

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

05-3209

KIRBY A. FACIANE,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

DECIDED: March 10, 2006

Before MICHEL, Chief Judge, MAYER, and BRYSON, Circuit Judges.

PER CURIAM.

Kirby A. Faciane appeals the final decision of the Merit Systems Protection Board, denying his petition for review of the board's initial decision affirming his removal from government service by the United States Postal Service. Faciane v. U.S. Postal Service, SF0752040005-I-3 (MSPB Mar. 4, 2005). We affirm.

We must affirm the board's decision unless it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures

required by law, rule or regulation having been followed; or unsupported by substantial evidence. 5 U.S.C. § 7703(c) (2000). The board properly considered the relevant evidence before it and did not abuse its discretion in making its credibility determinations. Substantial evidence supports the board's findings that the agency proved its charges against Faciane by a preponderance of the evidence, that there was a nexus between Faciane's removal and promoting the efficiency of the agency's operations, and that the penalty imposed was not an abuse of the agency's discretion. Additionally, the board properly concluded that the agency was not required to show that Faciane violated a specific rule, regulation, or policy. See LaChance v. MSPB, 147 F.3d 1367, 1371-72 (Fed. Cir. 1998).

Faciane waived his claims for disability discrimination and violation of the Family and Medical Leave Act by not presenting them to the board. Furthermore, his claims for procedural defects that allegedly occurred before the board and during the agency's disciplinary proceedings are not applicable to the disciplinary proceedings at hand.