

STATE OF MICHIGAN

MICHIGAN NATIONAL GUARD - AGENCY

vs.

ADVERSE ACTION APPEAL

RENEE K. REED,

Appellant.

\_\_\_\_\_  
MILITARY PREHEARING CONFERENCE

BEFORE COLONEL KEVIN K. DAWKINS, HEARING EXAMINER

Camp Grayling, Michigan - Monday, October 6, 2014

Appearances:

For the Appellee: CPT. DAVID J. BEDELLES, ESQ., (P55590)  
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Michigan Army & Air National Guard  
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North America  
Business Manager, National Guard  
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P.O. Box 1794  
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Also Present: Renee K. Reed  
SSG Steven Schultz, Assist. CPT Bedells  
MAJ Allyn Johnson, Labor Relations  
Specialist  
James Sweat, President 2132 Local  
Ja'net Vallotton, 2nd Chair to Mr.  
Banchs

Transcribed by: CURTISS REPORTING  
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None

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Exhibit 3

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(Case File-Reed)

1 Grayling, Michigan

2 Monday, October 6, 2014 - At about 10:31 a.m.

3 COURT RECORDER: We are on the record. Today's date  
4 is October 6th, 2014. The time is now 10:31.

5 HEARING EXAMINER: I will declare this  
6 prehearing conference in session and identify myself to  
7 you.

8 I am Kevin Dawkins, the Hearing Examiner that  
9 was requested by the Adjutant General of Michigan to hear  
10 the appeal of an adverse action case of Renee Reed. The  
11 case will be heard Wednesday, 8 October, beginning at 8:00  
12 o'clock.

13 My name, along with other qualified examiners,  
14 was submitted to the Adjutant General of this State by the  
15 National Guard Bureau, so that he could select a qualified  
16 Hearing Examiner from outside this State to hear this  
17 case.

18 After hearing this case, I will provide  
19 the Adjutant General a recommendation resulting from the  
20 outcome.

21 For the record, I want to identify those  
22 persons that are present, beginning with the Agency. So  
23 let's just go around the room from the right, and identify  
24 yourself by name and your role in this hearing.

25 CAPTAIN BEDELLS: I'm Captain David Bedells,

1 and I'm the Agency Recorder on this matter.

2 SSG SCHULTZ: Staff Sergeant Steven Schultz,  
3 and I'll be assisting Captain Bedells. I

4 MAJOR JOHNSON: Major Al Johnson, Labor  
5 Relations Specialist for the Michigan National Guard.

6 MR. SWEAT: James Sweat, LIUNA local 2132,  
7 President.

8 MS. VALLOTTON: Ja'net Vallotton, National  
9 Registry Council, assistant to Mr. Ben Banchs.

10 MS. REED: Renee Reed.

11 MR. BANCHS: The Appellant. And Ben Banchs,  
12 LIUNA National Guard District Counsel and the Appellant  
13 representative.

14 HEARING EXAMINER: Thank you.

15 For the record, I'd like to enter my opening  
16 statement at this time. Let me give you an idea of what  
17 we're going to be doing.

18 The case that we will be hearing on Wednesday  
19 is the case of an adverse action resulting in removal  
20 against the Appellant. My role in this process is to hear  
21 the evidence and to determine three things. And those  
22 things are did the technician do or fail to do what she  
23 was charged with. Two, will some discipline based on the  
24 proven conduct promote the efficiency of the service.  
25 And, three, is the penalty in this--in this case

1 appropriate.

2 I've been appointed by the National Guard  
3 Bureau, and I will hear the case based upon its merits.  
4 Each party in the case will be given an opportunity to  
5 make an opening statement limited to 15 minutes each, have  
6 its evidence cross-examined, have its witnesses presented  
7 and cross-examined, and each side will be given the  
8 opportunity to make a closing statement limited to 15  
9 minutes each.

10 This Examiner will hear the evidence, weigh  
11 its importance and render a recommendation to the Adjutant  
12 General of Michigan within 45 days after I receive the  
13 verbatim transcript of the proceedings.

14 I want to take just a minute to let Tracy give  
15 some instruction that most of you heard--but, Renee, for  
16 your benefit and for the record, instructions to all of us  
17 as we're talking throughout the next couple days.

18 COURT RECORDER: Just a couple of ground  
19 rules, basically.

20 When questioning is going on, please allow the  
21 person asking the question to finish before the answer  
22 begins, and also the questioning party will also wait and  
23 give that answer--let them completely answer, so we're not  
24 stepping on each other.

25 Also verbal answers, yes, no, whatever the

1 answer is, as opposed to uh-huh, unh-unh, nods of the  
2 head, things like that, so that the transcript record is  
3 clear.

4 Also please make sure that you understand the  
5 question before answering it, because those in the room  
6 would be taking your answer as if you did understand the  
7 question. If there's any question that you don't, you  
8 know, ask it to be restated, you know, so that you do  
9 understand it.

10 Thank you.

11 HEARING EXAMINER: Thank you.

12 Both parties must be aware that formal  
13 rule--formal rules of evidence do not apply in a hearing  
14 of this nature.

15 This concludes my opening statement.

16 I've called this prehearing conference for the  
17 purpose of accomplishing four different functions with  
18 regard to the actual hearing.

19 First, I want to develop and express the  
20 ground rules for the conduct of the actual hearing.  
21 Second, I want to identify any problem areas which we can  
22 foresee during the preliminary conference which may arise  
23 during the actual hearing. Third, I want both parties to  
24 agree upon any stipulations that may be agreeable to the  
25 parties that are involved in this case. Fourth, I want to

1 establish the responsibilities and rights of the Appellant  
2 and the Agency.

3 By accomplishing these four functions, I will  
4 not be surprised by the actions of either party during the  
5 actual hearing on Wednesday. Do both parties understand  
6 this?

7 The Agency?

8 CAPTAIN BEDELLS: Yes, we understand.

9 HEARING EXAMINER: Appellant?

10 MR. BANCHS: Yes, sir.

11 HEARING EXAMINER: Okay. Thank you.

12 So far as the actual conduct of the hearing is  
13 concerned, we will convene at 8:00 o'clock, on 8 October  
14 in this room. There will only be one person from each  
15 side of the case that will be allowed to represent their  
16 case. And to be clear, when I say represent, I mean  
17 actually to speak to the witnesses or to me. If you  
18 have--you're certainly welcome to--to share notes and, if  
19 you need to take a break and go outside to talk about an  
20 issue, that--I'm fine with that. But I really--I only  
21 want to hear from Mr. Banchs and Captain Bedells as we go  
22 through this.

23 Each side needs to agree as to who that person  
24 will be. Obviously, for the Agency, that person will be  
25 Captain Bedells, and for the Appellant, Mr. Ben Banchs.



1                   I think you can appreciate why only one  
2 person is to be heard. This rule is not to silence  
3 anyone. Again, you're welcome and free to have as much  
4 communication with your representative as you choose. But  
5 the Examiner will hear only one voice.

6                   Each witness will be sworn in prior to  
7 presenting his or her testimony. It's my responsibility  
8 to maintain proper conduct and decorum throughout the  
9 hearing. Let me assure each of you that I intend to  
10 exercise my responsibility in this area.

11                   Each party's hereby warned that, if proper  
12 conduct and decorum is not maintained, I will terminate  
13 the hearing. Does each party understand my position in  
14 this area?

15                   CAPTAIN BEDELLS: Yes.

16                   MR. BANCHS: Yes, sir.

17                   HEARING EXAMINER: Both parties have  
18 previously agreed to an open hearing in this case.  
19 Onlookers will be limited to the pre-approved list.

20                   I plan on sequestering all the witnesses.  
21 And, for the record, the witnesses will be--there will be  
22 space available, offices in this building, and also in  
23 building 102 next door. I don't object to witnesses going  
24 back to work if that's what they need to do, but I do want  
25 those folks available to--to be readily available if

1           they're--if they're called back for later testimony. So  
2           the main point is that they're responsive and available.

3                         And I'll also ask each of you to ensure that,  
4           if any of your witnesses show up--because we're going to  
5           have spectators, if anybody walks into this room that's a  
6           witness, because I don't know any of these people, please  
7           identify them immediately as witnesses, so that we can  
8           make sure that they're not here for--at a time when  
9           they're not--they're not testifying.

10                        So in the room during the hearing, I expect  
11           the Agency representative will be here, along with  
12           Sergeant Schultz as his assistant.

13                        Major Johnson's role will be as the subject  
14           matter expert on the adverse action process. So he's  
15           not--he's not necessarily representing management nor is  
16           he necessarily representing the Appellant, but is here to  
17           answer any questions regarding the process.

18                        Also present will be the Appellant and her  
19           representatives, one witness at a time, the Court  
20           Reporter, and, then, again, those audience members who  
21           have been preapproved to be here.

22                        I want to talk a little bit about conduct of  
23           the--of the audience.

24                        As the Appellant was the requesting party for  
25           an open hearing, and as the Agency has not requested the

1 presence of any audience members, other than Lieutenant  
2 Colonel Niedergall--

3 MAJOR JOHNSON: Niedergall.

4 HEARING EXAMINER: --and Captain--

5 MAJOR JOHNSON: Captain Marshall.

6 HEARING EXAMINER: --Marshall, who will be  
7 here basically as HRO representatives, again, observing  
8 the process.

9 MAJOR JOHNSON: Yes, sir.

10 HEARING EXAMINER: Captain Marshall is the  
11 incoming labor relations specialist, so--

12 MAJOR JOHNSON: Yes, sir.

13 HEARING EXAMINER: --a training opportunity.  
14 I'm holding the Appellant's representative  
15 responsible for ensuring the following of the audience  
16 members:

17 Audience needs to understand that this is not  
18 a show. I expect quiet respect for the process, no  
19 emotional outbursts or disruptive behavior of any kind.  
20 No photography or any other form of recording of any part  
21 of the proceeding. No entering or exiting the hearing  
22 room between the swearing in and release of each witness.  
23 No contact, whatsoever, between the witness and the  
24 audience during testimony.

25 Finally, I retain the right to dismiss any or

1 all of the audience members if, in my opinion, the process  
2 is contaminated by their presence. I'll exercise that  
3 right if necessary. Is this understood by both parties?

4 CAPTAIN BEDELLS: Yes.

5 MR. BANCHS: Yes, sir.

6 HEARING EXAMINER: Thank you.

7 MR. BANCHS: Sir, are you going to--are you  
8 going to brief that to the audience or would you like us  
9 to?

10 HEARING EXAMINER: I'd like you to. And I'll  
11 do it, as well.

12 MR. BANCHS: Okay.

13 HEARING EXAMINER: Yeah. Let's do both.

14 MR. BANCHS: Okay.

15 HEARING EXAMINER: I'm going to encourage each  
16 party to enter as many stipulations as can be agreed to in  
17 this hearing. By using stipulations, we can cut down the  
18 size of the verbatim transcript and speed up the actual  
19 hearing.

20 We'll come back to stipulations later during  
21 this prehearing conference, and make each stipulation that  
22 both parties can agree upon a matter of record.

23 Each of you will have certain rights and  
24 certain responsibilities. I'd like to outline what those  
25 rights and responsibilities are.

1                   First, all parties have a right to be present  
2 throughout the entire hearing.

3                   Both parties have a right to question all the  
4 witnesses, and to respond to any adverse evidence that may  
5 be presented in the course of the hearing.

6                   Each side has a right to inspect all the  
7 evidence or exhibits before they are made a part of the  
8 record.

9                   There are two very important obligations for  
10 both sides.

11                   First, there is an obligation to confine  
12 testimony to matters which are relevant to this case. And  
13 to avoid discussion of extraneous issues that will tend to  
14 clutter the record.

15                   Second, each party has an obligation to  
16 introduce all the testimony and all the evidence that is  
17 available for this hearing. No evidence is to be withheld  
18 by either party, and especially by the Agency, even if it  
19 is prejudicial to your case.

20                   I have the responsibility to create an  
21 impartial atmosphere, treating both parties alike. Since  
22 the objective of this hearing is to develop fully all the  
23 evidence surrounding the issues in the case, I shall be as  
24 flexible about the application of the procedures as I  
25 possibly can. I will always make certain that each party

1 has been given an opportunity to fully pre- --fully  
2 present their case.

3 I will now speak about testimony. If  
4 testimony is given to a conversation or occurrence or an  
5 event, then the place, persons--persons present, date,  
6 approximate time of the conversation, occurrence or event  
7 must also be stated as part of the testimony.

8 I will hear opinions, but opinions will be  
9 consider and weighed upon the qualifications of the  
10 witness. If it is to be an expert opinion on some matter,  
11 then the witness' qualifications as an expert will be  
12 considered in weighing the content of the opinion that is  
13 expressed.

14 Regarding evidence, I'd like to--if there are  
15 any questions about evidence, I'd like to revolve them as  
16 we proceed through the following definitions.

17 I'll define four different types of evidence  
18 and how each may be used in the hearing.

19 Direct evidence. Direct evidence is also  
20 admissible in this type of proceeding, however, when you  
21 present direct evidence, identify it for the record.

22 Documentary evidence. Documentary evidence  
23 may be admitted subject to identification and subject to  
24 its relevancy. Affidavits, if there are any, may be  
25 admitted, however, I will rule on each affidavit

1 separately prior to its admission. Documentary evidence  
2 must be shown to all parties concerned before introduction  
3 into the record.

4 Third is hearsay evidence. Hearsay evidence  
5 is admissible in this type of proceeding; however, if you  
6 use hearsay, the evidence must be identified as hearsay.  
7 And I will give it whatever weight it merits.  
8 Consequently, the weight of hearsay evidence usually will  
9 be not so great as documentary evidence or direct evidence  
10 that might be brought out by a witness.

11 And, finally, circumstantial or indirect  
12 evidence, where that evidence establish a fact which tends  
13 to prove other--other facts.

14 Does each party understand my definitions of  
15 evidence and what types of evidence I will allow to be  
16 submitted during the hearing?

17 CAPTAIN BEDELLS: The Agency understands, sir.

18 MR. BANCHS: Yes, sir.

19 HEARING EXAMINER: Thank you.

20 I want you to understand that all evidence to  
21 be considered will be made a part of the appeal file. I  
22 will decide any questions concerning the admissibility of  
23 evidence. All evidence presented in this case must be  
24 both relevant and material and not unduly repetitious.  
25 Evidence is relevant when it has some bearing on the

1 issues in the adverse action. Evidence is material when  
2 it will have some weight on the disposition of the case.  
3 Evidence is unduly repetitious when it duplicates other  
4 evidence which conclusively proves the point.

5 It's important that both parties understand  
6 the definitions of evidence that I've just placed into the  
7 record, because my recommendations and decision in this  
8 case will be based upon the understanding of evidence.

9 Before we leave the subject of testimony and  
10 evidence, I would like to explain off-the-record  
11 discussions. If any party to this hearing asks to talk  
12 off the record, he or she may be permitted to do so for  
13 the sake of keeping long, irrelevant chatter off the  
14 record. When we go back on the record, I'll make a short  
15 summary of our off-the-record discussion that will become  
16 a part of the record on the verbatim transcript.

17 The actual hearing that we shall conduct will  
18 proceed in this fashion: The Agency will present their  
19 case, followed by the Appellant.

20 Does each side understand the order of  
21 business for the actual hearing?

22 CAPTAIN BEDELLS: Yes.

23 MR. BANCHS: Yes, sir.

24 HEARING EXAMINER: Thank you. All right.

25 Let's talk about documents. I've received documents for



1 the appeals case file. The finished product, which each  
2 party has before them at this time, consists of the case  
3 file, which consists of three exhibits.

4 Exhibits 1 and 2 are the AR 15-6  
5 Investigation. Exhibit 3 is the Renee Reed Adverse Action  
6 File.

7 MR. BANCHS: Yes, sir.

8 HEARING EXAMINER: Let's go off the record for  
9 just one minute, please.

10 COURT RECORDER: We are going off the record.  
11 The time is 10:47.

12 (Off the record)

13 (On the record)

14 COURT RECORDER: We are back on the record.  
15 The time is 10:48.

16 HEARING EXAMINER: Within the three Exhibits  
17 that I previously mentioned, the indexes will be  
18 subcategorized as follows:

19 Exhibit 1, Tab A, Appointment Memoranda.

20 Tab B Questions and Interviews. Sub-Tab 1,  
21 Lieutenant Colonel McNamara transcript. Sub-Tab 2, Major  
22 Brian Burrell transcript. Sub-Tab 3, Lieutenant Colonel  
23 Christopher Golnick transcript. Sub-Tab 4, CW2 Joel Mack  
24 transcript. Sub-Tab 5, Master Sergeant Thad Cooper  
25 transcript. Sub-Tab 6, Master Sergeant Renee Reed

1 transcript.

2 Tab C Privacy Act Statements. Tab D  
3 Rights/Warnings.

4 Tab E, Sworn Statements. Sub-tab to Tab E are  
5 Sub-Tab 1, Sergeant First Class Jamie Joseph. Sub-Tab 2,  
6 Sergeant Kathryn Barrick. Sub-Tab 3, Staff Sergeant Brian  
7 Barrick. Sub-Tab 4, Master Sergeant Jane (sic) Fouts.  
8 Sub-Tab 5, CW2 Joel Mack. Sub-Tab 6, Master Sergeant Thad  
9 Cooper. Sub-Tab 7, WO1 Sharon Whitcher. Sub-Tab 8, CW4  
10 Dean Miller. Sub-Tab 9, Major Brian Burrell. Sub-Tab 11  
11 (sic), CW2 Robert Fitzpatrick. Sub-Tab 11, CW2 Todd  
12 Whitcher. Sub-Tab 12, Master Sergeant Troy Herblet.

13 Tab F, Original Complaint. Tab G, Records  
14 Requests. Tab H, Ben Banchs FaceBook Post. Tab I, MATES  
15 Union Representation Request.

16 I now go to Exhibit 2, which is subcategorized  
17 as follows: Tab J, MATES Standard Operating Procedures.  
18 Tab K, Waste Management Invoices. Tab L, Suburban Bolt  
19 and Supply Invoices. Tab M, MATES Credit Card Purchases.  
20 Tab N, MATES Time Off/Safety Awards. Tab O, Sergeant  
21 Bower Document Request and Supporting Documents. Tab P,  
22 MATES Time and Attendance Records for 4 September 2013.  
23 And Tab Q, Investigation Timelines.

24 I now refer to Exhibit 3, and it is  
25 subcategorized as follows:

1                   Tab A, Proposed Adverse Action Notice. Tab B,  
2                   Request for Representation. C, Representation Notice and  
3                   Request for Extension to Suspense for Reply. Tab D,  
4                   Extension to Suspense for Reply Granted. Tab E, Reply to  
5                   Adverse Action Notice. Tab F, Attachment to Technician  
6                   Reply. Tab G, Original Decision Memo and Douglas Factors.  
7                   Tab H, Suspension With Pay. Tab I, Request for Hearing  
8                   Examiner. Tab J, Notice of--Notice of Personnel Action,  
9                   Removal. And Tab K, Request for Information Concerning  
10                  Agency Disciplinary Practices.

11                  Are there any additional documents that either  
12                  party wishes to be identified as Exhibits?

13                  CAPTAIN BEDELLS: Sir, the Agency has no  
14                  additional--

15                  MR. BANCHS: No, sir.

16                  CAPTAIN BEDELLS: --Exhibits.

17                  MR. BANCHS: And just to bring--bring up the  
18                  concern about Colonel McNamara's, you know--

19                  HEARING EXAMINER: Right. Yeah. And we'll  
20                  get to the witnesses here in--

21                  MR. BANCHS: Okay.

22                  HEARING EXAMINER: --next.

23                  (At about 10:52, Exhibits 1, 2 and 3 marked)

24                  HEARING EXAMINER: All right. Let's move on  
25                  to witnesses. I'm in receipt of a witness list from both

1 parties and would like to thank each representative for  
2 providing this information as requested.

3 I wish to identify each of these witnesses for  
4 the record at this time.

5 The Agency--is it the same witness list? Was  
6 there a separate list of witnesses?

7 CAPTAIN BEDELLS: I--I don't know as I sit  
8 here.

9 MAJOR JOHNSON: There is--

10 CAPTAIN BEDELLS: I'm wondering if Lieutenant  
11 Colonel Meyers was listed on there.

12 MAJOR JOHNSON: They're a little bit  
13 different. I mean--

14 MR. BANCHS: There was a clarification that  
15 was sent up, because I did ask at some--whenever their  
16 list came out, I did ask who's testifying on whose, and  
17 they did send clarification. But I don't have that email  
18 in front of me.

19 HEARING EXAMINER: Okay. Well, let me read  
20 the witness list that was sent to me, and if you have  
21 additions or subtractions, we could talk about those.  
22 But--

23 MAJOR JOHNSON: Okay, sir.

24 HEARING EXAMINER: Okay. All right?

25 MR. BANCHS: Yes, sir.

1 HEARING EXAMINER: The proposed witness list  
2 for the Agency is Staff Sergeant Brian Barrick. Sergeant  
3 Kathryn Barrick. Major Brian Burrell. Master Sergeant  
4 Thad Cooper. Colonel Scotty Doolittle. Colonel Gregory  
5 Durkac. Captain Blaine Emery. CW2 Robert Fitzpatrick.  
6 Master Sergeant Jane (sic) Fouts. Master Sergeant Troy  
7 Herblet. CW2 Joel Mack. Lieutenant Colonel Michael  
8 McNamara. CW4 Dean Miller. Staff Sergeant Cory Rock.  
9 Master Sergeant Tim Sheldon. Warrant Officer 1 Sharon  
10 Whitcher. CW2 Todd Whitcher.

11 CAPTAIN BEDELLS: We would like to ask that  
12 Lieutenant Colonel Meyers be added to that list, as well.  
13 He apparently was inadvertently left off both of these  
14 witness lists.

15 MR. BANCHS: No objections from the Appellant.

16 HEARING EXAMINER: Okay. So we'll add  
17 Lieutenant Colonel--first name again?

18 MAJOR JOHNSON: Scotty.

19 HEARING EXAMINER: Scotty. Lieutenant Colonel  
20 Scott Meyers will be added to the Agency's witness list.  
21 And Sergeant Rock, my understanding, is unavailable.

22 CAPTAIN BEDELLS: That is correct.

23 HEARING EXAMINER: And, to date, despite  
24 attempts by the Agency to contact Lieutenant Colonel  
25 McNamara, he has not responded.

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MAJOR JOHNSON: Correct, sir.

HEARING EXAMINER: And the Agency is continuing to make efforts, even today, to try to--

MAJOR JOHNSON: Yes, sir.

HEARING EXAMINER: --compel him to be here.

Any objections to the list from the Appellant?

MR. BANCHS: No, sir.

HEARING EXAMINER: Okay.

MR. BANCHS: No objections from the Appellant.

HEARING EXAMINER: Let me--let's first go through the Appellant witness list, and then we can talk about any--any issues we've got.

So my understanding is the Appellant's witnesses are Colonel Scotty Doolittle. First Lieutenant Blaine Emery. Colonel Gregory Durkac. Sergeant Katie Barrick. Master Sergeant Jane (sic) Fouts. CW2 Joel Mack. Master Sergeant Thad Cooper. W1 Sharon Witcher. Major Brian Burrell. CW2 Todd Witcher. Mr. James Sheldon. Mr. Jim Teeple. Master Sergeant Troy Herblet. Sergeant First Class Casey Ellis. Captain Jerime Ruby. Master Sergeant Michael Hoag. Lieutenant Colonel Michael Perricane. CW2 James Reed. Lieutenant Colonel Chris Golnick. Lieutenant Colonel Scott Meyers. And Colonel Jim Gardiner.

MR. BANCHS: Yes, sir. They're still the

1 same.

2 HEARING EXAMINER: Any objections from the  
3 Agency?

4 CAPTAIN BEDELLS: We have no objection. I'm  
5 curious as to what we've done with Major Ruby.

6 MAJOR JOHNSON: That's what I was just going  
7 to ask. Lieutenant Colonel Perricane and Major Ruby are  
8 only available via audio. Major Ruby is having a baby  
9 tomorrow. Colonel Perricane, I'm not sure what--he just  
10 couldn't make the trip up here.

11 MR. BANCHS: And Major Allyn (sic) had  
12 notified me, and we had no objections.

13 HEARING EXAMINER: Okay.  
14 Any issues?

15 CAPTAIN BEDELLS: No. I just wanted to make  
16 sure that the record reflected that I don't think  
17 that--last I heard they weren't going to be able to be  
18 here, but they would be available via audio, correct?

19 MAJOR JOHNSON: Yes, sir.

20 HEARING EXAMINER: Okay.

21 CAPTAIN BEDELLS: That's it, sir.

22 HEARING EXAMINER: Okay. So other than those  
23 that will be available via audio and Lieutenant Colonel  
24 McNamara, is there any reason any of the other witnesses  
25 cannot be present for the hearing?

1 MAJOR JOHNSON: No, sir.

2 MR. BANCHS: No, sir.

3 HEARING EXAMINER: Let's go off the record for  
4 just a second.

5 COURT RECORDER: We are going off the record.  
6 The time is 10:58.

7 (Off the record)

8 (On the record)

9 COURT RECORDER: We are back on the record.  
10 The time is 11:02.

11 HEARING EXAMINER: For the record, we've just  
12 had a discussion regarding the fact that Colonel McNamara  
13 will not be--may not be present for the hearing despite  
14 attempts to contact him and compel him to be here.

15 There's general agreement that both parties  
16 can probably elicit the information they need regarding  
17 his testimony or his input or his contribution to this  
18 case talking to the other witnesses who were--who were in  
19 contact with Colonel McNamara or who made decisions or  
20 proposals based upon his input. And I'll give due weight  
21 to the understanding that he's not here, and that the  
22 Appellant was not able to examine or cross-examine that  
23 witness.

24 I'd like the record to indicate that I'm  
25 hereby instructing Counsel for the Agency to assure all



1 witnesses who are employed in the full-time support of the  
2 National Guard are available to testify at the designated  
3 time.

4 Additionally, I want the record to indicate  
5 that I'm hereby instructing Counsel of the Appellant that  
6 it is the Appellant's responsibility to assure that all  
7 persons who are testifying on behalf of the Appellant and  
8 not employed by the National Guard are present at the  
9 designated time at no expense to the Agency.

10 Can each representative assure me of this?  
11 Agency?

12 CAPTAIN BEDELLS: Yes, sir.

13 HEARING EXAMINER: Appellant?

14 MR. BANCHS: Yes, sir.

15 HEARING EXAMINER: I advised you earlier that  
16 we would return to stipulations and decide what each party  
17 could stipulate for the record.

18 I shall begin with the representative for the  
19 Agency and ask what you would like to propose, if any,  
20 stipulations.

21 CAPTAIN BEDELLS: Well, other than the  
22 material that's in what's previously been marked as  
23 Exhibits--Reed Exhibits 1 through 3, we have no other  
24 proposed stipulations.

25 HEARING EXAMINER: Okay. Appellant?

1 MR. BANCHS: Same here, sir.

2 HEARING EXAMINER: Okay. I want to explore,  
3 again, the opportunity, whether there is one or not, to  
4 settle prior to hearing.

5 CAPTAIN BEDELLS: I've been given no  
6 authority, sir.

7 HEARING EXAMINER: Okay.

8 MR. BANCHS: Just curious, have--has there  
9 been any discussions or--I mean, would it be prudent to  
10 maybe make a phone call? I mean, I understand you haven't  
11 been authorized to settle, but does the Agency not want to  
12 settle?

13 CAPTAIN BEDELLS: I believe that's--yeah--

14 MR. BANCHS: Okay.

15 CAPTAIN BEDELLS: --that's their position, so.

16 MR. BANCHS: So that--okay.

17 HEARING EXAMINER: Okay. Do either party have  
18 any questions at this time concerning the conduct of the  
19 hearing?

20 CAPTAIN BEDELLS: Other than that what we  
21 previously discussed in the--in the Smock matter, and that  
22 is to exped- --and I notice we have even more witnesses,  
23 sir, in this--in this file. So in the interest of  
24 speeding things along, but giving, you know, due measure  
25 to every- --the importance of this matter, that we agree

1           that we can lead witnesses, and whatnot, and not have to,  
2           you know, go through the laborious establishment of  
3           foundations and whatnot. So that's all--that's all that  
4           we--we would seek, and that'll be your ruling, of course,  
5           but.

6                         MR. BANCHS: How many witnesses do you have  
7           that are--are on our list that are not on your list?

8                         CAPTAIN BEDELLS: One, two, three, four, five,  
9           six, seven, I think I show.

10                        MR. BANCHS: Okay.

11                        STAFF SERGEANT SCHULTZ: I count eight.

12                        CAPTAIN BEDELLS: Oh. Right. Eight. Is it  
13           Jim Reed? Is that--is that who you have on your--

14                        MR. BANCHS: Jim Reed is her husband, yes.

15                        CAPTAIN BEDELLS: Right. Okay. Right. I  
16           missed that one, so, right, Jim Reed's eight. Sorry.  
17           Eight.

18                        MR. BANCHS: Okay.

19                        CAPTAIN BEDELLS: Eight witnesses.

20                        HEARING EXAMINER: So--so my intent is the  
21           Agency will present their case in chief. Obviously the  
22           Appellant has the opportunity to cross and recross if  
23           there's--if either side is satisfied with the testimony  
24           when the witness comes in originally and that witness  
25           doesn't need to be called back later on, that's always

1 your option if you're satisfied with the testimony that's  
2 in the record--

3 MR. BANCHS: Yes, sir.

4 HEARING EXAMINER: --from the first time they  
5 come in and testify.

6 And I agree with you. I intend to make this  
7 as expeditious as possible. Make sure we get all--all the  
8 information out there, but to do it as efficiently as we  
9 can.

10 Any other issues?

11 CAPTAIN BEDELLS: No, sir.

12 HEARING EXAMINER: Okay.

13 MR. BANCHS: No, sir.

14 HEARING EXAMINER: All right. This prehearing  
15 conference is hereby adjourned. The actual hearing will  
16 begin on 8 October, at 8:00 o'clock in this room.

17 Thank you.

18 MR. BANCHS: Roger that. Thank you.

19 COURT RECORDER: We are off the record. The  
20 time is 11:08.

21 (At 11:08 a.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.



Tracy L. O'Brien

Notary Public - CER - 5175

My commission expires 3/19/2020

