

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2006-3261

TOMMIE D. UNDERWOOD,

Petitioner,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

DECIDED: December 8, 2006

Before MAYER, BRYSON, and DYK, Circuit Judges.

PER CURIAM.

Tommie D. Underwood appeals the final decision of the Merit Systems Protection Board, which denied his petition for review and affirmed the initial decision upholding his removal. Underwood v. Dep't of the Treasury, AT0752050664-1-1 (MSPB Mar. 29, 2006). We affirm.

We must affirm the board's decision unless it was arbitrary, capricious, an abuse of discretion, or unlawful; procedurally deficient; or unsupported by substantial evidence. See 5 U.S.C. § 7703(c) (2000). It is undisputed that Underwood's stepfather

died in 2000, and that Underwood understated his tax liability by reporting him as a dependent on his 2001 tax return. The finding that he did so willfully is supported by substantial evidence, including the fact that he was employed as a Tax Examining Assistant and had familiarity with reading and interpreting tax regulations and guidelines. Having found that he willfully understated his tax liability, the removal was the statutorily-prescribed penalty absent mitigation by the Commissioner of Internal Revenue, which is done in his sole discretion and without review. IRS Restructuring and Reform Act of 1998 (“RRA”), Pub. L. No. 105-206, tit. I, § 1203(c)(3), 112 Stat. 685, 720-21 (codified at 26 U.S.C. § 7804 note); see also James v. Tablerion, 363 F.3d 1352, 1361 (Fed. Cir. 2004). Thus, neither the agency nor the board was required to consider mitigating and aggravating factors under Douglas v. Veterans Administration, 5 MSPB 313, 333 (MSPB 1981). Because the board applied the correct legal standards, and its conclusions are supported by substantial evidence, we find no error.