilding zdc Scott Mann Miami proximity event don brown group of five fired St. Petersburg john carr blog jerry n90 teterboro Gilding the main bang tower cab planet mia atct pic zab main bang asbestos

My Content

The Main Bang
YouTube :: Videos by...

Surprise me!

Get this Widget

Explore

Archives

September 2007
August 2007
July 2007
June 2007
May 2007

April 2007
March 2007
August 2006
July 2006
June 2006

Favorite Links

Blog Flux
Blue Eyed Buddhist
FAA Follies
Get The Flick
Google Earth
JetWhine
Legal Information Institute: U.S. Code: Home
NATCA.org
The Library Of Congress American Memory
THOMAS (Library of Congress)
Subscribe to this blog's feed
Add me to your TypePad People list

harassed and mentally tortured by Marion Blakey's FAA were not so fortunate. Their stories don't end so well.

With this background in mind I want to refocus your attention on something that took place in Phoenix and ask your indulgence as I tell this story. The story begins several years ago and will take me two days to tell, but the ending is ripped right out of current events. What I am about to report as a journalist will be reconstructed, to the best of my ability, exactly as it was recorded in official EEOC decisions, and in communication with myself, former Western Pacific Regional Vice President Bob Marks, and members of the PHX and P50 (Phoenix TRACON) locals.

NATCA Member Linda Peterson went to PHX Tower to train. She was not a favorite of management. She did check out at the facility, but was then subjected to scrutiny beyond belief by a supervisor named John Gilding. She filed an EEOC complaint. She was decertified on the basis of an alleged communication that took place which Supervisor John Gilding "heard."

Other witnesses said the communication was fine, but this particular supervisor decertified a qualified, competent controller WITHOUT LISTENING TO THE RECORDING OR EVER HEARING THE COMMUNICATION FIRSTHAND.

The supervisor then decided to take it a step further. An impromptu quiz was administered to her. I never had an impromptu quiz given to me in 29 years of federal service, and I never heard of one being given, or knew of someone who took one. From the decision:

–Complainant provided evidence during the hearing which established that Mr. Gilding did not administer the impromptu verbal quiz to any male controllers during the relevant time period (July 1999). I find that this evidence clearly demonstrates that Complainant was singled out and required to take the impromptu verbal quiz and that Mr. Gilding did not routinely utilize this method of ascertaining the knowledge base and skill level of his subordinates during the relevant time period.

–Complainant and various witnesses, all testified that they were not aware of any controller other than the Complainant who had been decertified based on a "non-operational" error. I find that the Agency did not provide specific evidence to refute their testimony on this point. I also find that this evidence supports the Complainant's testimony that she was singled out for harassment by Mr. Gilding.

–Complainant provided a significant amount of evidence which demonstrated that Mr. Gilding possessed a bias against women.

–testified during the hearing that Mr. Gilding told them that, "women controllers do not move traffic well."

–testified that Mr. Gilding referred to Complainant as a *"b**ch" and a "c**t" during a meeting in August 1999.

Other quotes from the decision, that Mr. Gilding said in the presence of others:

"That's what the tower needs, another woman controller who can't do the job."

"She has so little self esteem in her appearance that she had to have her breasts enhanced..the only way she would succeed is because she is a woman with big breasts."

Now lets talk about credibility, and the obligation to be as truthful as possible at all times during an official investigation. From the decision,

"Based on the demeanor of the witnesses during the hearing, I find that their testimony regarding Mr. Gilding's derogatory gender based statements are credible."

"In contrast, based on Mr. Gilding's testimony during cross examination and my observation of his demeanor, I do not find that his denials regarding the derogatory gender based statements are credible."

In the hearing, when Mr. Gilding was asked about the statements attributed to him by numerous witnesses, he was vague and evasive, and constantly answered he did not recall making the comments, or that he didn't know if it was possible or not

he made them. Remember the comments were all made between July and September of 1999. Back to the decision:

"During the hearing Mr. Gilding's recollection of the events that occurred between July and September 1999 was excellent and he was able to provide detailed information regarding the specific reasons for Complainant's decertification and placement on remedial training. I do not find his testimony that he could not recall whether he made the above mentioned derogatory gender based statements about the complainant during the relevant time period are credible. I further find that his reluctance to provide a definite "yes" or "no" response to questions about such statements further undermined his credibility."

So, Mr. Gilding's memory was perfect when it came to supporting his version of the story, but he suddenly suffered from amnesia when he was rightfully called out on the comments he made about Linda, and the names he called her. The administrative law judge found him not credible. In other words, he was lying under oath.

And the icing on the cake:

"I specifically find that Mr. Gilding made the above-mentioned derogatory gender based comments regarding the complainant. I also find that these comments clearly demonstrate that Mr. Gilding possessed a bias against the Complainant because she is a woman. Based on the preceding analysis, I find that Complainant has demonstrated a prima facie case of gender based harassment. The Agency must now demonstrate that there is no basis to impose liability."

The EEOC Administrative Law Judge and eventually the Equal Employment Opportunity Commission (EEOC) in Washington, DC, upheld the findings against all FAA appeals, and Marion Blakey finally dropped her objections. Six figures were paid, the FAA was ordered to reconsider their decision not to discipline the supervisor, and that was that.

The EEOC Case Number is 350-2000-08328X, the Agency Case Number is DOT 6-00-6032. The case decision was originally transmitted on January 29, 2004. The FAA rejected the decision, and the EEOC then ordered the FAA to comply in September, 2005. These are facts, and they are absolutely incontrovertible.

What an amazing vindication! Like our brothers in New York you would think, truly justice was served and the FAA would respect the rule of law and abide by this decision. To quote from a February 10, 2003 reply to a Hotline call a full year before the decision, the Air Traffic Division Manager John Clancy said, "While we acknowledge we had differences, Ms. Peterson exercised her administrative options in accordance with law, rule, and regulation." Harumph, Harumph. What a load from that toad. Yes, she did, John. She took your punk-ass agency to court. And those options resulted in a decision against the FAA.

Tragically, Linda was not able to celebrate this hard won victory. You see, the working environment was so bad at the tower that two years earlier someone had defaced the obituary of Linda's mother that was posted in the facility. How unspeakably cruel do you have to be to do that?

Additionally, someone had scrawled her operating initials on the inside of the tower elevator doors after she went forward bravely with her complaint, so that every time she went to work, they were staring back at her on the ride to the cab. The FAA, of course, never removed the graffiti.

Linda was a suffering soul, and after all the issues with fighting the FAA for years she succumbed to depression. Linda had a bad day on January 12, 2003, and with the specter of a quick turnaround back to the midnight shift that evening, she left early.

Linda Peterson drove home, her mind no doubt racing. She had heard nothing about her case, and every day at work she was probably forced to mentally relive the way the FAA had treated her.

She arrived at her driveway just as she arrived at the end of her hope. Linda Peterson drove up to her garage, raised the door, drove in, and closed it.

She left her car running.

Her housekeeper found her the next day.

Tomorrow: A Fate Worse Than Death, Part Two

Posted at 03:40 AM | Permalink

### TrackBack

TrackBack URL for this entry:
http://www.typepad.com/t/trackback/629509/20414084

Listed below are links to weblogs that reference A Fate Worse Than Death, Part One:

### Comments

I've heard bits and pieces of this story over the last few years, and assumed (hoped?) that it was exagerrated, overblown, misinformed, twisted or maybe just an urban legend. I now know that the rest of what I heard – what I'll probably read here tomorrow – may also be true. And it is, indeed, sickening. The FAA upper management, especially ms blakey, should be ashamed. Ashamed on the most basic level of humanity. This story alone should be the basis of blakey resigning in disgrace. I'm a 40-something year old guy, and this dark story makes me want to cry.

Posted by: BigAL | July 30, 2007 at 06:19 AM

It makes me want to cry as well, Big Al, but it also strengthens the hatred...yes hatred, I feel for Ms. Blakey and her minions Johnson, Day, Ducharme, etc.

Controllers have shown incredible restraint over the last four years while they've been attacked, demeaned, and despised by political hacks and former controllers-turned arrogant, jealous know-it-alls who permeate the FAA's "leadership."

Rest in peace, Linda.

Posted by: higher skilled set wannabe | July 30, 2007 at 08:01 AM

Name GILDING JOHN B
Pay plan FV (FAA CORE COMPENSATION PLAN)
State California
County Los Angeles County
Agency DEPARTMENT OF TRANSPORTATION
Duty station HAWTHORNE
2006 Base pay, adjusted $165,200

http://php.app.com/feds06/search.php

Posted by: TOP GUN's TOP PAY | July 30, 2007 at 08:36 AM

I'm shocked...SHOCKED! that Mr. Gelding (spelling?) has not suffered any pay cut because of this episode.

What a tragedy it is that this employee was subjected to this mistreatment to the point that it killed her and what absurdity it is that the management team in Arizona is so incompetent.

Posted by: lowskillset | July 30, 2007 at 10:46 AM

Very sad story.

Posted by: Saddened | July 30, 2007 at 12:24 PM

As one who had a similiar thing happen, and took the EEO route as well, I have to say that the whole process is slanted in the FAA's favor. You have two weeks to respond to something, they have 12 weeks to respond. You have to keep constantly reliving the incident when going over notes and paperwork.They will just put the offender back in charge within a few days and expect you to deal with it. My case was not near as heinous as Linda's, and it took over five years to get it resolved. This horrible, tragic story is just another example of FAA Mismanagement and its effects on the employees. So much for accountablility!

Posted by: ceceya | July 30, 2007 at 01:17 PM

The FAA Website recently had a picture of Marion the Snake and the head of the AOPA. FAA and the head of the AOPA were Touting Marion the Snakes Legacy she will leave behind for the FAA. They were so proud well this story is Marions TRUE LEGACY!!! She has commited murder and will pay for it when she meets her maker. I hope the family members have access to all this info John because it sounds to me like some sort of criminal charges should be filed on that Stupervisor that helped kill this young Women.

Posted by: mikey G | July 30, 2007 at 02:27 PM

Don't forget one of Marion's greatest hits...the Flight Service privatization debacle. She sharpened her teeth and claws with us and now she's using them to rip up the rest of ATC. It's going to end up costing more to run Flight Service than if it stayed FAA. As stations close, service suffers, and good people are shown the door even though they're still needed.

Posted by: RIF'd AFSS'r | July 30, 2007 at 02:28 PM

eeo process is nothing but another process designed to protect incompetent management. file and retaliation is certain.

Posted by: babs | July 30, 2007 at 03:11 PM

That's the FAA for you.

F__k a trainee on your desk at work? Recommended two-week suspension, served with annual leave.

Make a public statement against the imposed work rules that f__k all trainees everywhere in the system? Buddy, you'd better hope they allow you to retire in the old pay bands.

World's best job, world's worst employer. I can't remember who first said to me, but it's just as true today as it was the first day I heard it.

Posted by: I <3 the FAA | July 30, 2007 at 03:48 PM

The story is very true. I am the controller that was asked to pull the tape when it was reported that Linda did not perform her duties correctly. After I made a copy of the tape I asked John if he had listened to the tape. He said no. I told him you might want to listen to the tape because not only did Linda do her job but she went out of her way to ask the contoller if there was anything she could do to help.

Posted by: Darcy Simons | July 30, 2007 at 04:20 PM

When? When will justice be served?

Will My Beloved Agency's agents EVER be held accountable for this action? For ANY action over the last four years?

May God rest Ms Peterson. And I guess He will forgive Gilding and his supporters - because I don't think I can.

Posted by: Husband of Wife of ATC | July 30, 2007 at 07:11 PM

I have stated that what the FAA management has done to our proud service is criminal. After reading this, I take it back. What they have done to us and those that follow is clearly mean spirited and full of ill intent. What they have done to this person and her family is indeed criminal. I only hope that if the courts of the USA do not bring charges and find all guilty, that the courts of heaven will and theirs will be paid in the end.

Posted by: no way | July 30, 2007 at 07:44 PM

Recently I was one of two women who have complained about a known woman hater/minority hater. This person did not change their colors even after getting a temp position. They (the FAA) only made it worse, knowing this person's history and beliefs and still promoting them to a position of power. After the latest round, I was told by the FAA that they could not discuss disciplinary action.....I found out the action 3 weeks later. They promoted this person to a permanent position. So in essence, with this promotion they have condoned and supported this person's beliefs and actions. It will only be a matter of time before this person's beliefs will rear it's ugly head again.

The FAA has never had accountability within it's management ranks. They want to act like a business.....well, this is place to start. Stop the **** up, move up mentality. Treat everyone like you treat the controller workforce.....think they made a mistake.....fire them but for god's sake stop enabling the practice by just sweeping it all under the rug or hoping that by giving the person another promotion to another place of power it will all go away. A tiger cannot change it's stripes. A sexist or racist doesn't stop being one either. How many more Lindas will there be? One was one too many.

Posted by: Enough of it all | July 30, 2007 at 08:11 PM

Truly infuriating.

Posted by: Bravo_Echo_November | July 30, 2007 at 09:13 PM

Poor Linda. This story is so sad and horrifying. How does that guy sleep at night? Sadly, it's a common practice in the FAA to condone abuse of subordinates. Didn't the acting manager of N90 impregnate a trainee? And didn't a sup at Denver have sex with an employee on company time? One wonders if these women felt under duress(especially the trainee!) and afraid to refuse their bosses advances. There is a sup at one of the NYC towers who has verbally abused, yelled and cursed at several women ON THE FLOOR WHILE THEY WERE WORKING TRAFFIC over the course of his career with absolute and utter impunity. Actually he did it to men too, but he, like Mr. Gilding, thought women had no place in ATC so they got more abuse. I think most of the women he harassed are gone but he's still there. And then they wonder why the EAS score is so dismal.

Posted by: AccountabilityNow | July 30, 2007 at 10:48 PM

Gilding was recenty promoted from the position at the AWP regional office to "Finance Manager for the Phoenix Hub". The faa hierarchy continues to reward this low life scum for his crimes against Linda Petersen.

May God rest Linda's soul, and may Gilding burn in eternal hell.

Posted by: criminal faa | July 30, 2007 at 11:39 PM

I think everyone should send him a big box of dog crap.

Posted by: loser | July 31, 2007 at 12:18 AM

Absolutely disgusting! Management is supposed to be held to a higher standard. Yet they do things that we would be fired on the spot for and they get promoted. I find it hard to justify to myself why i still work for these heartless and malicious people. Makes me want to scream.

Posted by: D | July 31, 2007 at 12:28 AM

John,

Does this mean that the Model Work Environment (MWE) is officially over?

Posted by: lowskillset | July 31, 2007 at 01:34 AM

This tragedy was one I had a front row seat for. If you're angry now, wait for Part 2.

Bob Marks

Posted by: John Fisher FAAMA | July 31, 2007 at 01:44 AM

One thing that I think goes unclarified regards the box on the form that went unchecked. For those not "on the inside," who might otherwise think, "Hey, what's the big deal? Just check the damn box and shut up!" – the condition that went "unreported" by not checking the box HAD IN FACT been reported by an ENTIRE OTHER FORM that went to the SAME PERSON, namely the Regional Flight Surgeon.

The FAA's assertion was that the controllers involved failed to tell the left hand what the right was doing. In fact, only the left hand was involved, and if the left hand didn't know what the left hand was doing, there are greater problems in the FAA than _any_ of us could imagine.

Posted by: One of the 5% (link repaired) | August 01, 2007 at 11:45 AM

### Post a comment

If you have a TypeKey or TypePad account, please Sign In

Name:

Email Address: (Not displayed with comment.)

URL:

☐ Remember personal info?

Comments:

Preview | Post

# The Main Bang

« A Fate Worse Than Death, Part One | Main | Oh, Baby »

July 31, 2007

## A Fate Worse Than Death, Part Two

After Linda Peterson took her own life, the facility came apart. Many of Linda's co-workers were witnesses in her EEO case and were intimately familiar with what had happened over the years.

Linda's co-workers and friends were on the one hand livid over the fact that the FAA had done nothing to stop the harassment, and on the other racked with guilt, as anyone in their situation would be.

You can imagine the thoughts...that maybe if some of them had stood up to the harassment they received from the same supervisor, Linda might still be alive. That maybe if they had come forward, or said something, or done something... It was awful. The supervisor was quietly moved out of the tower and booted upstairs, to the Western Pacific Regional Office in Southern California.

It was about one year later that the official decision in this case came down, and it seemed that our sister could finally rest in peace. Her allegations were thoroughly and impartially investigated, she was vindicated, the supervisor was found to be not credible, the FAA was chastised for its lack of action to fix the working environment, and now maybe things could move forward.

At this point, you would expect the FAA to respect the rule of law and the memory of their dead employee. At this point you would expect the agency to show a modicum of integrity, a shred of decency, a micron of compassion. You would be wrong.

Shortly after the decision came out, the FAA sprang into action. NATCA Western Pacific Regional Vice President Bob Marks was contacted and told that the supervisor involved in Linda's harassment was going back to Phoenix Tower, to his original position, in order to show support for him. Bob was further told that it was "a Headquarters decision," and that no one could do anything about it. Bob and other NATCA activists went ballistic at this possibility. They raised the ante, fought the agency at every turn, and with the permission of Linda's family they prepared to go public to the media concerning the story. The FAA relented, and the offending supervisor was left in LA.

Remember the part about the FAA having to prove they shouldn't be held liable? They swung into action there, too, and squirmed and wiggled this way and that to avoid their responsibilities.

Your tax dollars went to pay for an **FAA contracted forensic psychologist** whose SOLE job was to engage in character assassination of a woman who was no longer alive to defend herself. His job? Smear Linda, and reduce the cash cost of damages.

Linda's father took her place in the case, and was subjected to having to hear this hired goon try and destroy any shred of dignity his late daughter had. The FAA tried to evade responsibility by destroying her in front of her still grieving father.

What kind of human beings are these? This story should once and for all change the way we look at those currently in leadership at the FAA. Their efforts failed—AGAIN. They appealed it and failed—AGAIN. Eventually and finally, the FAA Administrator's team gave up on their efforts to ensure Linda's loved ones and co-workers suffered as much as possible. Damages were assessed against the FAA which eventually reached into the low six figures.

The supervisor never did return to the tower as originally threatened, and remained at the Regional Office in Los Angeles. This was a man who lied under

September 2007

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | | | | | | |

About

Email Me

Recent Posts

More New Hire Woes
Deja Vu All Over Again, Again
NOTAM Madness
A Steaming Vent
Make A New Plan, Stan
Showtime!
Here We Go Again
Beating The Old Nag
Things I Can't Do
Even More Posters We'd Like To See

search

Popular Searches

yearly salary for... "George Petrovich" potomac Kansas City albuquerque center tampa developmental ib ego Miami Tower Cab memphis jerry mcarthur flight service houston center linda peterson Miami ATCT mica fss faa fs21 washington center phoenix faarna WalMart Miami Tower klub jacksonville get the flick jacksonville fumes shifflett consolidation john gilding zdc Scott Mann Miami proximity event don brown group of five fired St. Petersburg john carr blog jerry n90 teterboro Gilding the main bang tower cab planet mia atct pie zab main bang asbestos

My Content

The Main Bang
YouTube :: Videos by...

Get this Widget

Explore

Archives

September 2007
August 2007
July 2007
June 2007
May 2007

April 2007
March 2007
August 2006
July 2006
June 2006

**Favorite Links**

Blog Flux
Blue Eyed Buddhist
FAA Follies
Get The Flick
Google Earth
JetWhine
Legal Information Institute: U.S. Code: Home
NATCA.org
The Library Of Congress American Memory
THOMAS (Library of Congress)
Subscribe to this blog's feed
Add me to your TypePad People list

oath and manipulated the **Training Order** in order to harass and intimidate a subordinate woman...some say to death.

His feelings and biases about women in the workplace are now part of the official record in this case. The FAA can no longer claim innocence or ignorance. The FAA cannot close ranks around their despicable lout. The FAA is on full, complete written notice about this guy. They paid cash money, big time, to try and wash his stain out of their agency.

Amazing, isn't it? The FAA fires twelve of us for not checking a box on a form. They claimed in court that this heinous form-filling act was dishonesty, which they said strikes so severely at the heart of the employer-employee relationship that termination is the only option.

And yet—here you have a supervisor lie under oath, call women terrible names, contribute to a culture and a working environment that was brutal, unlawful and in retrospect may have contributed to a poor woman's demise, and he gets booted upstairs to the Regional Office in LA. He skates away, scot-free.

Last month, NATCA at Phoenix Tower had occasion to write their Facility Manager concerning Mr. Gilding, and their letter reads in pertinent part:

"Before Mr. Gilding was given a job in the Western-Pacific Region (the memorandum informing the bargaining unit of this action was dated August 27, 2003), NATCA had several grievances against Mr. Gilding for creating a hostile work environment at PHX.

Just in case you and the FAA need a refresher course in Mr. Gilding's history of superior abuse, I have attached several documents (not everything because it would be entirely too large)including the decisions against the Agency for which Mr. Gilding was acting. I will also include in the following paragraphs some additional information concerning Mr. Gildings conduct while a supervisor at PHX.

On January 18, 2000 a bargaining unit employee filed a formal EEO complaint against Mr. Gilding for harassment and discrimination.

On February 23, 2003 Mr. Gilding had a meeting with a bargaining unit employee concerning possible discipline. At this meeting Mr. Gilding called another supervisor into the meeting to act as a witness while not affording the employee any type of representation. This was a violation of the employee's rights. Less than a week before this same employee had filed an informal grievance with the assistant manager for operations at PHX accusing Mr. Gilding of harassing the employee.

A grievance was filed on February 27, 2003 which showed Mr. Gilding was discriminating against a Hispanic male and a Black male while not treating his "buddy" White male the same.

In a letter given to you by NATCA, the following information was given to you due to the fact Mr. Gilding continues to fail to adhere to his responsibilities and abuse his authority as a supervisor and continues to harass, intimidate, discriminate, and treat employees at Phoenix Tower unfairly.

1) August 1999, decertification of Linda Peterson leads to an EEO complaint being filed by Ms. Peterson against Mr. Gilding
2) November 1999, Mr. Gilding watches an operational error occur without taking action
3) June 2000, Mr. Gilding attempts to charge an individual with 8 hours of AWOL
4) December 2000, Mr. Gilding coordinates, then covers up an operational error requiring a hotline call
5) June 2001, Mr. Gilding made threatening remarks towards a potential witness in the pending Peterson EEO case [for which Mr. Gilding did not receive the proper penalty under the Conduct and Discipline Order—which states, #52 Reprisal or retaliation action against a complaint, representative, witness or other person involved in an EEO investigation, proceeding, hearing or other agency process (e.g. Accountability Board). First offense by a supervisor: 5-30 day suspension to downgrade and/or removal from supervisory position.
6) Summer 2001, several issues with Mr. Gilding not addressing requests in a timely manner on the Phoenix Tower daily worksheets and then when instructed by you to address the requests he is suppose to address, he maliciously denies

all requests no matter their merit
7) January 2002, employee request to be removed from Mr. Gilding's crew due to harassment by Mr. Gilding
8) July 2002, Mr. Gilding meets with two employees to explain why he is not in the tower cab very often
9) July 2002, Mr. Gilding attempts to blame a controller for a pilot deviation
10) August 2002, Mr. Gilding is improperly assigning CIC duties
11) August 2002, Mr. Gilding, purposely, is illegally recording conversations in the tower cab utilizing the "RB" button [Per the Conduct and Discipline Order 215b. FAA employees, in the conduct of their official duties, may not use secret recording or monitoring equipment of any kind or aid in or ignore the improper use of such equipment.]
12) August 2002, Mr. Gilding discriminates against two employees by wanting the full punishment for them while trying to get his "buddy" out of trouble when all three employees were accused of leaving the facility early
13) January 2003, Mr. Gilding has a meeting with his crew intimidating them and ultimately causes the flow requested to have to be changed whenever he is on duty
14) February 2003, CIC issues again with Mr. Gilding
15) February 2003, Mr. Gilding attempts to neglect his supervisory responsibilities by having a CPC call in overtime
16) February 2003, Discriminates and abuses his authority against an employee in the assignment of work
17) February 2003, Mr. Gilding lectures a supervisor in the ways in which Mr. Gilding wants the operation handled and employees treated [the supervisor disagrees vehemently with Mr. Gilding]
18) April 2003, Mr. Gilding informs his crew he is going to be recording conversations in the cab [in direct violation of laws, regulations, rules and/or the Conduct and Discipline Order].

On November 4, 2004 an EEOC Administrative Judge found the Agency (through Mr. Gilding's actions) was guilty of discrimination on the basis of gender.

On September 21, 2005 the EEO Commission upheld the Administrative Judge's decision and further stated, "The agency will consider taking disciplinary action against the supervisor for his conduct which was found to be discriminatory. The agency shall report this decision. If the agency decides to take disciplinary action, it shall identify the action taken. If the agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline."

"Commission regulations state that each agency shall take appropriate disciplinary action against employees who engage in discriminatory practices." What actions were taken against Mr. Gilding?

In addition to these past grievances, one only needs to talk to the minorities who are or who were at PHX during Mr. Gilding's tenure as a supervisor to realize the extent of his discrimination, harassment and intimidation. An individual who was a supervisor during the same time period relayed a story of how Mr. Gilding was leaving for vacation and pointed to three individuals on the schedule and told that supervisor not to approved anything for those "fu*kheads."

And why did Phoenix NATCA have occasion to write their Facility Manager last month?

Because the FAA had just announced a new Assistant Manager for Training at Phoenix Tower/TRACON: John Gilding.

Yes, you read that right: The man who used the Training Order to harass a subordinate, the supervisor with the 18-plus complaints against him, the supervisor the agency paid big money to cover up, is now in charge of all training in Phoenix. He was quietly moved back to the Phoenix area just a few weeks ago, where he maintained the house he never sold. He must have known he was eventually coming back.

Resist the urge to vomit, and instead email the FAA Administrator at

marion.blakey@faa.gov

and weigh in on her tacit approval of this grossly inappropriate personnel move...the promotion of this miscreant, and his transfer back...to the scene of the

crime.

EPILOGUE:

New Assistant Manager for Training Gilding has already participated in at least one training review board. The developmental controller is a military veteran and a new hire, straight into Phoenix, and was struggling on Clearance Delivery. (By the way, Phoenix is way too busy for a new hire, and the agency is idiotic beyond belief to put this kid in one of the busiest air traffic control towers in the world.)

Mr. Gilding asked the young man what he thought his problem was. The trainee replied that he thought he was transposing call signs.

Mr. Gilding then shocked everyone in the room by saying words to the effect of, "Do you know you can kill hundreds of people by transposing call signs? You can kill people." His manner was reminiscent to those who saw it...reminiscent of the last time John Gilding had supervised others in Phoenix.

The developmental was shaken, his confidence shattered. He is now exploring other employment opportunities. He isn't sure he wants to continue in the FAA as an air traffic controller.

Posted at 04:09 AM | Permalink

**TrackBack**

TrackBack URL for this entry:
http://www.typepad.com/t/trackback/629509/20414468

Listed below are links to weblogs that reference A Fate Worse Than Death, Part Two:

**Comments**

Very sad story. I find it incredible that the individual would want to return to the same facility where the tragic events unfolded. Beyond incredible is that the agency saw fit to allow it.

Posted by: freud | July 31, 2007 at 07:05 AM

Truely infurialing! When will these manglement stooges ever be held accountable for anything??? I hate them!

Posted by: Lack of faith | July 31, 2007 at 08:03 AM

John - when you write book ONE about FAA improprelies, I hope you make this the first chapter. This is disgusting.

Posted by: AceRockola | July 31, 2007 at 08:25 AM

John - when you write book ONE about FAA improprelies, I hope you make this the first chapter. This is disgusting.

Posted by: AceRockola | July 31, 2007 at 08:26 AM

There are alot of illegals out there that would love to make an easy 1K. It's not that hard folks !!

Posted by: The Hammer | July 31, 2007 at 08:29 AM

John,
Thank you for exposing the inner workings of one of the busiest towers in the country. The manner in which these actions transpired was with the full blessings of the manager, the hub manager, and the regional manager. You, however, forgot to mention Mr. Gildings contempt for female supervisors. His predisposition to approve all requests for "the chosen one" and his utter contempt for those who arrived at Phoenix without being selected (ie. assigned or via complaints).

Posted by: Beamer | July 31, 2007 at 08:35 AM

John, why don't you send this story to the news outlets in Phoenix. Maybe some other major outlets as well. Nice piece of reporting.

Posted by: RD | July 31, 2007 at 09:18 AM

This is your faa at it's best. Every time these pinheads get a chance to do the right thing they do exactly the opposite. What is truly amazing is that more people and organizations outside the faa don't get into a total uproar over stories like this.

Posted by: Not Amazed at ZFW | July 31, 2007 at 10:07 AM

John, the beauty of your blog is that thousands of people will read it. I know this story to be true, and I thank you for telling it.

The Bush Syndicate and its goose-stepping FAA Administrator Marion Blakey have made it understandable how Nazism was imposed in Germany in the 1930's. Crush the people and make them suffer. Put our minions into the power positions. Rule with fear.

Nazi Germany in the 30's and 40's, right?

Bush/Marion's FAA in the 2000's, right?

It makes me sick.

Posted by: Howie | July 31, 2007 at 10:14 AM

Having lived at PHX during the later stages of this debacle, all that is print is true. Guess what? That mentality is still alive and well. Hypocrisy, self righteousness, and Hitleresque mentality abounds by management.

Posted by: hater | July 31, 2007 at 10:33 AM

It's interesting that the FAA will bend over backwards to help a management type geographically but heaven help the rest of us. I know a controller who failed the training program at Portland. While his family lived in Portland and he requested a transfer to a Flight Service Station there, he was offered the following options:

1. Jefferson County, Colorado
2. Brown Field, Colorado (about 100 feet from the Mexican border)
3. Separation

A whole new meaning for the organzation's poster: "Separation: It's what we do."

Posted by: lowskillset | July 31, 2007 at 10:44 AM

Lowskillset,
You hit that on the head. The real meaning of "Separation".

Posted by: myview | July 31, 2007 at 10:58 AM

If the agency "idiotic beyond belief to put this kid in one of the busiest air traffic control towers in the world" what would you say to a CTI grad who has been selected for PHX tower? Really I would like to know because if this is how its like I would gladly decline and hope I for another location.

Posted by: ocair4me | July 31, 2007 at 12:54 PM

Ooops, the number 2 option was Brown Field, California.

Posted by: lowskillset | July 31, 2007 at 01:02 PM

Scooter Libby (Gilding) walks, Valerie Plame loses her career, Compeon and Ramos sent off to prison, and Bush/Cheney/Rove/Gonzales and BLAKEY continue their unabated practice of Nazism. A typical government operation. Totally disgusting.

Posted by: suupercub | July 31, 2007 at 01:06 PM

Can we get a phone number for this guy? Home is preferable, but work is o.k. too.

Abused

Posted by: Abused | July 31, 2007 at 01:41 PM

Gilding should look up the definition of bad karma

Posted by: forress | July 31, 2007 at 01:43 PM

I hate this f*cking scum bag I dont even know him if it was up to me his name would be gelding

Posted by: J F CHRIST | July 31, 2007 at 01:56 PM

All,

Kindly follow up your comments with emails to the Administrator. We cannot let this stand.

Bob Marks

Posted by: John Fisher FAAMA | July 31, 2007 at 02:02 PM

According to Switchboard.com

Lot's of court records associated with this address. May or may not be the same guy.

JOHN GILDING
(address and phone number deleted by JTB)

Folks...I can't allow that. The information is readily available to anyone who wants to chase it, but I can't allow it to be posted here. Sorry.

Posted by: less than gruntled | July 31, 2007 at 02:14 PM

Sucks to be a CTI going there. I hope everyone gives this dude the cold shoulder. Think i'll call in sick, this made me ill.

Posted by: D | July 31, 2007 at 02:46 PM

Anyone thinking of transferring to the PHX HUB, think twice.....THIS PLACE IS TERRIBLE! If you have no other choice but to transfer to Phoenix, then be sure to hire an attorney in advance.

Posted by: AWOL in AZ | July 31, 2007 at 04:00 PM

How about the PHX facility phone number then. He should be able to answer a few questions between donuts.

Posted by: lowskillset | July 31, 2007 at 09:00 PM

Where's NATCA!

Posted by: ExRadarman | July 31, 2007 at 09:10 PM

In case you're ever looking for someone, try Zabasearch.com or whitepages.com.

Posted by: lowskillset | July 31, 2007 at 09:11 PM

I forgot to mention that I was the one with the possible OE in November 1999. Strange night...working traffic like normal. Skywest aborts takeoff and told to clear runway first op. He does. Cactus crosses threshold just as Skywest crosses hold bars. Get called to office. Told that I had OE...I said B.S... Told to tow the line and dismissed from office. Return to tower and ask supervisor if I was ok to work...He looks at me as if I was speaking Greek...Gilding returns to tower..ask him if I can work...he said shut up and get on position...what a guy!
Speaking of transposing...when Mr. Gilding first showed up to the tower I used the initials JB. For years before he quit the agency he had those initials. He couldn't change and would use JB even though they weren't his... So being the nice guy I was I sold them to him for 2 cases of beer...took me two interphone transmissions not to use JB...didn't get the beer for over a year...he had IRS problems and could not afford it....

Posted by: Beamer | July 31, 2007 at 09:52 PM

I have seen a lot happen in the FAA. As a controller, Facility Rep, and RVP, you see a lot. But this story made me cry. Just like a baby. I would be ashamed if this wasn't so typically sad.

Mikey P

Posted by: MikeyP | July 31, 2007 at 10:32 PM

Just finished my 2007 Employee Attitude Survey online. Totally anonymous but I've locked all the doors anyway. Most questions didn't have enough boxes to the left to answer correctly so I just chose the far left box in most cases. As we've seen above, management types are not held accountable. There were a couple of questions that didn't have enough boxes to the right. Regular employees are regularly held accountable. Had to "strongly agree" on that one. I hope they're not counting on me to improve the poll results over the last survey. Several good questions on managerial accountability. Not enough boxes to the left.

It must be really hard to be a supervisor...having an idea about what the right thing is to do but knowing for sure that doing the wrong thing won't hurt a bit. I saw a poster once, at work on Inegrity. I can't remember the definition for sure since it's such a big word. Something like "We look both ways before we do something wrong."

Posted by: lowskillset | August 01, 2007 at 01:46 AM

Totally anonymous....hmm, that is why I did the survey at work. No tracing the website to my home comps. I got 15 minutes of duty time to do it, although it only took 5 or so. I plan on asking to re-do it tomorrow, saying that I got an error message. That oughta throw the stupe!

Posted by: just another hamster in the sun | August 01, 2007 at 05:25 AM

Everybody that reads these 2 articles should forward a copy to their members of congress. It is going to be interesting to see what their response will be.

Posted by: Pete G | August 17, 2007 at 11:52 AM

### Post a comment

If you have a TypeKey or TypePad account, please Sign In

Name:

Email Address: (Not displayed with comment.)

URL:

☐ Remember personal info?

Comments:

Preview Post