

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED STATES POSTAL SERVICE,
Respondent

and

Case 05-CA-180590

LARRY THURMAN PRETLOW, II, an Individual
Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S
EXCEPTIONS TO THE DECISION AFTER REMAND AND
ORDER OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, counsel for the General Counsel (CGC) files the following Exceptions to the Decision After Remand and Order (ALJDAR) of the Honorable Deputy Chief Administrative Law Judge Arthur J. Amchan (ALJ), which issued September 14, 2018.

1.

CGC excepts to the ALJ's dismissal of the allegations in the Complaint and Notice of Hearing (Complaint) alleging Respondent discharged the Charging Party in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

2.

CGC excepts to the ALJ's finding that "Respondent did not violate the Act in terminating [the Charging Party] for his insubordination at the June 8, 2016 performance evaluation." (ALJDAR 9:38-39).

3.

CGC excepts to the ALJ's finding that "Respondent was entitled to terminate [the Charging Party] for insubordination because scheduling him for a performance evaluation does not rise to the level of a 'provocation.'" (ALJDAR at 8:40-42).

4.

CGC excepts to the ALJ's distinguishing of *Supershuttle of Orange County*, 339 NLRB 1 (2003) and *Kidde, Inc.*, 294 NLRB 840 (1989) from the instant case, and in so doing failing to make the connection between the unfair labor practice of discriminatorily mandating an evaluation for the Charging Party and then discharging the Charging Party for conduct occurring because of that unlawful evaluation. (ALJDAR 9:21-31).

5.

CGC excepts to the ALJ referring to the Charging Party's conduct following his discharge by Respondent. (ALJDAR 6:18-24).

6.

CGC excepts to the ALJ finding the Charging Party would likely have been given an evaluation at some time after he returned to work. (ALJDAR 8:1-3).

Respectfully submitted,

/s/ Stephen P. Kopstein

Stephen P. Kopstein, Counsel for General Counsel
National Labor Relations Board
Region 5 – Washington Resident Office
1015 Half St, SE, Suite 6020
Washington, DC 20570
Telephone: (202) 273-1994
Facsimile: (202) 208-3013
E-Mail: stephen.kopstein@nlrb.gov

Dated at Washington, District of Columbia, this 12th day of October 2018.

CERTIFICATE OF SERVICE

I hereby certify that the COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION AFTER REMAND AND ORDER OF THE ADMINISTRATIVE LAW JUDGE in Case 05-CA-180590 was filed via E-Filing and served on the following individuals via electronic mail, on this 12th day of October 2018, on the following:

Via Electronic Mail:

Mark F. Wilson, Esq.
Law Department – NLRB Unit
United States Postal Service
1300 Evans Avenue, Room 217
San Francisco, CA 94188
Mark.F.Wilson@usps.gov

Larry Thuman Pretlow, II
5906 Stevens Forest Road, #4
Columbia, MD 21045
Larry.T.PretlowII@gmail.com

/s/ Stephen P. Kopstein

Stephen P. Kopstein, Counsel for General Counsel
National Labor Relations Board
Region 5 – Washington Resident Office
1015 Half St, SE, Suite 6020
Washington, DC 20570
Telephone: (202) 273-1994
Facsimile: (202) 208-3013
E-Mail: stephen.kopstein@nlrb.gov