



SEPTEMBER 30, 2014
TOP NEWS STORIES

EX-GSA EXECUTIVE RESPONSIBLE FOR LAS VEGAS CONFERENCE INDICTED ON FIVE COUNTS OF FRAUD

Jeff Neely, the former General Services Administration (GSA) executive at the epicenter of the “[over the top](#)” \$822,000 2010 Western Regions Conference in Las Vegas, has been [indicted](#) by a federal grand jury in San Francisco.

The 2010 training conference, made famous by a [photo of Neely in a hot tub](#) with two glasses of wine, ushered in an era of scrutiny of travel and conference spending, as well as that of senior executives, that persists to the present.

Neely was [indicted on five counts of fraud](#) total, including three counts of making false claims and two counts of making false statements.

Only two of the charges relate to the Las Vegas conference, with the additional charges relating to Neely seeking reimbursement for personal travel and expenses, as well as misrepresenting costs as incurred for official government business.

Neely will appear in federal court in San Francisco on October 20. He faces a maximum sentence of five years imprisonment, and a fine of \$250,000 for each violation.

INCREASE IN VETERAN HIRES RESULTING IN DECLINE IN FEMALE HIRES, MSPB FINDS

The federal government’s success in attracting and hiring military veterans is [affecting hiring of another group](#) – females.

New research from the Merit Systems Protection Board (MSPB), included in the [Fall 2014 Issues of Merit](#), found a 6 percentage point drop in new female hires – from 43% in 2000 to 37% in 2012.

The MSPB article highlights the use of certain hiring authorities, including Veterans Employment Opportunities Act (VEOA) and Veterans’ Recruitment Appointment (VRA) authorities, as potential factors driving the percentage of female hires down, since over 80% of active duty military are males.

MSPB research has found that as the use of veterans hiring authorities has increased in recent years, the percentage of female new hires decreased. Additionally, over 35% of those hired under competitive examining were veterans.

“An over-reliance on too few hiring authorities may not be healthy for an organization’s culture, as those authorities may not result in a workforce that is representative of society. Agencies should take care when hiring the majority of their employees through just one or two authorities that limit eligibility to a particular segment of society,” the MSPB article states.

MSPB will soon issue a report on fair and open competition, and will discuss in depth the implications of hiring authorities for open competition and workforce diversity.

ATTORNEY GENERAL ERIC HOLDER TO RESIGN

Attorney General Eric Holder, the nation's 82nd attorney general, and the first African American to hold the position, announced his intent to resign last Thursday.

Holder's resignation was [first reported by NPR](#), and the Attorney General has indicated he will remain in his position until the Senate confirms his successor. Holder ranks as the fourth-longest serving attorney general in U.S. history.

Holder is one of the President's longest serving cabinet members, having joined the Administration in 2009. He discussed his plans to resign with the President over Labor Day weekend, [according to media reports](#).

The Attorney General informed Justice Department staff of the news prior to the public announcement, and also called civil rights icon Rep. John Lewis (D-GA) and Ethel Kennedy, the widow of former Attorney General Robert F. Kennedy, to inform them before the news went public.

President Obama and Attorney General Holder [appeared in the White House State Dining Room](#) to officially announce Holder's intended departure. Both the President and the Attorney General [delivered remarks](#), with the President highlighting Holder's reinvigoration and restoration of the Justice Department's Civil Rights Division among Holder's "proudest achievements."

"As younger men, Eric and I both studied law," the President said of Holder. "And I chose him to serve as Attorney General because he believes, as I do, that justice is not just an abstract theory. It's a living and breathing principle. It's about how our laws interact with our daily lives. It's about whether we can make an honest living, whether we can provide for our families; whether we feel safe in our own communities and welcomed in our own country; whether the words that the Founders set to paper 238 years ago apply to every single one of us and not just some. That's why I made him America's lawyer, the people's lawyer."

"I have loved the Department of Justice ever since as a young boy I watched Robert Kennedy prove during the Civil Rights Movement how the Department can and must always be a force for that which is right. I hope that I have done honor to the faith that you have placed in me, Mr. President, and to the legacy of all those who have served before me," Attorney General Holder stated at the White House press conference.

"In the months ahead, I will leave the Department of Justice, but I will never -- I will never -- leave the work. I will continue to serve and try to find ways to make our nation even more true to its founding ideals," Holder also stated. "I want to thank the dedicated public servants who form the backbone of the United States Department of Justice for their tireless work over the past six years, for the efforts they will continue, and for the progress that they made and that will outlast us all."

Statements from public figures, organizations, and political figures reflecting on Attorney General Holder's tenure were [posted by the Justice Department](#).

NPR reported that Solicitor General Don Verrilli, the administration's top representative to the Supreme Court, is a leading candidate for the attorney general nomination. The President has not yet decided on a nominee to replace the attorney general, according to media reports.

FROM THE HILL

BILL PROHIBITS ACCESSING PORNOGRAPHY ON FEDERAL COMPUTERS AND DEVICES

Legislation ([H.R. 5628](#)) has been introduced that prohibits accessing pornographic or explicit websites from federal computers and devices.

Rep. Mark Meadows (R-NC) introduced the legislation in the wake of an Environmental Protection Agency (EPA) inspector general report that found an employee was viewing as much as six hours of pornography a day from their government office.

The employee has not yet been removed from federal service, [according to Greenwire](#), although the EPA has said the [employee is on leave pending an investigation](#) by the EPA Office of Inspector General and the U.S. Attorney's office.

Many agencies, including the EPA, do have policies restricting access of certain sites.

"It's appalling that it requires an act of Congress to ensure that federal agencies block access to these sites at work," Rep. Meadows [said](#).

CAREER TIP OF THE WEEK

HOW TO WRITE A GREAT BUSINESS ACUMEN ECQ

Even in this unique writing style we call ECQs, Business Acumen stands out as a little bit different. Of course, each ECQ should be executive in scope, fall within the past 10 years, follow the Challenge-Context-Action-Result (CCAR) format, include impactful results, and address the specific competencies.

For example, your Leading People ECQ will ideally include two career stories that address the competencies of team building, developing others, conflict management, and leveraging diversity.

Business Acumen has three competencies (Financial Management, Human Capital Management, and Technology Management), but unlike the other ECQs, they don't always "flow" as naturally together.

In fact, many people find it extremely difficult to think of career stories that incorporate all three of the Business Acumen competencies. And even when they do, the stories tend to be overly dense and confusing because there's just too much information packed in there.

Here is a highly effective best practice and perspective to consider for Business Acumen: Imagine you are on the review board. You may be reading career stories from a senior military officer, a corporate executive, or a seasoned federal manager. Moreover, the setting could be anywhere in the world, from the boardroom, to the battlefield, to countless other work environments. Regardless of the applicant's background or the setting, you, as part of the review board, need to be able to see that the applicant is comfortable and capable in managing the financial, human capital, and technological aspects of programs and organizations.

So, when writing your Business Acumen examples, think of this particular ECQ as three "mini-ECQs," instead of trying to combine the somewhat disparate topics of financial, human capital, and technology management. The examples may have to be a bit shorter than normal, since all three still have to fit within the two-page limit. Additionally, the three CCAR examples can come from different positions or programs within the past 10 years, or they can come from the same position.

Ultimately, by taking this straightforward approach, you can more clearly present your top career stories while effectively addressing the Business Acumen competencies.

Lee Kelley is an Iraq war veteran, former Army Captain, and author who now serves as the senior writer on [CareerPro Global's writing](#) team. Leveraging the company's vast expertise in assisting thousands of SES and federal job seekers, Lee has personally developed hundreds of resumes and more than a thousand ECQs. He is also the Director of Training and Veteran Transitions, and has provided USAJOBS resume-writing workshops to hundreds of federal employees and military personnel. In addition, Lee co-authored the book *Roadmap to the Senior Executive Service: How to Find SES Jobs, Determine Your Qualifications, and Develop Your SES Application*. His latest book is titled *Inside Marine One: Four U.S. Presidents, One Proud Marine, and the World's Most Amazing Helicopter*.

THIS WEEK ON FEDTALK

HIRING & MANAGING MILLENNIALS

This week's FEDtalk show will take a look at hiring and managing millennials in the federal sector. Kimberly Holden, Deputy Associate Director of Recruitment and Hiring, Employee Services, Office of Personnel Management (OPM), Miguel Aviles, Chief Learning Officer, Young Government Leaders (YGL), and Neil Reichenberg, Executive Director, International Public Management Association for Human Resources will be joining the show.

The radio show airs this Friday, October 3rd, at 11:00 a.m. Eastern time. [Click here on Friday to listen or tune in to 1500 AM in the Washington, DC area.](#)

FEDtalk is a live radio talk show produced by [Shaw Bransford & Roth P.C.](#), a federal employment law firm. Bringing you the insider's perspective from leaders in the federal community since 1993.

CASE LAW UPDATE

MSPB FINDS NO WRONGFUL ACTIONS BY AGENCY IN DEPRIVING EMPLOYEE OF CHOICE TO RETURN TO WORK

A Postal Service Customer Services Supervisor was absent from his position, starting in October 2012, due to chronic headaches. On January 23, 2013, the employee filed a Board appeal, which claimed that although he had been released to return to work as early as December 24, 2012, he had not been returned to work by the Agency. An MSPB administrative judge dismissed the employee's Board appeal for lack of jurisdiction because at the time of the appeal's filing, the employee had not been cleared to work in his previously assigned duties, and because the administrative judge believed that the agency had met its burden to show that no work was available within his medical restrictions. Also, the administrative judge found that, subsequent to the filing of the appeal, the Agency convened a district reasonable accommodations committee ("DRAC") meeting to offer the employee other, non-supervisory work that was consistent with his restrictions, which the employee declined, and that the employee had only initially provided a brief note stating that he needed hearing protection and a 12-hour cap on his daily hours, with receipt of medical documentation delayed until the end of March 2013. At that point, the administrative judge noted, the Agency returned him to work "within a reasonable time." Concluding that the employee had failed to meet his jurisdictional burden to establish that an appealable suspension had occurred, the administrative judge dismissed the appeal. The employee appealed to the full Board. On September 24, 2014, the Merit Systems Protection Board affirmed the initial decision as modified by its own opinion.

The Board has, as it noted at the outset of its analysis, recently grappled with whether certain leaves of absence should be appealable as either constructive or actual suspensions. The Board cited *Bean v. U.S. Postal Service*, 120 M.S.P.R. 397 (2013), a case in which an employee took a large amount of sick leave, annual leave, and leave without pay ("LWOP") to avoid working into the night contrary to his doctor's recommendations. The

employee in *Bean* submitted supporting medical documentation along with his request for reasonable accommodations, but the agency never found an accommodation upon which the parties could agree. In that case, the Board found that the employee was compelled to take leave because his only alternative would be to work into the night in violation of his physician's orders, and that the Agency had improperly removed him from the 2-day shift, failing to accommodate his condition. This decision departed from previous Board decisions, which had suggested that the choice to take leave instead of working outside of a doctor's orders was merely an "unpleasant choice," instead of a constructive suspension in which the employee lacked a meaningful choice.

The Board also discussed another recent decision, *Abbott v. U.S. Postal Service*, 121 M.S.P.R. 294 (2014), which according to the Board "did not concern a claim that leave that appeared to be voluntary actually was not." Rather, in *Abbott*, the employee submitted a request to work a light-duty assignment, but the agency denied her request and stated that there was no work available under those medical restrictions. The agency then placed the employee on enforced leave, and an administrative judge dismissed the appeal as an alleged constructive suspension that lacked jurisdiction. The full Board reversed, holding that placement of an employee on enforced leave due to a medical condition which prevents work from being performed in any available position is not a constructive suspension, but an actual suspension of more than 14 days. In these cases, the *Abbott* Board concluded, the burden of proof is heightened, and the agency must prove by preponderant evidence that the charged conduct occurred, that a nexus exists between the conduct and service efficiency, and that the penalty is reasonable.

After comparing the cases, the Board in this case determined that it was, like *Bean*, an appeal of a constructive, rather than an actual, suspension, "insofar as it concerns a claim that leave that appeared to be voluntary actually was not." The Board observed specifically that although the employee was voluntarily absent at first, it "arguably" became involuntary after he expressed his readiness to return to work on December 24, 2012, and the agency did not find him work within his expressed restrictions. Citing *Bean*, the Board stated that in order to establish Board jurisdiction the employee would have to prove by preponderant evidence that he lacked a meaningful choice in the matter and that it was the agency's wrongful actions that deprived him of that choice.

According to the Board, the employee satisfied the first prong of the *Bean* test, because he proved that he lacked a meaningful choice in the matter after the agency decided not to return him to work. However, the Board also concluded that the employee failed to prove by preponderant evidence that the agency acted improperly in refusing to allow the employee to return to work, and therefore failed to prove the *Bean* test's second prong. The record included a work capacity report which indicated that the employee's condition could be augmented with stress, and that his work should be limited to eight hours per day. The agency produced testimony that it followed up on that work capacity report, and was told by the employee's primary care physician and neurologist that the employee was not "safe and medically cleared" to return to the work environment. The physician also clarified that the employee's symptoms could be exacerbated by stress and by loud noises.

Because the agency showed that the employee's restrictions were significant (less noise, less stress, and less hours), the Board found that there was not any improper or wrongful agency action. Citing the agency's two DRAC meetings, the reasonable determination that a supervisory position did not meet the aforementioned restrictions, and the offering of three nonsupervisory positions (which were rejected), the Board found that, contrary to the employee's assertions, the Agency had worked diligently to find a position that met the restrictions. The Board also found that the agency, after subsequently receiving medical documentation which instructed it that the employee could return to work with only hearing protection and hours not to exceed 12 per day, "promptly" returned the employee to his previously held Supervisor position.

The employee argued that there were other vacant supervisory positions available within his prior medical restrictions, but the Board held that the record did not support this assertion, and that the employee's belief

that he could perform supervisory duties did not change its disposition due to the inherent stress of a supervisory position.

For the above stated reasons, the Merit Systems Protection Board affirmed the administrative judge's decision that the Board lacked jurisdiction over the employee's constructive suspension appeal.

[You can read the full case, *Romero v. United States Postal Service*, here.](#)

This case law update was written by [Conor D. Dirks](#), associate attorney, [Shaw Bransford & Roth, PC](#).

For thirty years, Shaw Bransford & Roth P.C. has provided superior representation on a wide range of federal employment law issues, from representing federal employees nationwide in administrative investigations, disciplinary and performance actions, and Bivens lawsuits, to handling security clearance adjudications and employment discrimination cases.

GEICO'S GOOD STUFF **U.S. MARSHALS MARK 225 YEARS OF SERVICE**

GEICO's Good Stuff is a column series highlighting great stuff happening in the federal community.

September 24 marked the 225th anniversary of the U.S. Marshals Service (USMS), the nation's oldest law enforcement agency.

"When President George Washington appointed the first 13 U.S. Marshals on Sept. 24, 1789, his pen marked the creation of an agency that has since played a role in virtually every facet of the nation's federal judiciary during times of crisis and times of peace," [said](#) U.S. Marshals Service Director Stacia Hylton.

The USMS force is comprised of 5,400 deputies and civil servants to carry out the agency's mission. Those individuals carry out operational and administrative duties that include apprehending fugitives, housing and transporting prisoners, protecting witnesses and federal judges, and managing and selling seized assets.

The USMS is the government's primary agency for conducting fugitive investigations. Working with federal, state, and local partners, the Marshals apprehend more federal fugitives than all other federal law enforcement agencies combined. In fiscal year 2013, U.S. Marshals arrested over 110,000 fugitives.

"For 225 years, the Marshals Service has occupied a unique and valued position in our country's judicial system. This nation has relied upon U.S. Marshals and their deputies at pivotal moments in our history, and each time, the men and women of this great organization have risen to the challenge. On this anniversary, we remember their efforts in establishing order in the Wild West, in restoring a divided nation following the Civil War, in desegregating America's schools, and in enforcing civil rights legislation," [said](#) Attorney General Eric Holder.

"These brave men and women continue their fight for justice today, remaining dedicated to their traditional missions of securing our courts, tracking and apprehending fugitives, detaining and transporting federal prisoners, protecting federal witnesses, and seizing criminal assets. The agency continues to evolve technologically and strategically to meet current law enforcement challenges, while still holding true to its core values of "justice, integrity and service." I thank these dedicated professionals for their sacrifice and commitment to justice," Holder also stated.

The U.S. Mint has printed a [set of commemorative coins](#) to mark the Marshals Service's 225 years.

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HEARD INSIDE THE BELTWAY

Perhaps the most universally frustrating part of working for DHS, according to numerous former and current officials, is the byzantine congressional oversight.

From a September 25 article in The Washington Post “Department of Homeland Security has 120 reasons to want streamlined oversight”

WEEKLY LEADERSHIP REFLECTION

To lead people, walk beside them ... As for the best leaders, the people do not notice their existence. The next best, the people honor and praise. The next, the people fear; and the next, the people hate ... When the best leader's work is done the people say, 'We did it ourselves!'

Lao-Tsu