

## **Nomination of Stephen Dickson – FAA Administrator**

Serious questions have arisen regarding the nomination of Stephen Dickson to serve as Administrator of the Federal Aviation Administration:

- 1. In his responses to the questionnaire submitted to him by the Senate Commerce Committee, Mr. Dickson failed to disclose a safety-related whistleblower complaint brought against Delta Air Lines by a longtime company pilot.**
- 2. The facts related to the whistleblower claim are troublesome and support the possibility that the pilot's claim of retaliation has merit.**

**Background.** Approximately two weeks after Mr. Dickson's June 5<sup>th</sup> confirmation hearing, Committee staff was made aware of a whistleblower complaint brought against Delta by a longtime company pilot, First Officer Karlene Petitt.

First Officer Petitt is a resident of Seattle, Washington. She holds a Ph.D. from Embry-Riddle Aeronautical University. She has approximately 40 years' experience as an airline pilot for Northwest Airlines and Delta. She is qualified to fly numerous air carrier aircraft and currently serves as a first officer for Delta, flying Boeing 777 aircraft.

In her complaint, which is pending before an Administrative Law Judge at the U.S. Department of Labor, First Officer Petitt alleges she was subject to significant retaliation after communicating safety-related concerns to Delta's Department of Flight Operations. This occurred during Mr. Dickson's tenure as Delta's Senior Vice President of Flight Operations.

- In January of 2016, First Officer Petitt provided a written report to Mr. Dickson and his management team, raising several good faith, safety-related concerns. *See FAA Memo re Whistleblower EWB-16637.*
- Two months later, in March of 2016, Delta grounded First Officer Petitt and ordered her to undergo a compulsory mental health examination. The sole basis for taking this action was an interview with a Delta human resources officer to which First Officer Petitt was required to submit. *See Page 3 of Delta's Opposition to Complainant's Motion for Summary Decision ("Delta Opposition").*
- Delta representatives told Committee staff that the human resources officer had no training in identifying or treating mental health concerns. First Officer Petitt became emotional during the interview with the human resources officer, who reported that First Officer Petitt appeared troubled. *Delta Opposition, Page 3.*
- Delta referred First Officer Petitt to a psychiatrist selected by the company to perform a psychiatric review under what is known as Section 15 of the Air Line Pilots Association (ALPA) collective bargaining agreement. The psychiatrist selected by the company

diagnosed First Officer Petitt with bipolar disorder. *Delta Opposition, Page 4; and Page 10 of Petitt's Motion for Summary Decision (Petitt Motion).*

- First Officer Petitt exercised her right under Section 15 to challenge the diagnosis. A panel of doctors from the Mayo Clinic subsequently rejected the diagnosis of the company-selected psychiatrist and determined that First Officer Petitt was fit to fly. *Petitt Motion, Page 10.*
- A third, neutral medical examiner with authority to issue a final and binding determination agreed that First Officer Petitt was medically fit. She returned to flying and is currently a pilot for Delta. *Petitt Motion, Page 10.*
- While the Section 15 outcome was ultimately favorable to First Officer Petitt, she was grounded throughout the entire process, which took approximately 18 months. She filed her formal whistleblower complaint after returning to duty.

**Failure to disclose.** On October 31, 2018, Mr. Dickson was deposed in the course of the discovery process related to First Officer Petitt's complaint. The daylong deposition of Mr. Dickson resulted in a 270-page written transcript, which was provided to Committee staff when the whistleblower complaint was first brought to our attention. *See Dickson Deposition 10-31-18.*

Mr. Dickson's deposition was taken during the same timeframe in which he was presumably completing various documents related to his nomination, including the standard Commerce Committee questionnaire to which all nominees are required to respond. Despite having been subjected to the deposition and the complex fact pattern and safety related basis for First Officer Petitt's whistleblower complaint, Mr. Dickson failed to disclose the matter in his responses to clearly relevant questions included in the Committee questionnaire.

**Additional concerns – the company psychiatrist.** During the course of the investigation, additional concerns regarding the company-selected psychiatrist came to the attention of Committee staff.

When Delta determined that First Officer Petitt should undergo a psychiatric evaluation, they referred her to a psychiatrist currently under investigation by the State of Illinois for ethics-related concerns. While Mr. Dickson was not personally involved, it is our understanding members of Mr. Dickson's team played a direct role in the choice of the psychiatrist.

Prior to his involvement in First Officer Petitt's evaluation, the company-selected psychiatrist authored a report in a matter concerning another Delta pilot, stating unambiguously that he would treat the pilot's filing of a complaint against him as a factor indicating there should be a diagnosis which would permanently bar the pilot from aviation. In doing so, it appears the psychiatrist threatened direct retaliation for what would have amounted to whistleblower activity.

ALPA attorneys submitted a written complaint to a Delta attorney regarding the psychiatrist's retaliatory threats. The Delta attorney in receipt of the complaint had a hand in selecting the very psychiatrist who conducted First Officer Petitt's evaluation. ***See Psychiatrist Documents.***

In his testimony at the Petitt whistleblower trial, the psychiatrist explained his diagnosis of First Officer Petitt, in part, by saying he felt that no woman could care for three children under the age of three, go to night school, and assist with her husband's business without being manic. Because she was also nursing, the psychiatrist insisted on knowing when First Officer Petitt had time to express milk. ***Trial Transcript & Psychiatrist Testimony, Pages 710 & 711.***

**Costs of Psychiatric Evaluation.** The psychiatrist chosen by Delta Air Lines collected a fee of nearly \$74,000. He is the only one who found First Officer Petitt unfit for duty. Two other doctors found First Officer Petitt fit to fly (as did the FAA medical team). The combined cost for the other two doctors was just under \$11,000 . . . and that is actually the cost of three examinations, because the neutral doctor did two exams (at Delta's request).

First Officer Petitt chose Mayo Clinic to perform an exam under the terms of the ALPA contract. Mayo's charge was about \$3,600 – which is included in the \$11,000 noted above. Again, that compares to the \$74,000 fee charged by the company-selected psychiatrist. ***See Petitt Mental Health Evaluation Expense.***

**Trial judge comments.** The excerpt, below, is from the final pages of the Petitt trial transcript. These words are attributed to the Administrative Law Judge who presided in the Petitt case, and appear to address the Delta attorneys:

*The other thing that I will tell you, I'll just be up front, you are not going to like my findings, factually. If you really want this out there, I would think long and hard about this. You can settle at any point you want to, but the facts in this case – I'm going to lay it out – I'm going to lay it out – and from what I'm hearing it's not pretty. You've got some – you have a pilot that was identified, went through, I'll call it a "gauntlet," get reinstated. And I understand the company is torn, the company has a hard decision to make, given the Germanwings scenario, but there's more to that than just the Germanwings scenario. And I am really troubled by some of these exhibits, about how this referral came to fruition. And I think that that's really – it troubles me a great deal, I'll just tell you that. That does not mean – please, do not take this as, you know, Ms. Petitt – they're a long way from saying, yes, you win. I would tell you, flat out, if I could do a decision on the record – although it has to be a written decision, it doesn't mean I couldn't do it and use the transcript – but you all have to make a business decision if you want all this laundry out there.*

\* \* \* \*

*The long and the short of it, frankly, is no matter how I rule, this is a sad case. It really is. It's a sad case. And I would encourage the parties to think long and hard about settling this, before I write this decision, because you can't un-ring that bell. ***Trial Transcript, Pages 2129-2131.****