
Office of the General Counsel

B-251120

March 17, 1994

Dear Mr. :

This responds to your September 29, 1992 appeal of our Claims Group's settlement Z-2867800-347, July 31, 1992, which sustained the Federal Aviation Administration's (FAA) denial of your claim for backpay and related benefits due to an alleged involuntary downgrade that occurred February 3, 1985.

Your appeal presents nothing to change the conclusion in that settlement that you suffered no unjustified or unwarranted personnel action that would form the basis for granting backpay and related benefits, and upon review of the record, we affirm that settlement. We disagree with your basic premise that the FAA misapplied its nepotism-related regulation, which states: "A relative may not be assigned under the line authority of another relative."¹ We agree with the FAA's conclusion that for those periods (although brief) in which you would have been required to work as the Area Manager (Watch Supervisor) at the Seattle Control Center with your wife serving there at the same time as an air traffic control specialist there would have been a violation of the regulation. The section of FAA's regulations that you cite [3300.7 (401) (2) (E)] does not apply to this situation but to other situations where a relative is not assigned under the line authority of another relative but where actions taken by one relative in his job may affect the other relative.

The method the Northwest Mountain Region used in 1984-85 to prevent one relative from being assigned under the line authority of another in your situation was not to allow your spouse to transfer from Olympia to Seattle while you

¹This regulation is in furtherance of the statutory anti-nepotism provision applicable to federal agencies. 5 U.S.C. § 3110.

remained a supervisor at Seattle. We believe that this was a reasonable application of FAA's regulation not to assign one relative under the line authority of another relative. In addition, the regulation itself was a legitimate measure to address concerns about nepotism. See, e.g., Cutts v. Fowler, 692 F.2d 138 (D.C. Cir. 1982), copy enclosed, which approves reasonable agency measures addressing nepotism, and which sanctions the involuntary reassignment of a spouse when the other spouse became the spouse's supervisor. Therefore, it appears that the information you were given in 1984 about what the FAA's Northwest Mountain Region required for your spouse to transfer to the Seattle Control Center, on which you based your decision to accept a downgrade, was correct.

Also, you have provided no evidence that there was then a national FAA policy that required a different application of the regulation concerning the assignment of one relative under the line authority of another than the Northwest Mountain Region was practicing. Thus, the case you cited from the Merit Systems Protection Board,² treating what would normally be considered a voluntary downgrade as an involuntary downgrade because of misinformation, does not apply to your situation.

The FAA concedes that its application of the regulation precluding one relative from being assigned under the line authority of another relative has now changed. Measures, such as judicious scheduling of the relatives' shifts, have been taken so that a supervisor-relative and another relative may now work at the Seattle Control Center (although one not directly under the line authority of the other). However, that does not mean that the FAA's application of the regulation in 1984 was wrong. We believe that the FAA's degree of discretion to take legitimate measures to avert nepotism could include either application of the regulation.³

Whatever procedural irregularity may have attended your reinstatement to your supervisory grade in 1991 or the other supervisor retaining his supervisory grade in the circumstances you described (presumably because of the changed

²Paszek v. Department of Defense, Docket No. CH07529010138, Oct. 7, 1991.

³Compare Federal Aviation Agency, B-203452, Dec. 31, 1981, copy enclosed, where in another context of establishing policy, we held that the FAA could change its policy and broaden the degree of aid allowed under the Program without either policy being illegal or past actions under the old policy subject to review.

application of FAA's nepotism-related regulation), that irregularity does not change the voluntary downgrade you took in February 1985 into an improper involuntary downgrade. Accordingly, we find no unjustified or unwarranted personnel action that would form the basis for backpay or other related relief in your case.

Sincerely yours,

for *Seymour Efron*

Robert P. Murphy
Acting General Counsel

Enclosures

B-251120

March 17, 1994

DIGEST

Legitimate measures, such as preventing supervisor-relatives from working in the same Air Route Traffic Control Center as other relatives, taken by agencies to anticipate and avert nepotistic problems are sanctioned in the law. Where a supervisor-relative took a voluntary downgrade so another relative could be assigned at the same Control Center, this downgrade did not become involuntary or an unwarranted or unjustified personnel action entailing backpay when the agency later changed its policy and allowed supervisor and other relatives to work at the same Control Center but used other measures to avert nepotistic problems.