

STATE OF MICHIGAN

MICHIGAN NATIONAL GUARD - AGENCY,

vs.

ADVERSE ACTION APPEAL

JOSEPH L. SMOCK,

Appellant.

_____ /

MILITARY HEARING

BEFORE COLONEL KEVIN K. DAWKINS, HEARING EXAMINER

Camp Grayling, Michigan - Thursday, October 9, 2014

APPEARANCES:

For the Agency:

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Curtiss Reporting 2319418715

1 Also Present: Joseph L. Smock
2 SSG Steven Schultz, Assist. CPT Bedells
3 LTC Alice Niedergall
4 MAJ Allyn Johnson, Labor Relations
5 Specialist
6 James Sweat, President 2132 Local
7 Ja'net Vallotton, 2nd Chair to Mr.
8 Banchs
9
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WITNESSES:

PAGE:

None

EXHIBITS:

MARKED:

None

1 Grayling, Michigan

2 Thursday, October 9, 2014 - at 12:56 p.m.

3 COURT REPORTER: We are on the record. It is
4 October 9, 2014, and the time is 12:56 p.m.

5 HEARING EXAMINER: We have reconvened to allow
6 closing statements for both parties. So I will allow the
7 Agency go ahead and make their closing statement. Captain
8 Bedells?

9 CAPTAIN BEDELLS: Thank you, sir. Thank you,
10 sir. I intend to be very brief. This was a collaborative
11 effort between my assistant, Staff Sergeant Schultz, and
12 myself, and we've pared it down to, I think, well short of
13 the allotted time. Sir, at the outset of this hearing, you
14 suggested that you were interested in answering primarily
15 three questions, the first of which was, did the
16 technician do or fail to do what he was charged with in
17 this case. Secondly, would the discipline, based on the
18 proven conduct, promote the efficiency of the service.
19 And, finally, is the penalty in this case appropriate.
20 Now, what I'm going to do for the sake of efficiency is
21 move to the second question first, namely, whether
22 disciplining Master Sergeant Smock for his misconduct
23 promotes the efficiency at MATES.

24 Each of the crimes--or each of the allegations
25 of misconduct in here involve theft. Theft in and of

1 itself makes an agency less efficient. And in fact, you
2 had not only multiple types of theft but theft that
3 over--that we heard over the last couple days, it occurred
4 over a number of years. We heard testimony from Chief Joel
5 Mack, Master Sergeant Thad Cooper, Chief Warrant Officer
6 Todd Whitcher, and Chief Warrant Officer Sharon Whitcher,
7 each of whom testified that they worked alongside Mr.
8 Smock for a number of years. I think at minimum 15 years
9 and as long as in excess of 20 years.

10 Each of those individuals testified that they
11 hadn't spoken up until now about what they--what they
12 testified to in some form or another as a--as a culture at
13 MATES. They chose not to speak up until now because they
14 didn't think anything would be done. More than one of
15 those witnesses I just mentioned testified that they
16 believe Mr. Smock was receiving what we call in the
17 military top cover, right, that the supervisor at MATES
18 was a close personal friend and that going to the
19 supervisor at MATES would--would in effect probably do
20 more harm to their career than good. And we--and we heard
21 that from--in one form--in one form or another from each
22 of those witnesses. So in light of that, how do we answer
23 the second question? Does disciplining Master Sergeant
24 Smock in this case further the efficiency of the
25 organization? And I think that discipline is essential,

1 because without punishing the offender in this case, we
2 allow the culture to continue at MATES. We leave--we
3 leave--we now know Lieutenant Colonel Golnick, for
4 instance, is gone as well. But if we don't remove the
5 theft, the culture continues.

6 And I can be even more brief, sir, with
7 respect to the third question. The third question you want
8 us to answer is whether the penalty, in this case
9 dismissal of Mr. Smock, was appropriate. We looked at the
10 TPR. There's a table of recommended punishments. And
11 that's what they are, recommendations. But both Lieutenant
12 Colonel Meyers and Colonel Durkac testified at the hearing
13 today that--or I'm sorry. They testified on Tuesday that
14 each said that if even one of the offenses was proven, it
15 would have warranted removal and that they would have
16 recommended removal. In the TPR authorizes removal--or
17 warrants up to dismissal for a theft--the theft of--the
18 offense of theft. In fact, a second offense, if proven,
19 recommends no lesser punishment. So I think with the first
20 two questions out of the way, now we--now we get into
21 the--you know, the merits of the case if you will. So the
22 third--the third question that I'll address and really was
23 the first question you wanted answered is did the
24 technician do or fail to do what they were charged with.

25 I think, first of all, we look to the 15-6 and

1 its exhibits. Lieutenant Colonel Meyers and Colonel Durkac
2 again looked at--and they testified to such, that they
3 looked at the 15-6. They looked at the exhibits. And they
4 concluded that if even one of these offenses is proven
5 true, that it warrants dismissal. Okay? And the question,
6 sir, is not did the IO, or investigating officer, capture
7 every single detail of every single crime. That's not what
8 you asked us to answer. You wanted to know, and we have
9 explored in great detail during the course of this
10 hearing, whether there's any evidence whatsoever much of
11 which falls outside what the IO was able to capture, to
12 suggest that he committed these--these offenses. And Staff
13 Sergeant Schultz and I grappled with how best to--how best
14 to get to the merits of the case. Do we address the
15 charges in the order as I've done with the witnesses? Or
16 do we single out the witnesses and then speak to what each
17 witness testified?

18 And what I concluded is that I'm going to
19 deviate from the original plan where I went--where I asked
20 each witness what their knowledge was with respect to each
21 offense. What I want to do is focus on the witnesses here
22 because, as you heard, sir, we have four witnesses who
23 essentially testified of knowledge of widespread theft by
24 Mr. Smock throughout the course of their employment. We
25 had--and that would be Chief Mack, Master Sergeant Cooper,

1 and the two Whitchers. We had a couple of employees who
2 testified, Chief Miller and Master Sergeant Herblet, who
3 really didn't have much to offer one way or the other. We
4 had Master Sergeant Sheldon, who testified that the
5 accounts that Master Sergeant Cooper, Chief Whitcher, and
6 Chief Mack provided were in fact false. And finally, we
7 had Master Sergeant Fouts, who testified--who again really
8 didn't lend any--any substantive testimony with respect to
9 the charges.

10 So with that in mind, I want to focus on the
11 four people who did testify about that--about the theft.
12 First is Chief Mack. Chief Mack testified, sir, that he
13 had personal knowledge of Mr. Smock removing wood from the
14 MATES facility. If you recall at the outset of his
15 testimony, he said that Mr. Smock asked him to help load
16 sheets of ripped plywood from the MATES facility into his
17 personal pickup truck and then help him unload it at his
18 house. Okay? He testified that--he testified where they
19 were at the MATES facility, approximately when that as,
20 what truck was used, what Mr. Smock specifically asked
21 him, where they drove to, and where they unloaded it.
22 Mr.--or I'm sorry--Chief Mack also testified that Mr.
23 Smock personally told him that he had used MATES--lumber
24 from MATES to build a gazebo at his house. He also told
25 him that--Chief Mack also testified that Mr. Smock told

1 him that he had removed engines from Kubota tractors at
2 the air-to-ground range and used those for his personal
3 use.

4 Finally, Chief Mack testified that Mr. Smock
5 personally told him that he had used tires from the MATES
6 facility to install on his son's pickup truck. Now, this
7 is personal knowledge that Mr. Mack shared with you under
8 oath. As I--as I alluded to earlier, that alone according
9 to Colonel Durkac and Lieutenant Colonel Meyers, would
10 have given them reason to terminate Mr. Smock, but I'll go
11 on. Mr. Mack also testified that he was told by Tim
12 Sheldon that--that Mr. Sheldon had observed luan on the
13 Friday--I believe the testimony was after July Fourth,
14 that over the weekend he visited Mr. Smock's house,
15 noticed luan I believe on the interior of a shed, then
16 upon returning to MATES on Monday, the Monday following
17 that very weekend he visited Mr. Smock's house, he noticed
18 that the luan was gone.

19 Now, I will grant you Mr. Sheldon testified
20 under oath, as the other people did, that he never
21 provided that account whatsoever. But we have Chief Mack
22 testifying in that regard and Master Sergeant Cooper
23 confirmed this account and he said he was present when
24 this conversation occurred. Chief Mack also testified that
25 he observed Mr. Smock building tip-ups and display boxes

1 at MATES. Chief Mack also testified that Master Sergeant
2 Herblet had relayed an account--and we heard I think no
3 less than two and possibly three different versions of
4 this account. But nonetheless, Master Sergeant Herblet
5 relayed it to Mr. Mack that he was confronted by
6 Lieutenant Colonel Golnick when Mr. Smock was noticed
7 exiting the MATES with diesel fuel on the back of a pickup
8 truck. Now, again, Master Sergeant Cooper has a very
9 similar account of Mr. Herblet saying this and in fact he
10 testified under oath that he's heard this story from Mr.
11 Herblet at least a dozen times. With respect to Master
12 Sergeant Cooper, he also testified--and regrettably, we
13 couldn't have Staff Sergeant Rock here to testify. But
14 Master Sergeant Cooper also testified that Staff Sergeant
15 Rock had told him that he had observed Mr. Smock driving
16 away from the MATES facility with wood. He
17 testified--Master Sergeant Cooper, that is, testified that
18 he spoke with Staff Sergeant Cooper--or Staff Sergeant
19 Rock to confirm this. And he further testified that Staff
20 Sergeant Cooper--or Staff Sergeant Rock was reluctant to
21 come forward because, according to Master Sergeant Cooper,
22 Staff Sergeant Rock said, "I have 20 years more to go at
23 MATES and I don't want to rock the boat" or words to that
24 effect. Finally, Master Sergeant Cooper testified under
25 oath that he personally observed Mr. Smock building

1 tip-ups at the MATES facility and in fact had purchased
2 tip-ups from Mr. Smock.

3 Next I'd like to address the testimony of
4 Chief Todd Whitcher. Importantly, Mr. Whitcher has some
5 direct knowledge. Mr. Whitcher testified under oath that
6 Mr. Smock himself relayed to Chief Whitcher that he had
7 taken heaters from Camp Grayling for his own use. We then
8 learned of some circumstantial evidence because Chief
9 Whitcher went on to say that while--while on a Craigslist
10 web posting, he observed heaters, because he in fact was
11 looking for heaters according to his testimony. He had
12 observed heaters and the reply listed a telephone number
13 that he recognized. He testified that in fact he knew that
14 number to be Master Sergeant Smock's telephone number. So
15 Chief Whitcher pieced together the fact that Master
16 Sergeant Smock had told him, "Hey, I can get these heaters
17 for you from Camp Grayling. I've gotten them myself." And
18 he went and, according to his testimony, confronted
19 Lieutenant Colonel McNamara about this. Interestingly, we
20 heard that others had confronted Lieutenant Colonel
21 McNamara about this. So this account seems to have some
22 substance to it. Others have corroborated it.

23 We also heard from Chief Sharon Whitcher. And
24 for the record I'll clarify I just spoke about Chief Todd
25 Whitcher. Chief Sharon Whitcher testified that she

1 personally observed Mr. Smock leaving MATES with a
2 truckload of wood. Sir, she provided very detailed
3 accounts of the type of truck, the type of day--or I'm
4 sorry--the particular day, the location that Mr. Smock
5 was--or the direction in which Mr. Smock was traveling,
6 her location as she observed this, the appearance of the
7 truck. She testified to this--these types of observations
8 on at least three occasions. This is firsthand knowledge,
9 sir, of Mr. Smock traveling in a pickup truck full of
10 wood. There is no reason--we heard testimony from multiple
11 people there is no reason to be just traveling within the
12 confines of MATES with a truckload of wood. And there's,
13 furthermore, no reason for it to leave the MATES facility.
14 We heard testimony that Camp Grayling, for instance, has
15 its own woodshop. Finally, she--I'm sorry--Chief Sharon
16 Whitcher testified that upon returning from her
17 deployment, she had a discussion with Master Sergeant
18 Herblet. And her account of that conversation with Master
19 Sergeant Herblet is similar in many respects to the
20 discussion that both Master Sergeant Cooper and Chief Mack
21 testified to, specifically that Master Sergeant Herblet
22 had--had relayed to her an account wherein Mr. Smock was
23 seen leaving the facility--her testimony that he was seen
24 leaving the MATES facility with 55-gallon drums of diesel
25 and returning with empty--returning with those same cans

1 and that they were empty upon return. She also testified,
2 as Chief Mack and Master Sergeant Cooper did, that
3 Lieutenant Colonel Golnick had asked, "Does anyone know
4 why Mr. Smock's leaving the MATES facility with 55-gallon
5 drums of diesel fuel?" Finally, Chief Whitcher testified
6 that she had personally observed Mr. Smock building
7 display cases and tip-ups and leaving the MATES facility
8 with those building--with those tip-ups and display boxes.

9 Now, as I mentioned earlier, we heard from
10 more than these four witnesses. With the exception of
11 Master Sergeant Tim Sheldon, what we never heard was
12 that--that these offenses did not occur. What we heard
13 from Master Sergeant Sheldon was only that what Master
14 Sergeant Cooper and Chief Mack were claiming he said never
15 occurred. That does not discount what Chief Mack, Master
16 Sergeant Cooper, Chief Sharon Whitcher, and Chief Todd
17 Whitcher said that had nothing to do with Mr. Sheldon. Mr.
18 Sheldon testified to one account. Now, what he claims
19 happened is different than what two other people claim
20 happened. You'll have to weigh that testimony and give
21 weight however you see fit. But taking that particular
22 account out of the equation, it still leaves firsthand
23 accounts of Mr. Smock stealing property from the MATES
24 facility.

25 I'll tell you, sir, that as I looked at this

1 case and the fact that we had four witnesses come forward,
2 four witnesses who had worked with Master Sergeant Smock
3 for a number of years, it gave me some pause. And
4 I'll--I'll say why I wrote some personal notes down here.
5 It's regrettable that we only heard from four witnesses,
6 because according to each one of those witnesses the theft
7 was so widespread, so prevalent, that they talked about a
8 culture. They were frustrated. They didn't do anything.
9 And I thought to myself, how can I only get four of these
10 people to come forward? And that's why you also heard
11 testimony from each one of those four people explaining
12 why it was only the four of them. They explained the
13 culture. They explained the fact that Master Sergeant
14 Smock and Lieutenant Colonel Golnick were close friends.
15 Lieutenant Colonel Golnick, up until, what, very recently,
16 was the supervisor at MATES for a number of years. And
17 they decided now was the time to change that culture, to
18 call people out on this. You heard Chief Witcher talk
19 about--and this is really what gave me pause as I went
20 through this with Staff Sergeant Schultz and wrote my
21 notes down. She testified, sir, that at some point she had
22 to look herself in the mirror and do what was right. And
23 I'm proud of those four people for coming forward and
24 doing what was right. It was difficult. You know it was
25 difficult. We know it was particularly difficult for Chief

1 Mack, who had at one point to excuse himself. These people
2 were good friends with Joe Smock. And I'm sure Joe Smock
3 was a good friend back to them. I can't imagine how
4 difficult it must have been for these people to come
5 forward and testify in this forum against a close friend.
6 I have nothing further.

7 HEARING EXAMINER: Thank you. Mr. Banch, you
8 prepared--

9 MR. BANCH: Yes, sir.

10 HEARING EXAMINER: --a closing statement?

11 MR. BANCH: Yes, sir, we're prepared.

12 HEARING EXAMINER: Go ahead.

13 MR. BANCH: Thank you, sir. Sir, I'm not going
14 to bore you with a blow-by-blow rebuttal and an
15 unequivocal denial of each charge against Mr. Smock,
16 because it is--it is already in our technician reply. And
17 I think we did a fairly good job of rebutting all the
18 charges against Mr. Smock by the Agency. And it is our
19 strong belief that the Agency's entire case is based on
20 hearsay, sometimes double or even triple hearsay. We also
21 believe that the credibility of Mr. Smock's accusers like
22 Mr. Joel Mack and Mrs. Sharon Witcher, the only two
23 witnesses who now claim firsthand knowledge of wrongdoing,
24 is questionable enough to cast doubt on their
25 post-investigation revelations. Whether it was because

1 they all of the sudden remembered or because they didn't
2 make revelations due to their mistrust of commissioned
3 officers or because they all of the sudden had an attack
4 of conscience, all that testimony is far outweighed by the
5 testimony we believe of individuals like Master Sergeant
6 Troy Herblet, Master Sergeant Tim Sheldon, two individuals
7 who they supposedly relied on for testimony, who
8 completely disputed what they were claimed to have said.
9 And also the testimony of individuals like Chief Warrant
10 Officer 4 Dean Miller and even Colonel Jim Gardiner, who--
11 should be highlighted that he came here as a witness on
12 behalf of Mr. Smock.

13 And it is interesting that Captain Bedells
14 would mention that individuals like CW4 Miller's testimony
15 did not contribute much because he in fact refuted all of
16 the allegations against Joe. And that's telling,
17 considering that the Agency has seen to fit to promote him
18 to the number-two spot at MATES post-investigation.
19 Instead, Captain Bedells would like you to focus on the
20 testimony of some who alleged--who allegedly committed a
21 federal crime--who alleged to have committed a federal
22 crime by allegedly being an accomplice to stealing
23 government purchased wood from MATES like Mr. Mack.

24 Instead, I would rather focus on the
25 Appellant, sir. For nearly 30 years Joe Smock has been

1 doing the right thing. He served his country. He's
2 well-liked and respected in this community. And he's been
3 an outstanding son, a husband, a father and friend to many
4 including myself. Joe will do anything for anyone, and Joe
5 is a guy who can do almost anything. Because of his
6 upbringing and where he grew up, Joe's a skilled
7 individual who can build things and who enjoys fishing and
8 hunting and doing all of the things that his father and
9 others in his life taught him to do. Joe's family has been
10 in Grayling for a long time, as have many others. In fact,
11 from my brief stay here, because this is the first time
12 that I've--well, actually it's the second time that I've
13 been to Grayling but the first time that I've been here
14 for more than a day. From my brief--here it's apparent
15 that this is a very close community. And in my book,
16 that's always been a good thing. It's your typical
17 American small town where everyone grows up together. They
18 enjoy each other's company, whether it's during the week
19 or on the weekends, whether they go to church, whether
20 they go to a ballgame or whatever it is. And they laugh
21 and they all grieve together here. And that's all supposed
22 to be good things, and in this case it was used against
23 Mr. Smock by both his accusers and the Agency
24 representative. And then one day some of those same people
25 in his life who he thought were his friends, people he

1 grew up with, people he went to school with, that he went
2 fishing with, who he'd help build their house, who he
3 introduced their future spouses to and then stood in their
4 weddings, people whom he helped land a job, these same
5 individuals whether out of jealous, spite or perhaps
6 because they had nothing better to do, set out to ruin his
7 life and the lives of a handful of others by fabricating a
8 story so outlandish and so farfetched that it reeks of a
9 bad mafia movie, so much so that they even labeled those
10 they wished to do harm as the Grayling mafia.

11 It's important to note that this all started
12 with a single anonymous letter, a document that's short on
13 facts and long on baseless accusations, a document which
14 the US Army CID Department themselves apparently found was
15 not worthy of their attention. And the fact that the
16 letter was anonymous is important, because those who would
17 accuse Joe and the others of breaking the law tried to
18 hide behind the allegation that they need to remain
19 anonymous because they fear retaliation or because they
20 fear for their safety. They even fabricate stories of
21 verbal or physical threats, even vandalism like having
22 their tires slashed, but don't file complaints or call the
23 police. In reality, the need for anonymity and the stories
24 of intimidation strike more of an excuse. They sort of
25 give themselves a free pass to make accusations and face

1 no consequences. In fact, at least one of the witnesses
2 yesterday testified that they were assured and they never
3 imagined that they would have to ever face those they
4 accused. How convenient.

5 In response to this document, to the
6 anonymous document, the Agency turned the entire system on
7 its head. Rather than conduct an objective and unbiased
8 investigation in order to build a case from the ground up,
9 it's quite clear the Agency allowed the anonymous letter
10 to build the foundation for their investigation. They
11 select an investigating officer, and they deliberately
12 selected him because of his law enforcement background,
13 who proceeded to formulate a collection of assumptions
14 based on the anonymous allegations and who, based on my
15 listening to over 34 hours of audio interviews, conducted
16 his investigations as a means to justify the
17 pre-formulated conditions. In other words, he sought out,
18 he coached, and he even elicited witnesses' testimony that
19 would support his prejudiced notions and ignores--and
20 ignored those witnesses who contradicted and refuted the
21 anonymous accusations.

22 To further complicate matters, he readily
23 accepted hearsay testimony, sometimes double and triple
24 hearsay, as being true and accurate from individuals who
25 openly admitted to collaborating with each other outside

1 of the interview room. The IO chose to ignore the fact
2 that witnesses were openly admitting to talking about the
3 questions he was asking, even though each witness was
4 being ordered not to speak about the interview nor their
5 testimony with anyone. In fact, even during this very
6 hearing, sir, yesterday a witness informed our panel,
7 informed you, that witnesses were actively ignoring your
8 instructions not to discuss their testimony and
9 immediately afterwards they were finishing here--after
10 they were finished here, they would return to the holding
11 area and discuss their testimony with others. In other
12 words, these individuals have zero respect for this
13 process. This collaboration or tainting of witnesses was
14 something that the IO's assistant investigator, First
15 Lieutenant Emery, indicated was troubling to him. And
16 that's in the record.

17 Witness collaboration is something AR-15 also
18 cautions investigators strongly about, because it could
19 taint their investigation. Now, while the Agency has tried
20 to downplay the significance of this, it is nonetheless an
21 important issue because it is clear from my review of the
22 case file, that this entire incident was manufactured by
23 four specific individuals, Mr. Joel Mack, Mr. Thad Cooper,
24 and Sharon and Todd Whitcher. And along those lines is
25 also important to note that this is four out of over 50

1 interviewed by the investigating officer and out of 60
2 that work at the facility at MATES. Colonel Doolittle
3 operated under the belief that those accused were guilty
4 until proven innocent and set out to indict rather than
5 exonerate. That's not how our system of justice is
6 supposed to work, neither in criminal settings or in this
7 type of administrative settings--setting or even in a
8 military setting. The burden of proof always rests with
9 the accuser, not the accused. Again, Colonel Doolittle
10 clearly established a theory or theme as he stated in his
11 15-6 summary based on the anonymous allegations and then
12 cherry-picked his way through the pages upon pages of
13 nothing more than unsubstantiated hearsay testimony. And
14 he admitted on the stand that basically his investigation
15 was cut short, and he was not able to finish.

16 Once Colonel Doolittle turned his
17 investigation over in Mr. Smock's supervisory chain, their
18 actions are also questionable. And their timeline from the
19 time the investigation ended at the end of January until
20 the original decision was issued at the end of February
21 raises numerous concerns. Now, personally having been
22 involved in labor relations for nearly ten years now, both
23 as a union representative and as an agency representative,
24 I believe that I have the experience, knowledge to speak
25 as an expert on this point. I have represented employees

1 as a union rep in disciplinary matters, and I have
2 processed adverse actions on the Agency's behalf as a
3 labor--as a labor relations specialist. And I can assure
4 you that while it is possible that Lieutenant Colonel
5 Meyers gave full consideration to the entire contents of
6 the 15-6 and while it is possible that with help from his
7 labor relations folks or HR staff or even the JAG, that he
8 was able to accomplish six separate proposed adverse
9 action letters in the span of two weeks, it is implausible
10 that he did so to the best of his ability, especially in
11 light of the fact that he failed to interview not one of
12 the accused employees to ascertain their side of the
13 story.

14 Now, while it is possible for Lieutenant
15 Colonel Meyers to do what he claimed he did in two weeks,
16 it is my expert opinion that it is categorically
17 impossible for Colonel Durkac to have given full
18 consideration to the contents of the 15-6 investigation,
19 to Lieutenant Colonel Meyers' proposals of termination or
20 of suspension, and Mr. Smock or the other five employees'
21 replies and rebuttal evidence in a span of less than 48
22 hours. Colonel Durkac never explained his rush to
23 judgment, and the only conclusion that I can draw--and
24 this is my opinion--is that the decision was already made.
25 As such, this case stands as an example of how not to

1 conduct an investigation and how not to process
2 discipline.

3 I'll close with this, sir, and like I said, I
4 don't want to bore you with retrying the case here in the
5 closing argument, because you're going to have plenty of
6 time to do that, sir. And I think we did a very good job
7 of cross-examining witnesses, putting our own witnesses on
8 the stand, and our technician reply we feel is good
9 enough. But I'll close with this and, and oddly enough,
10 I'll quote one of Joe's detractors, Mr. Joel Mack. Mr.
11 Joel Mack on the stand testified that just because someone
12 says it doesn't mean it's true. Truer words couldn't have
13 been spoken. He's absolutely right. While the burden of
14 proof in this forum is not as demanding as it is in a
15 court of law, a preponderance of the evidence still
16 requires evidence. And as Mr. Mack testified himself,
17 hearsay is not enough to end a man's career. Hearsay is
18 not enough for Joe to go home to his wife and kids and
19 say, "Karen, some of my coworkers said I stole a TV, I
20 stole fuel, I stole wood and a bunch of other stuff, and
21 they fired me. Sorry. I've got to find another job or
22 we've got to sell the house." With all the laws, the
23 rules, regulations, administered processes, the checks and
24 balances that we have in our society and in our system of
25 justice, they're all derived from the Constitution and

1 law, and they're made to protect those who are accused. Do
2 we really end someone's career, do we really ruin
3 someone's life, their family, and their reputation, and do
4 we really turn an entire community upside down merely
5 based on hallway chitchat like one of the witnesses
6 testified? The short answer, sir, from my perspective and
7 on behalf of Joe is no, we don't. That's it, sir. Thank
8 you.

9 HEARING EXAMINER: Thank you. Mr. Smock, I'm
10 going to now ask you for the record, do you feel that
11 you've had a fair opportunity to present your side of the
12 case?

13 MR. SMOCK: Yes, sir.

14 HEARING EXAMINER: Thank you. I want to just
15 thank some folks before we finish this up. It's been a
16 rough couple days, I know, for every--actually months in
17 this case. I do want to thank, first of all, both
18 representatives for a couple of things--for a number of
19 things, for a vigorous effort to present the two sides of
20 the case. I've not done a lot of cases but I will say that
21 this--both representatives in this case have in my opinion
22 done--put a lot of effort and attention into presenting
23 your cases. And I appreciate that. I appreciate your
24 communication with me, both prior to my getting here,
25 prior to this starting, and throughout--throughout the

1 process. I appreciate your cooperation, and I also
2 appreciate your flexibility. We've hit some logistical
3 snags here and there along the way, and I definitely
4 appreciate your flexibility. And that goes not only for
5 the primary representatives, but also for your--for your
6 teams. So thank you for that, all of you.

7 MR. BANCH: Thank you, sir.

8 HEARING EXAMINER: I want to thank the HRO
9 support staff who every time we've had a little diversion
10 in the intended path have had to react to that and
11 logistically respond to that too. So thanks. It doesn't go
12 unnoticed and I very much appreciate and understand when
13 we change our mind about how we're going to do things,
14 that that causes a ripple effect that probably causes
15 hours of work for you after a decision that was made in
16 about 30 seconds. So thank you. I want to thank also the
17 audience. You guys have, as I asked, been respectful, and
18 I very much appreciate that. So thanks. And also you
19 remind me what a small world it is. And the court
20 reporters, thank you very much for your participating in
21 this as well. All right. Both parties will be given an
22 opportunity to review the total record of the case when
23 the verbatim transcript is completed and mailed. The
24 Appellant or his or her representative will receive a copy
25 of the transcript. Ben, is it your intent that the

1 transcript be sent directly to you and then you'll share--

2 MR. BANCH: Yes, sir.

3 HEARING EXAMINER: Okay. And then how does the
4 Agency--do you want it sent to the HRO?

5 CAPTAIN BEDELLS: Yes, sir.

6 HEARING EXAMINER: And then--and then it's
7 distributed as needed, the Agency set?

8 CAPTAIN BEDELLS: Yes, sir.

9 HEARING EXAMINER: Okay. I have 45 days from
10 the time I receive the verbatim transcript in order to
11 render a recommendation in this case. I will consider all
12 the evidence that's been presented and then submit a
13 report of findings and recommendations to the Adjutant
14 General of Michigan through the human resource office. So
15 my primary conduit for information for my report of
16 findings will be to Major Johnson--

17 LIEUTENANT COLONEL NIEDERGALL: It won't be--

18 HEARING EXAMINER: That's right--Captain
19 Marshall?

20 LIEUTENANT COLONEL NIEDERGALL: Yes, sir.

21 HEARING EXAMINER: Okay. And I'm open to--do
22 you want that to be your conduit as well? Do you want me
23 to send it to him and then he--I'm sorry--to Captain
24 Marshall and then she'll distribute to the Agency and to
25 you? Or would you rather have it direct?

1 MR. BANCH: That's fine, sir. They can--you
2 can--

3 HEARING EXAMINER: Okay. It's easier for me if
4 I've just got one--

5 MR. BANCH: Absolutely.

6 HEARING EXAMINER: --one conduit.

7 MR. BANCH: No worries.

8 HEARING EXAMINER: A copy of my report will be
9 given to the Appellant or representative. For your benefit
10 after the review and consideration, the decision will be
11 furnished in writing by the Adjutant General of Michigan.
12 You're advised that you may make any additional statements
13 that you consider necessary to complete the record of this
14 case at this time. Does the Agency have any additional
15 statements?

16 CAPTAIN BEDELLS: No, sir.

17 HEARING EXAMINER: Does the Appellant have any
18 additional statements?

19 MR. BANCH: No, sir.

20 HEARING EXAMINER: In that case, I will
21 declare this hearing closed. Thank you.

22 MR. BANCH: Thank you, sir.

23 HEARING EXAMINER: We can go off the record.

24 COURT REPORTER: We are going off the record.
25 The time is now 1:34 p.m.

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(At 1:34 p.m., proceedings concluded)

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RECORDER'S CERTIFICATE OF TRANSCRIPTION

I do hereby certify that on the date and at the place set forth on the title page hereof, there did personally appear before myself, Notary Public, the witnesses named on the table of contents page; that said witnesses were sworn to tell the truth and that testimony electronically recorded, the same being later reduced to typewriting, and that the foregoing is a true and accurate transcription by me of said electronic recording.

I further certify that I, to the best of my knowledge, am not related to or employed by any party to this cause or their respective counsel/representative.

Teresa A. Sotuyo



Teresa A. Sotuyo

Notary Public - CER - 4812

My commission expires: 2/26/2020