

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2006-3407

MICHAEL J. WILEY,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Michael J. Wiley, of Humble, Texas, pro se.

Meredyth D. Cohen, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With her on the brief were Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, and Bryant G. Snee, Assistant Director

Appealed from: United States Merit Systems Protection Board

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DECIDED: March 7, 2007

Before MAYER, GAJARSA and PROST, Circuit Judges.

PER CURIAM.

Michael J. Wiley appeals the final decision of the Merit Systems Protection Board, which sustained his removal. Wiley v. U.S. Postal Serv., 102 M.S.P.R. 535 (2006). 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 required procedures; or not supported by substantial evidence. 5 U.S.C. § 7703(c) (2000). Here, Wiley was charged with "Improper Conduct/Violation of the Joint Zero Tolerance

Policy on Violence in the Work Place.” This policy prohibits any “actual, implied or veiled threat, made seriously or in jest.” Substantial evidence supports the board’s finding that Wiley made a threat, and the board applied the proper legal analysis in making its determination. In addition, the board was well within its authority to consider the alleged legal error made by the administrative judge in his initial decision. Finally, the board properly determined that the penalty of removal was not unreasonable.