

Lee Seham
Stanley Silverstone
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: (914) 997-1346

Attorneys for Complainant

**UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)	
MARK ESTABROOK,)	
)	
Complainant,)	
)	CASE NO. 2014-AIR-00022
v.)	
)	ADMINISTRATIVE LAW JUDGE
)	JOHN P. SELLERS, III
FEDERAL EXPRESS CORPORATION,)	
)	
Respondent.)	
_____)	

**COMPLAINANT’S RESPONSES AND OBJECTIONS
TO RESPONDENT’S FIRST SET OF INTERROGATORIES**

Pursuant to 29 C.F.R. § 18.18, the Complainant, Captain Mark Estabrook, by his attorneys, Seham, Seham, Meltz & Petersen, LLP, hereby responds to the Respondent’s First Set of Interrogatories as follows:

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Complainant hereby reserves all objections to the relevance, form, and admissibility of any answers (the “Answers”) to Respondent’s First Set of Interrogatories (the “Interrogatories”) until the time of trial. The Answers contained herein should not be construed as a waiver of any right to object.

2. Complainant reserves the right to amend, supplement, or modify his Answers based upon continuing investigation and discovery.

3. Complainant interposes a continuing objection to each and every interrogatory, the answer to which may be derived or ascertained from business records, documents or information that are in the possession or control of Respondent or from documents or information that are readily available to Respondent. To the extent that an Answer can be ascertained or derived from documents or information in Respondent's possession, custody, or control, the development of that Answer is significantly more convenient and less burdensome for Respondent than it is for Complainant, and Respondent accordingly should bear the burden.

4. Complainant interposes a continuing objection to any and all discovery requests that seek disclosure of information not in Complainant's possession or control.

5. Complainant interposes a continuing objection to any and all discovery requests that seek disclosure or identification of confidential communications protected from disclosure by the attorney-client privilege. The inadvertent disclosure of any communication covered by such protection shall not be deemed a waiver thereof.

6. Complainant interposes a continuing objection to any and all discovery requests that seek disclosure or identification of confidential communications protected by the work product doctrine. The inadvertent identification or production of any document or matter covered by such privilege shall not be deemed a waiver thereof.

7. Complainant interposes a continuing objection to any and all discovery requests to the extent that the request is overbroad, vague, unduly burdensome, harassing, or seeks information or documents that is/are irrelevant to this case or not reasonably calculated to lead to the discovery of admissible evidence.

8. Each of the foregoing General Objections and Reservations of Rights is hereby incorporated into each of the following Answers.

Subject to these general objections and reservations, which Complainant incorporates into each response given below, Complainant answers the interrogatories as follows:

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: Identify any person who has or is likely to have (to the best of your knowledge and belief) any information about any of the matters described in your Complaint and describe fully the information that each such person has or is likely to have.

RESPONSE:

(i) Todd Ondra, Vice President of Security. Mr. Ondra has or is likely to have information regarding the August 9, 2013 meeting, which was requested by Complainant for the purpose of discussing security issues that Complainant previously had raised as the FedEx FPA and MEC ALPA Security Chairman. The August 9 meeting was attended by Complainant, Todd Ondra, FedEx legal counsel Robert Tice, and Manager A300/310 Fleet Operations Captain Rob Fisher.

(ii) Rob Fisher, Manager A300/310 Fleet Operations. Captain Fisher has or is likely to have information regarding the August 9, 2013 meeting, which was requested by Complainant for the purpose of discussing security issues that Complainant previously had raised as the FedEx FPA and MEC ALPA Security Chairman. The August 9 meeting was attended by Complainant, Rob Fisher, FedEx legal counsel Robert Tice, and Vice President of Security Todd Ondra. Captain Fisher also has or is likely to have information regarding his August 9, 2013 telephone conversations with Complainant wherein Fisher first told Complainant that he would be immediately returned to flying status, and subsequently told Complainant that FedEx Security Director Todd Ondra insisted that Complainant's flying status remain suspended until he submitted to a psychiatric evaluation. When Complainant asked Captain Fisher why FedEx Security was demanding a psychiatric evaluation despite FedEx's determination earlier in the day that he was being returned to flying status, Fisher responded "all they said is that you know too much." Fisher can confirm that he advised Complainant that he was on a recorded FedEx telephone line (901-224-3435) at 5:30 PM Central on August 9, 2013. Captain Fisher also has or is likely to have information concerning his interview with the Regional Investigator for the U.S. Department of Labor- OSHA, wherein Fisher denied any knowledge of Captain Estabrook's prior AIR 21 complaint, dated April 29, 2013, relating to his refusal to depart from Laredo into a severe and solid line of thunderstorms on April 10, 2013. Captain Fisher represented to the Investigator that he had no knowledge that Captain Estabrook had filed the April 29, 2013 AIR 21 complaint until he was informed by the Investigator during the interview. However, Captain Fisher can confirm that he was the recipient of a letter from attorney Alan

Armstrong, dated April 29, 2013, advising Fisher of Captain Estabrook's AIR 21 filing and providing him with a copy of the complaint along with exhibits.

(iii) Robert Tice, FedEx Legal Counsel. Mr. Tice has or is likely to have information regarding the August 9, 2013 meeting, which was requested by Complainant for the purpose of discussing security issues that Complainant previously had raised as the FedEx FPA and MEC ALPA Security Chairman. The August 9 meeting was attended by Complainant, Robert Tice, Manager A300/310 Fleet Operations Captain Rob Fisher, and Vice President of Security Todd Ondra. Mr. Tice can confirm that during the August 9 meeting, he asserted that Captain William McDonald had accused Captain Estabrook of posting messages on an internet bulletin board under the name of "Mayday Mark," whose postings indicated that "Mayday Mark" was a pilot who had suffered a Temporary Ischemic Attack or stroke.

(iv) William McDonald, System Chief Pilot and Managing Director/Flight Operations. Captain McDonald has or is likely to have information concerning his agreement to arrange the August 9, 2013 meeting between Complainant and FedEx management Representatives, and confirming that Captain McDonald removed Estabrook from flight status on August 5, 2013, and designated him as not qualified (NOQ).

(v) William E. Green, III, M.D. Dr. William Green has information that on October 23, 2013, he conducted a psychiatric evaluation of Complainant, and concluded that Complainant is "psychiatrically stable and displays no evidence of any coexisting psychiatric disorder which would interfere with his ability to safely operate aircraft." (ME 208). Dr. Green concluded that Complainant "is perfectly capable to return to active flight status without any limitations from a psychiatric perspective." (ME 209).

(vi) Stephen D. Leonard, M.D. Dr. Leonard has information that on August 23, 2013, he evaluated Complainant's mental and emotional qualifications as an airline pilot. Dr. Leonard concluded that "there is no psychological issue that should be of any concern regarding Mr. Estabrook's medical qualification as a pilot." (ME 210).

(vii) Mark A. Nugent, M.D. Dr. Nugent, who is Complainant's Aviation Medical Examiner, has information that he examined Complainant on July 19, 2013 for his flight physical and "had no concerns regarding his fitness for pilot duty." (ME 214).

(viii) John Otto, former FBI Director and retired Delta Airlines Security Director. John Otto has information regarding his briefing of FPA in November 2001 on airline security and his recommendation to FedEx pilots that they should make security reports to the Company. (ME 1781).

(ix) Jason Brush, Regional Investigator for the U.S. Department of Labor, OSHA. Jason Brush has or is likely to have information concerning his interview of Rob Fisher.

(x) Michael McAfee, Manager Global Ops Control. Michael McAfee has or is likely to have information concerning the Respondent's policy of recording telephone conversations between the Respondent and its pilots.

(xi) Mark Crook, Duty Officer. Mark Crook has or is likely to have information concerning the Complainant's claims regarding the Laredo departure on April 10, 2013.

(xii) Sherrie Hayslett, Senior GOC Specialist. Sherrie Hayslett has or is likely to have information concerning the Complainant's claims regarding the Laredo departure on April 10, 2013.

INTERROGATORY NO. 2: Identify each physician, counselor, hospital, clinic, or other health care provider from whom you have sought or received medical treatment, examination, and/or counseling because of and/or related to any of the allegations that form the basis of your Complaint; provide the date(s) of each such examination, treatment, and/or counseling; and state the nature of each such examination, treatment, and/or counseling. Your response should include, but not be limited to, each physician, counselor, hospital, clinic, or other health care provider involved in and/or related to the "pain, suffering and emotional distress due to this adverse action" described in the Complaint (see, e.g., Paragraph G of the prayer for relief on the last page of the Complaint).

RESPONSE:

(i) Mark A. Nugent, M.D. Flight physical on July 19, 2013. (ME 214).

(ii) Stephen D. Leonard, M.D. Evaluation of Complainant's mental and emotional qualifications as an airline pilot on August 23, 2013. (ME 210).

(iii) George S. Glass, M.D. Psychiatric evaluation on September 16, 2013. (ME 197-202).

(iv) William E. Green, III, M.D. Psychiatric evaluation on October 23, 2013. (ME 203-209).

(v) Thomas N. Bettes, M.D. Coordinated Complainant's evaluation with George S. Glass, M.D. (ME 1297, 1299), recommended complainant for treatment (ME 1327-1328) and evaluated Complainant via telephone on at least September 24, 2013, as well as other dates. (ME 1281).

INTERROGATORY NO. 3: Except as provided in your response to Interrogatory No. 2, identify each physician, counselor, hospital, clinic, or other health-care provider from whom you have sought or received medical treatment, examination, and/or counseling at any time within the past eight (8) years; provide the date(s) of such examination, treatment, and/or counseling; and state the nature of each such examination, treatment, and/or counseling.

RESPONSE: Complainant objects on the grounds that this request is overly broad and burdensome and seeks information that is not material, necessary, or relevant to the subject matter of this action, nor designed to lead to the discovery of admissible evidence.

INTERROGATORY NO. 4: For any and all audio, video, digital, or photographic recordings of any employee, agent, officer, manager, director, independent contractor, or representative of FedEx (whether current or former) made by you or on your behalf, (1) identify the date of each recording; (2) identify the person making the recording; and (3) summarize the substance of the recording.

RESPONSE: Complainant objects on the grounds that this request is overly broad and burdensome and not reasonably limited in time or to the allegations in the Complaint. Subject to, and without waiving this objection, Complainant states that he has not made, nor has anyone made on his behalf, any audio, video, digital, or photographic recordings of any employee, agent, officer, manager, director, independent contractor, or representative of FedEx (whether current or former) related to the allegations in the Complaint. *See also*, Complainant's Response to Respondent's First Requests for Production of Documents, Request Nos. 4-7.

INTERROGATORY NO. 5: For each cause of action asserted in the Complaint, separately identify all categories or types of monetary relief, equitable relief, non-pecuniary relief, or other remedies you are seeking, including any special damages or recovery for litigation costs and/or attorney's fees, based on that cause of action. For those remedies involving monetary amounts that are susceptible to a mathematical calculation (such as back pay, front pay, medical expenses, costs, attorney's fees, etc.), provide the estimated amount of such monetary amounts you are claiming or intend to prove at trial and provide a description of the method as to how such amounts were calculated. For those remedies involving monetary amounts that are not susceptible to a mathematical calculation (such as damages for emotional distress or mental anguish and punitive damages), provide a good faith estimate of the relief you believe is appropriate based on the information on which your request for such damages is based.

RESPONSE:

(A) Monetary Relief. Complainant seeks **(i)** Front pay from the time of adjudication or resolution of the action until age 65, in the approximate amount of \$1,500,000, plus benefits, including, but not limited to, contributions to MPP and RSP, and health and dental insurance for Complainant and his family until age 65; **(ii)** Reduced contributions to RSP during 2013, while on NOQ status, in the amount of \$9,516.10, which is based on the difference between Complainant's 2013 contributions and the average of his contributions in 2011, 2012, and 2014; **(iii)** Reduced contributions to MPP during 2013, while on NOQ status, in the amount of \$1,827.03, which is based on the difference between Complainant's 2013 contributions and the average of his contributions in 2011, 2012, and 2014; **(iv)** Damages for pain, suffering, and emotional distress in the amount of \$5 million; and **(v)** Attorneys' fees and costs in the amount of \$82,143.40 (\$8,325.28 to Alan Armstrong, Esq., + \$73,818.12 to Seham, Seham, Meltz & Petersen, LLP), as of February 28, 2015, and continuing. (ME 1778-1780).

(B) Equitable Relief. Complainant seeks **(i)** an order directing FedEx to suppress, remove and expunge all disciplinary proceedings, medical and psychiatric evaluations and treatment histories concerning Captain Estabrook from FedEx personnel files, including all contracted medical agents' records; **(ii)** an order directing the removal and expungement of all references to psychiatric

evaluation and treatment in all government records, including but not limited to, the Federal Aviation Administration; (iii) an order directing FedEx to cease and desist from all discriminatory conduct toward Captain Estabrook; (iv) a public apology by the Respondent, with content and form satisfactory to Complainant, published on the home page of the Respondent's Flight Operations website (www.pilot.fedex.com) for a period of not less than 30 days; and (v) an order directing FedEx to permanently post U.S. Department of Labor and OSHA posters advising employees of their rights under AIR 21 on all Company employee bulletin boards.

INTERROGATORY NO. 6: Identify every lawsuit or administrative proceeding you have been involved in (whether as a charging party, complainant, respondent, plaintiff, defendant, witness or in any other capacity) from January 1, 2000 to the present by providing the name and docket number for each case and the court or agency in which each case is or was pending.

RESPONSE: Complainant objects on the grounds that this request is overly broad, not reasonably limited in time, and seeks information that is not material, necessary, or relevant to the subject matter of this action, nor designed to lead to the discovery of admissible evidence. Subject to, and without waiving this objection, Complainant identifies the following lawsuits or administrative proceedings that he has been involved in since 2013:

- AIR 21 complaint against FedEx, April 29, 2013.
- AIR 21 complaint against FedEx, Oct. 3, 2013.

INTERROGATORY NO. 7: If you contend, as part of your Complaint, that other employees were treated differently or more favorably than you with respect to any employment decisions or the terms and conditions of your employment with FedEx, (1) identify all individuals whom you claim were treated differently or more favorably and (2) identify the person(s) who you contend was responsible for the different or more favorable treatment of each individual identified.

RESPONSE: This information is in the possession of the Respondent. Complainant is continuing to pursue this information through discovery and reserves the right to supplement this response.

INTERROGATORY NO. 8: Identify each representative of FedEx (or any third party) with whom you have communicated regarding any complaint(s) of discrimination or retaliation by or against FedEx and, for each such communication, provide the date of the communication, the individuals present, the substance of the matter communicated, and the relief or response, if any, that you requested.

RESPONSE: (i) On August 9, 2013, Complainant told Rob Fisher by telephone that the Respondent's order to place Complainant back on NOQ status was retaliatory, and Complainant told Fisher that he should be returned to flying status. This was a recorded telephone call that Respondent refuses to provide to Complainant. Rob Fisher told Complainant in this same phone

call that Complainant “knew too much.” (ii) See letter dated September 26, 2013, from Complainant to Dr. Thomas N. Bettles, MD, stating that the Respondent’s requirement that Complainant submit to psychiatric evaluation was in retaliation for Complainant’s “filing security concerns with the Company.” (ME 145-146). Complainant wrote that “[a]s I have stated in the past, I consider the Company’s initiation of these procedures to be a violation of Federal law.” (ME 146). Complainant requested that Respondent comply with the procedures of Section 15.G.2.b of the CBA, which required Dr. Bettles to consult with Complainant’s physician, Dr. Nugent, to determine whether counseling was appropriate. (ME 146). (iii) Complainant told Dr. George S. Glass on September 16, 2013 that the Respondent was retaliating against him for following the Company policy called “If you see something, say something.” (ME 199).

INTERROGATORY NO. 9: If you contend that FedEx maintained any policy, procedure, regulation, practice, contract provision or custom that was misapplied regarding you, identify the policy, procedure, regulation, practice, contract provision or custom; and identify the dates(s) that the policy, procedure, regulation, practice, contract provision or custom was misapplied to you.

RESPONSE: (i) The FedEx policy, procedure, regulation, practice, contract provision or custom of placing Complainant on “NOQ” and/or “NOQ UFN” was misapplied to Complainant on August 5, 2013 and August 9, 2013. (ii) FedEx misapplied Section 15 of the CBA, including, but not limited to Section 15.G, when it ordered Complainant to submit to a psychiatric evaluation on August 16, 2013. (ME 61).

INTERROGATORY NO. 10: State the name, address, employer and phone number of all persons you expect to call as expert witnesses to testify at the trial of this civil action, and for each person identified, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and summarize the grounds for each such opinion.

RESPONSE: Complainant has not yet retained any expert witness(es). Complainant will supplement this response if any expert witness is retained.

Dated: March 23, 2015

/s/ Lee Seham

Lee Seham
Stanley Silverstone
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: 914-997-1346

*Attorneys for Complainant
Captain Mark Estabrook*

CERTIFICATE OF SERVICE

A copy of the foregoing document was personally served on March 23, 2015, by email and regular U.S. mail to:

David P. Knox, Esq.,
Senior Counsel
FedEx, Legal Department
3620 Hacks Cross Road, Building B, 3rd Floor
Memphis, TN 38125
David.Knox@fedex.com

Dated: March 23, 2015

/s/ Stanley Silverstone

Stanley J. Silverstone

VERIFICATION

I, MARK ESTABROOK, am the Complainant in this action. I have read the foregoing Answers to Respondent's First Set of Interrogatories, and I believe that the answers are true and correct to the best of my knowledge, information and belief.

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

Executed on March 23, 2015.



Mark Estabrook