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No. 67030-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

REYNOLD QUEDADO,

Appellant,

v.

THE BOEING COMPANY,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Appellant Reynold Quedado, a senior manager at The Boeing Company whose responsibility was to ensure fair hiring practices, violated Boeing policy by favoring two family members in the hiring process. When caught, he lied about it. Boeing's discipline policies allow for a demotion in those circumstances. The trial court correctly granted summary judgment for Boeing, and this Court should affirm.

Boeing's policies forbid employees from favoring or appearing to favor relatives in the hiring process. Boeing's investigation revealed ample evidence that Quedado had helped two relatives get hired. Quedado's assertion to this Court that he "had *no* involvement in the hiring of" his cousin (Open Br. 14) or his nephew (Open Br. 15) is flat wrong. Quedado *admitted* at his deposition that "during the down-select" of resumes, which is the initial screening process, he told "a group of employees and managers" *who reported to him*, that his cousin's "resume fit well with a job at Boeing." And for his nephew, who had applied for a job at Boeing, Quedado approached the hiring manager, who was a lower level manager than Quedado, and told him positive things about his nephew. Based in part on Quedado's input, his nephew got the job. When Boeing investigated Quedado's involvement, he lied and said that he was not related to either applicant.

Boeing's disciplinary policies include guidelines for discipline in various circumstances. But they also allow management the discretion to impose more severe discipline, particularly when the wrongdoer is a manager and when the wrongdoer lies in an attempt to conceal his misconduct. The policies also expressly list demotion as a possible disciplinary action. And they include a clear disclaimer that the policies "*do[] not constitute a contract or contractual obligation.*"

Despite all that, Quedado, who is an at-will employee, claims that his demotion breached a contract between him and Boeing in which Boeing promised that it would not demote him for misconduct. His lawsuit is meritless, and the trial court correctly granted summary judgment. Boeing asks this Court to affirm.

II. STATEMENT OF ISSUES

1. Did Boeing's policies specifically promise that Quedado would not be demoted if he improperly intervened to help two relatives get jobs at Boeing and then denied the family relationship?

2. Can Quedado pursue his claim in the absence of any evidence that he justifiably relied on Boeing's policies where it is undisputed (a) that he never read those policies, and (b) that he did not forego other employment opportunities in reliance on them?

3. Did Boeing's discipline policies give rise to a promise of specific treatment or an implied contract even though those policies expressly disclaim the formation of any contract?

III. STATEMENT OF THE CASE

A. Quedado's Employment at Boeing.

Quedado joined Boeing as an at-will employee in 1980. CP 193-94. At the time of his demotion, he was a Production Engineering Manager. CP 36. In that position, Quedado was responsible for assisting Boeing's Manufacturing Engineering, Tool Engineering, and Numerical Control Programs with hiring and staffing. More specifically, Quedado was responsible for ensuring that the hiring process in his organization was "timely, efficient [and] fair." CP 36-37, 68.

B. Boeing Policy Prohibits Employees From Exerting Improper Influence on the Hiring Process.

Boeing's policies require employees to avoid improper influence, conflicts of interest, or apparent conflicts of interest, in hiring and placement decisions. CP 37, 105, 111-14. Specifically, PRO-6477, titled "Filling a Job Opening," and PRO-58, titled "Employment of Relatives," forbid employees from favoring or appearing to favor relatives in the hiring process.¹ PRO-6477 provides that "the hiring, transfer, or

¹ "PRO" is a Boeing term that stands for a company-wide procedure. CP 150.

placement of relatives must not result in actual or perceived preferential treatment, improper influence, or other conflict.” CP 105. PRO-58 provides that a relative’s placement in a position is forbidden if it “result[s] in actual or perceived preferential treatment, improper influence, or other conflict.” CP 113. In addition to those responsibilities, as a Boeing manager, Quedado was responsible for taking affirmative action to enforce Boeing’s anti-nepotism policies: “Management” has responsibility to “[t]ake appropriate action to address any situations that would conflict with this [Employment of Relatives] procedure.” CP 114.

Quedado testified that he was aware of and understood those policies. CP 58-59, 63-64.

C. Quedado Improperly Interceded to Help His Cousin Obtain a Position at Boeing.

In the fall of 2005, Quedado’s second cousin and neighbor, Reynaldo Joven, applied for a Manufacturing Planner 2 job in Quedado’s organization. *See* CP 165, 52, 42. Boeing employees Geoffrey Fischer and Bill Knutson screened the applicants, including Joven. CP 153, 91-93, 165. Quedado was Fischer’s and Knutson’s senior manager. *Id.* Fischer and Knutson did not select Joven for further consideration during the “down-select,” which is the first review of applications to narrow the pool of candidates. CP 153, 156.

Boeing's investigation revealed that after Joven was not selected, Quedado approached Fischer and told him that Joven "may be a good candidate." CP 156. Quedado also approached Knutson and told him "to take a look at Joven," and that Joven "was a real good guy." CP 153. Quedado did not tell Knutson or Fischer that he was related to Joven. CP 62. Quedado himself admitted that he told "a group of employees and managers during the down-select" that "Joven's resume fit well with a job at Boeing." CP 60-61.

Boeing's investigation also revealed that, after receiving Quedado's input, Fischer and Knutson selected Joven for further consideration and, at least partially as a result of Quedado's recommendation, Joven was ultimately hired. CP 153, 156.

Quedado's involvement on Joven's behalf did not end there. Quedado testified that after learning that Joven failed his training class, Quedado "called the instructor to ask for an explanation of how" Joven had failed. CP 89. As before, Quedado did not disclose the family relationship, saying only that Joven was a neighbor. CP 89-90, 367. Joven was allowed to take the class again, and Quedado asked Greg Lusk, who was in charge of coordinating new hire training, to keep Quedado posted if Joven had any further problems. CP 367-68. Joven passed the class the second time. CP 368.

D. Quedado Improperly Interceded to Help His Nephew Obtain a Position at Boeing.

Quedado also interceded on behalf of his nephew, Allan Alonzo. In 2005, Alonzo applied for an Industrial Engineering position, but his skills were not a strong fit for the job. CP 165, 159. Boeing's investigation revealed that Quedado approached the hiring manager, Taurun Hazari, and "told him positive things about Alonzo." *Id.* Based in part on Quedado's input, Hazari extended an offer to Alonzo. *Id.*

Because Alonzo was part of a group hire, Hazari forwarded Alonzo's qualifications to Boeing line managers to place him into a specific job. *Id.* But because Alonzo's background was not a good fit for the Industrial Engineering job, Hazari could not find a manager willing to accept him. *Id.* Hazari then approached Quedado and asked if he could find a place for Alonzo in his organization. CP 148. Quedado agreed, responding that putting his nephew in his own organization was a "[g]reat idea." *Id.* He instructed Hazari to forward Alonzo's information to two other Boeing managers. *Id.*, CP 288-90. When Alonzo was not quickly placed, Quedado instructed Hazari to work with one of Quedado's subordinates, Pete Masten, to find Alonzo a position. CP 284.

But Alonzo also lacked the right experience for Quedado's organization. CP 94, 288-90. Alonzo underwent additional training in the hopes that another position would open. CP 94-95, 161, 163. Quedado

testified that it was a “group decision” to put Alonzo in training and that the idea originated with Don Pennington and Pete Masten, two of his subordinates. CP 94-95. Masten told Boeing’s investigator in April 2006 that “Quedado wanted to put Alonzo through training despite his [Masten’s] feedback and that is what happened.” CP 163.

Quedado inaccurately contends that Masten “retracted” that statement in his deposition, which was taken over four years later in November 2010. Open. Br. 24. In his 2010 deposition, Masten testified that he did not “have a memory” of Quedado *telling him* to place Alonzo in training school. CP 442. That is not inconsistent with what Masten told Boeing’s investigator in 2006—that Quedado “wanted” Alonzo in training school and that is what happened.

E. When Confronted by Boeing Investigators, Quedado Lied About His Relation to Joven and Alonzo.

In February 2006, Boeing’s Ethics and Human Resources offices became aware of Quedado’s influence in the hiring of his relatives and started an investigation. CP 150. On May 11, 2006, Boeing investigator Jana Lackie, accompanied by Boeing manager Garry Totman, interviewed Quedado. CP 37. During that interview, they asked Quedado if he was related to Joven and Alonzo. Quedado denied it. CP 37-38, 42-44, 82, 84. Quedado eventually admitted to a “somewhat extended” family

relationship with the two men, but did not disclose the full extent of their close familial relationships. CP 38, 85.

During the course of her investigation, Lackie interviewed seven Boeing employees, including Quedado. CP 42-45, 153-63, 367-68. Because Lackie passed away in late 2008, she was not available to provide testimony in this case. CP 150. Her interview notes, however, survive, and they reflect a balanced and fair investigation that confirmed that Quedado repeatedly assisted his relatives—most often by approaching subordinate employees—and then lied about it when caught. CP 42-45, 153-63, 367-68. After considering that information, and conferring with Boeing Corrective Action Program Manager Steve Miller, Boeing Vice President Mike Denton made the final decision to suspend Quedado for five days and demote him out of management. CP 38, 44, 151, 499.

F. Boeing Policies Provide Discretion in Determining Appropriate Discipline.

Boeing’s employee discipline policies are set forth in two Boeing procedures, PRO-1909 and BPI-2616.² Both procedures include a conspicuous statement disclaiming any contractual obligation. The disclaimer, found on the first page of each procedure, states that the procedure or process instruction “*does not constitute a contract or contractual obligation,*” and that “the Company reserves the right, in its

² “BPI” means a Boeing Business Process Instruction. CP 150.

sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omission, or statement to the contrary." CP 232, CP 248 (emphasis added).

Both PRO 1909 and BPI 2616, which work in conjunction (CP 232), include disciplinary guidelines and provide for significant discretion in determining the appropriate discipline when employees engage in misconduct. BPI 2616, for example, is described as "a tool that will assist the manager and the Human Resources organization" in identifying and determining appropriate discipline "given the specific facts of incidents." CP 232. While "[g]enerally, management should follow a progressive [discipline] path," "some acts of unacceptable conduct are so serious as to warrant severe corrective action upon the first known offense." CP 233. Thus, the "guidelines" in BPI 2616 "are not all-inclusive with respect to the types of violations that may occur." CP 233. And "[e]ach incident must be evaluated on the facts after a thorough investigation of the circumstances in the specific case." CP 234. The matrix of recommended discipline for various types of misconduct in BPI 2616 also uses permissive language; for example, it provides that a violation of Boeing's Conflict of Interest policy "[u]sually results in time off from work." CP 321 (emphasis added).

Similarly, PRO 1909 provides that “some latitude is permitted in determining the level of corrective action.” CP 250. While corrective actions are “normally to be governed by progressive correction action,” “[i]t is not always necessary for the corrective action process to commence with a verbal warning or include every step.” CP 250-51. In instances of more serious misconduct, employees can expect to be reclassified, reassigned, suspended or even discharged, even if there have been no prior instances of misconduct. CP 249-50. PRO 1909 twice identifies demotion as permissible discipline. CP 251, 253.

Both Boeing discipline policies expressly provide that Boeing managers “are held to a higher standard of conduct and may be subject to more severe levels of corrective action.” CP 237, 251. And BPI 2616 allows for more severe discipline when an employee lies about or is not forthcoming about his misconduct, as Quedado was here. CP 236. Finally, nothing in either PRO 1909 or BPI 2616 promises, or even suggests, that a senior manager who is found to have improperly favored two relatives—and to have lied about it when questioned—will not be demoted out of management.

IV. STANDARD OF REVIEW

The standard of review from an order granting summary judgment is de novo. *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 92-93, 993 P.2d

259 (2000). The relevant inquiry is whether the trial court properly found that the “pleadings, depositions, affidavits, and admissions, viewed in a light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Pulcino v. Fed. Express Corp.*, 141 Wn.2d 629, 639, 9 P.3d 787 (2000). Bare assertions that a genuine material issue exists will not defeat a summary judgment motion in the absence of actual evidence. *Trimble*, 140 Wn.2d at 93. This Court may affirm the trial court’s order granting summary judgment on any basis supported by the record. *E.g.*, *Ertman v. City of Olympia*, 95 Wn.2d 105, 108, 621 P.2d 724 (1980).

V. ARGUMENT

Generally, an employment contract, indefinite as to duration, is terminable at will by either the employee or employer. *Roberts v. Atl. Richfield Co.*, 88 Wn.2d 887, 894, 568 P.2d 764 (1977). The right to terminate employment at will necessarily implies the lesser right to freely demote or take other adverse employment actions short of termination. *See, e.g., Duncan v. Alaska USA Fed. Credit Union, Inc.*, 148 Wn. App. 52, 77-78, 199 P.3d 991 (2008). Quedado, an at-will employee, nonetheless argues that, by demoting him, Boeing breached a promise under either a *Thompson* handbook theory or an implied contract. He is wrong on both counts.

First, Boeing's policies made no promise of specific treatment in specific situations. More to the point, nothing in those policies promised Quedado, a senior manager, that Boeing would not demote him if he were caught favoring his family members in the hiring process and then lied to Boeing investigators about it. Nor has Quedado produced any evidence that he relied on that purported promise to his detriment and forwent other employment opportunities.

Second, there can be no contract, implied or actual, without *mutual* assent. Boeing's unambiguous, conspicuous disclaimers on the first page of its disciplinary policies make clear that those policies do not give rise to a contract.

The trial court correctly granted summary judgment for Boeing, and this Court should affirm.

A. Summary Judgment Is Entirely Appropriate in This Kind of Case.

As an initial matter, Quedado argues that summary judgment is improper when an employee argues that employer policies give rise to a contract. Open. Br. 37, 44. That is incorrect. Washington courts routinely resolve cases like this one on summary judgment. *See, e.g., Trimble*, 140 Wn.2d at 93-96 (summary judgment for employer); *Klontz v. Puget Sound Power & Light Co.*, 90 Wn. App. 186, 194, 951 P.2d 280

(1998) (same); *Birge v. Fred Meyer, Inc.*, 73 Wn. App. 895, 900, 872 P.2d 49 (1994) (same); *Hill v. J.C. Penney, Inc.*, 70 Wn. App. 225, 227, 852 P.2d 1111 (1993) (same).

Quedado's reliance on *Swanson v. Liquid Air Corp.*, 118 Wn.2d 512, 826 P.2d 664 (1992), to suggest otherwise is misplaced. Open. Br. 37. *Swanson* does not hold that these claims always present matters of fact and that summary judgment is not appropriate. To the contrary, the Supreme Court has held that "if reasonable minds could not differ in deciding" whether a policy promised specific treatment in specific situations, the trial court can decide the question as a matter of law. *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 105-06, 864 P.2d 937 (1994). And the Supreme Court has also made clear that Washington "follow[s] the objective manifestation theory of contracts" and unexpressed subjective intent will not suffice to form a contract. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

B. Employee Manuals Create Contractual Obligations Only in Narrow Circumstances Not Present Here.

While an employment contract, indefinite as to duration is terminable at will by either the employee or the employer, the Supreme Court has created a narrow exception to the employment at-will doctrine.

Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 685 P.2d 1081 (1984).

Under *Thompson*, “the employer’s act in issuing an employee policy manual can lead to obligations that govern the employment relationship,” and, in certain circumstances, “employers may be obligated to act in accordance with policies as announced in handbooks.” *Id.* at 229. An employee seeking to enforce an employer’s policy must satisfy a three-part test, proving all of the following:

- (1) that a statement (or statements) in an employee manual or handbook or similar document amounts to a promise of specific treatment in specific situations,
- (2) that the employee justifiably relied on the promise; and
- (3) that the employer breached the promise of specific treatment.

Bulman v. Safeway, Inc., 144 Wn.2d 335, 340-41, 27 P.3d 1172 (2001).

The trial court correctly found that Quedado did not satisfy that test.

1. Summary Judgment Was Proper Because Boeing’s Disciplinary Policies Make No Promises of Specific Treatment in Specific Situations.

“Only those statements in employment manuals that constitute promises of specific treatment in specific situations are binding.” *Stewart v. Chevron Chemical Co.*, 111 Wn.2d 609, 613, 762 P.2d 1143 (1988).

And “where the employment manual gives the employer discretion in applying the discipline procedures”—as Boeing’s policies do here—“courts have held as a matter of law that the manual does not provide a

promise of specific treatment in a specific circumstance.” *Drobny v. Boeing Co.*, 80 Wn. App. 97, 103, 907 P.2d 299 (1995). To state the obvious, “[a] ‘promise’ in a manual is not binding if its performance is optional or discretionary on the part of the promiser.” *Hill*, 70 Wn. App. at 236; *see also Stewart*, 111 Wn.2d at 613 (“[a] supposed promise may be illusory ... if its performance is optional or discretionary on the part of the promisor”).

It is undisputed that Boeing’s discipline policies make no promises as to the specific discipline a senior manager may receive if he is found to have violated Boeing’s conflict of interest policy and then to have lied to investigators when caught. Quedado contends, however, that Boeing promised that “the most severe corrective action for [his] alleged violations was five days’ time off work without pay.” Open. Br. 5. He is wrong.

The discipline matrix in BPI 2626 does not set a ceiling on discipline. Rather, the part of the matrix on which Quedado relies provides only that violations of Boeing’s conflict of interest policy will “usually result[] in time off from work.” CP 321 (emphasis added). The term “usually” is infused with discretion—even more discretion than the term “should,” which the Supreme Court has held is “advisory.” *Stewart v. Chevron Chemical Co.*, 111 Wn.2d 609, 614, 762 P.2d 1143 (1988).

In *Stewart*, a statement that in determining layoffs “consideration *should* be given to performance, experience and length of service” was an illusory promise because its performance was discretionary. *Id.* at 613-14. Similarly, there was no “promise of specific treatment” where an employment policy provided for immediate discharge for certain defined misconduct, but also retained discretion to immediately discharge employees for other unspecified misconduct “determined by the Company to be of an equally serious nature.” *Birge*, 73 Wn. App. at 897, 900.

It is not an accident that Boeing used the discretionary term “usually.” The matrix is not, as Quedado claims, analogous to mandatory sentencing guidelines, Open. Br. 5, but rather is a “tool to assist” managers in determining discipline based on the “specific facts of incidents.” CP 232. That demotion is not listed as the “usual” penalty for violating Boeing’s conflict of interest policy does not constitute a promise that demotion will *never* be the penalty, particularly given that PRO 1909 twice identifies demotion as permissible discipline. CP 251, 253.

Moreover, the “usual” discipline in the matrix is subject to additional considerations. Lying or failing to be forthcoming about one’s misconduct is an aggravating factor “that *may increase* the level of employee corrective action.” CP 236, 238 (emphasis added). And managers are “held to a higher standard and *may receive* more severe

corrective action, depending on the issues.” CP 237, 251 (emphasis added).

In short, Boeing’s disciplinary policies allow for leeway in selecting the appropriate discipline depending on the circumstances of each case. They do not make promises of specific discipline in specific situations. Indeed, this Court has previously analyzed essentially the same language that Quedado relies upon, and held that Boeing made no “promise of specific treatment under specific circumstances.” *Drobny*, 80 Wn. App. at 104. The Boeing manual in *Drobny* stated that disciplinary actions taken by supervisors “are to be governed by progressive discipline.” *Id.* at 102. But it also said that while the discipline process for less serious violations will “normally” begin with a written warning, “acts warranting severe discipline” might justify dismissal or suspension, even without a prior warning. *Id.* at 102-03 (emphasis added). Thus, “Boeing retained discretion to determine on a case-by-case basis whether conduct would be deemed serious enough to merit dismissal without recourse to progressive discipline.” *Id.* at 104.

Consistent with *Drobny*, a later court reached the same conclusion, holding that a progressive discipline policy that permitted “dismissal for some misconduct ... without prior disciplinary action” was “not a promise of specific treatment in a specific situation.” *Korlund v. Dyncorp Tri-*

Cities Services, Inc., 121 Wn. App. 295, 327, 88 P.3d 966 (2004), *aff'd in part, rev'd in part*, 156 Wn.2d 168 (2005).

As in *Drobny, Stewart, Birge, and Korlund*, Boeing retained the discretion to demote Quedado at the end of its investigation into his involvement in hiring his relatives. That should end the matter.

Quedado also appears to argue that Boeing made and breached other collateral “promises” to him. None of his arguments bear scrutiny.

First, Quedado argues that BPI 2616, which states that “[t]hese guidelines must be applied consistently,” is a promise that he would receive the same discipline as other employees who violated Boeing’s hiring policies—regardless of individual circumstances. And he points to two Boeing employees who were suspended, but not demoted, for violating Boeing’s hiring processes. Open. Br. 8, 26. BPI 2616 does not promise that every employee who violates the same rule will receive the same *discipline*. It merely states that the *guidelines*—which require that misconduct and discipline be evaluated on the particular facts and aggravating circumstances—must be applied consistently. CP 232-33.

The two examples cited by Quedado are not comparable anyway. Unlike Quedado, there is no evidence that the other employees had favored their own family members or lied when questioned by Boeing investigators. *Compare* CP 263 with CP 336, 348. And there is no

evidence that either employee was, like Quedado, responsible for ensuring the implementation of fair and efficient hiring practices.

Second, in arguing that his managers conspired to drum up an excuse to remove him from management, Quedado appears to argue that Boeing promised that it would not consider his previous job performance when deciding to impose discipline. Open. Br. 29-30. Nowhere does the policy say that and, in fact, BPI-2616 expressly provides that an employee's work history should be part of the review. CP 234.

Throughout his briefing, Quedado argues that Boeing's reason for demoting him was a "pretext." Open. Br. 2, 29-30, 48-49. That is a red herring. Absent a contractual agreement to the contrary, Boeing was free to demote, or even discharge, Quedado "for no cause, good cause or even cause morally wrong without fear of liability." *Thompson*, 102 Wn.2d at 226. Pretext and motive are simply not relevant here.

Quedado's "evidence" of pretext fails on its own terms anyway. For starters, his own admission that he intervened on behalf of his relatives; his position as a senior manager uniquely responsible for overseeing hiring processes; and his initial lies to Boeing investigators were alone more than enough to justify his demotion. He nevertheless argues that handwritten notes—the origin and author of which is unknown—indicate that his managers had already decided to demote him

before learning that he had violated Boeing's policies.³ Open. Br. 29-31. Even assuming that those notes are admissible, which they are not,⁴ they do not stand for what Quedado claims. Judging by the context, the reference in the notes to taking Quedado "out of mgmt" refers to the discipline decision, not to anything that occurred prior to Quedado's misconduct. And the "Gary & Karsten" identified in the notes as the managers who Quedado claims wanted to demote him were not the decision-makers who actually demoted him. Rather, the evidence is undisputed that Mike Denton, in consultation with Jana Lackie and with input from Steve Miller, made the decision to demote Quedado. CP 499, 502.

Third, Quedado argues that Boeing's policies promise that the employee's manager "is to be involved in all steps of the investigation and corrective action process," but that Garry Totman's participation in the investigation was "minimal." Open. Br. 27. Again, Quedado is wrong.

³ Boeing did not refuse to identify the author of the notes, as Quedado falsely suggests. Open. Br. 30. Boeing answered truthfully that it did not know with certainty who had authored the notes, but advised Quedado's counsel that it was likely that the author was a retired Boeing EEO investigator named Robert Otto. CP 553.

⁴ Because those notes (a) are not authenticated, and (b) appear to be notes of statements by one or more unidentified third persons and Quedado fails to establish an exception to the hearsay rule, the notes are inadmissible and cannot form the basis for a reversal. CR 56(e); ER 802; ER 901(a).

BPI 2616 describes four steps for administering corrective action at Boeing: (1) investigate; (2) review investigation findings; (3) make Employee Corrective Action decision and (4) issue Employee Corrective Action. CP 234-37. Under the heading “Role(s),” each step lists the following individuals: “Human Resources Generalist, Employee Corrective Action Coordinator, Manager.” *Id.* Nowhere does BPI 2616 promise that an employee’s immediate manager will be involved “in all steps of the investigation,” Open Br. 27, most steps, or even any steps. In any case, Totman *was* involved in the investigation and in the subsequent corrective action process. He was present for Quedado’s interview, apprised of the investigator’s findings, signed the final corrective action memo, and was present when Quedado received it. CP 37-38.

2. Summary Judgment Was Proper Because Boeing’s Code of Conduct Makes No Promises of Specific Treatment in Specific Situations.

Quedado also claims that Boeing’s Code of Conduct promised him specific treatment in specific circumstances. Open. Br. 44-46. He does not actually say *what* the Code of Conduct promised him other than that the Code of Conduct “specifically incorporates Boeing’s employment policies.” Open. Br. 36. Even if that were true, those policies do not include promises of specific treatment in specific circumstances, as explained above. They do not become something else through the Code of

Conduct. Moreover, those policies include express disclaimers that they are not contracts. If the Code of Conduct incorporates those policies, that includes the disclaimers with the same effect.

Quedado's reliance on the Boeing Code of Conduct is meritless anyway. The Code of Conduct is a one-page declaration that all Boeing employees sign every year. CP 220. In it, Boeing outlines "expected behaviors for all Boeing employees." *Id.* Boeing explains that it expects employees to act with integrity and the "highest standards of ethical business conduct" and to avoid conduct that calls into doubt Boeing's honesty, impartiality, or reputation. Boeing's employees promise to perform their job duties "fairly, impartially, in an ethical and proper manner, and in full compliance with all applicable laws and regulations." Boeing employees must acknowledge that they are in line with the Code of Conduct and that they will continue to comply with it. *Id.*

For starters, a "general policy of fair treatment" does "not modify an at-will employment relationship." *Hill*, 70 Wn. App. at 235. And, in any event, the Code of Conduct is not, as Quedado argues, a promise from Boeing to its employees that no *other* Boeing employee will ever act unfairly, partially, unethically, improperly or with any less than perfect compliance with all laws, regulations, and Boeing policies. Open. Br. 44-45. To the extent there is an exchange of promises in the Code of

Conduct, the exchange is between Boeing and the employee signing the Code of Conduct. The employee pledges to act ethically and with integrity, and Boeing pledges to discipline the employee if he or she fails to live up to those standards. CP 233 (“Corrective Action shall be taken when an employee engages in conduct contrary to the Boeing Code of Conduct or reasonable commonsense rules of conduct.”). Nothing in the Code of Conduct purports to make third-party promises to employees or Boeing outsiders who might themselves be affected if a Boeing employee fails to act in perfect conformance with the highest ethical standards.

Indeed, another court applying Washington law has rejected a similar argument and recognized that the Code of Conduct is “aspirational language” that cannot support a *Thompson* style handbook claim. *Evergreen Int’l Airlines, Inc. v. Boeing Co.*, 2010 U.S. Dist. LEXIS 140547, at *15 (W.D. Wash. June 9, 2010). The Court found “nothing specific in the quoted sections [of the Code of Conduct] that would give rise to an enforceable promise.” *Id.* at *16. Quedado cites the same language here, *compare id.* at *15 with Open. Br. 44-45, and the same result should follow.

3. Summary Judgment Was Proper Because Quedado Introduced No Evidence of Justifiable Reliance.

Even if Quedado could show that Boeing’s policies promised him specific treatment in specific situations, summary judgment was still

proper because Quedado failed to present any evidence of justifiable reliance on Boeing's discipline policies. "An employer is bound only by promises upon which the employee justifiably relied." *Stewart*, 111 Wn.2d at 614. To establish reliance, Quedado must show that he was (a) aware of the promises he seeks to enforce *and* (b) "induced thereby to remain on the job and not actively seek other employment." *Thompson*, 102 Wn.2d at 230.

Taking the second requirement first, even if Quedado had prior knowledge of the specific promises he now alleges, there is no evidence in the record that Quedado was induced by those alleged specific promises—or even by his general understanding of how the discipline process worked—to remain at Boeing and forego other employment opportunities. An "employee must have been aware of the specific promise allegedly breached and *that* specific promise must have induced the employee to remain on the job and not seek other employment." *Korslund v. Dyncorp Tri-Cities Servs.*, 156 Wn.2d 168, 191, 125 P.3d 119 (2005) (emphasis in original); *see also Bulman*, 144 Wn.2d at 349-50 (reversing jury verdict for plaintiff); *Shaw v. Housing Auth. for Walla Walla*, 75 Wn. App. 755, 761, 880 P.2d 1006 (1994) (affirming summary judgment for employer because plaintiff presented no evidence of reliance). That failure alone is grounds for affirmance.

As to the first requirement—that Quedado had “been aware of the specific promise allegedly breached,” *Korlund*, 156 Wn.2d at 191—he may not claim reliance on promises of specific treatment of which he was unaware. *Bulman v. Safeway*, 144 Wn. 2d 335, 341, 27 P.3d 1172 (2001). Quedado testified that he never actually read the Boeing discipline policies until after he was disciplined. CP 196-98. And he does not assert that he was aware of the purportedly specific promises on which he supposedly relied (pp. 18-21, above); rather, he says that he was generally aware of Boeing’s discipline policies. Open. Br. 47.

Quedado cites *Korlund*, 121 Wn. App. at 327, for the proposition that he can establish justifiable reliance without having read the policies “word-for- word.” Open. Br. 46. That is not what *Korlund* held. In *Korlund*, the plaintiffs submitted declarations stating that they were aware of the promises at issue from, among other things, the company website, postings on bulletin boards, emails, and postings on company bulletin boards. *Id.* at 327. In other words, the *Korlund* plaintiffs claimed they had read materials containing the promises they were relying upon. Here, by contrast, Quedado does not claim that he read the two Boeing discipline policies in any form, but that he gained his general knowledge through training, his experience as a manager, and interactions with Boeing’s human resources. CP 196-97.

That is not enough to establish awareness of a specific promise. *See Bulman v. Safeway*, 144 Wn. 2d 335, 27 P.3d 1172 (2001). Like Quedado, in *Bulman*, the plaintiff argued that his general awareness of his employer's disciplinary policies was sufficient, and that he did not need to prove that he had actually read the specific policies he claimed had been violated. Specifically, the plaintiff testified that while he did not "sit down and thumb through" the policy, he gained awareness of the policy by using it in performing his managerial duties, *id.* at 360 (dissent), and that when he had questions he would rely on another Safeway employee to find the answer for him. *Id.* at 346. Similarly, Quedado argues he was aware of Boeing's policies through his experience as a manager and by relying on other Boeing employees, specifically Boeing "human resource personnel," to provide him with "guidance in the substance and application of" Boeing's policies. CP 197.

4. Summary Judgment Was Proper Because Boeing's Discipline Policies Contained Appropriate Disclaimers.

Even if statements in Boeing's policies would otherwise constitute a promise of specific treatment in specific situations (which they do not), the conspicuous and unambiguous disclaimers in BPI 2616 and PRO 1909 make clear that the procedure or process instruction "*does not constitute a contract or contractual obligation.*" CP 232, 248 (emphasis added).

Washington courts recognize that “[a]n employer can escape an obligation to act in accordance with its promises by stating in a conspicuous manner that the writing contains simply ‘general statements’ of company policy which are not intended to be part of the employment relationship.” *Birge*, 73 Wn. App. at 898-99 (citing *Thompson*, 102 Wn.2d at 230-31). In *Birge*, for example, language that the manual did “not constitute an employment contract” “provided reasonable notice to [employee] *not* to rely to her detriment on anything contained” therein. 73 Wn. App. 898, 901.

Quedado argues that he was never aware of the disclaimer language. Open. Br. 42. But in fact, what Quedado actually testified was that he had not read the disclaimers *in the most recent iterations* of Boeing’s discipline policies, which had been in effect only a few months before his demotion. CP 74, 80. That is a telling omission because Quedado admitted that he was familiar with the prior version of BP 2616, and he knew it well enough to testify, from memory, that it was not “materially different” from the 2006 policy. CP 74. In fact, nowhere in the record, including his 21-page declaration, does Quedado say outright that he was unaware of the disclaimers. Instead, he carefully parses his testimony so as to precisely limit the scope of his claimed ignorance. *See* CP 196.

Not only is it surprising that a senior Boeing manager would be unaware of a fundamental element of Boeing's policies, it is disingenuous for Quedado to claim that he was "specifically aware of" PRO-1909 and BPI-2626 "and understood their substance" enough to rely on them (Open. Br. 11, 47), yet he was unaware of the clear disclaimers in those policies. He cannot have it both ways. If he did, in fact, "understand" those policies, that understanding would include the disclaimers. His failure to deny otherwise precludes him from arguing that the disclaimers are ineffective because he did not know about them.

While Boeing theoretically could have overridden by subsequent actions its clear intention to avoid entering into a contract (*see* Open. Br. 42), there is no evidence sufficient to give rise to a genuine issue of material fact that Boeing did so. Quedado argues that because he and one other Boeing employee testified that they believed they were obligated to follow Boeing's discipline policies, that shows that Boeing intended to override its disclaimers and convert its policies into binding contracts. Open. Br. 43. But it is clear under Washington law that "unexpressed subjective" understandings do not suffice to create a contract. *Hearst*, 154 Wn. 2d at 503.

In any event, Quedado misrepresents Hansen's testimony. Open. Br. 43. What Hansen said was that he did not "have any discretion to

deviate” from the policies, *except as provided for in the policies themselves*. CP 394. And of course, those policies allow for discretion in determining what measure of discipline to apply. Moreover, that some employees believe they must follow the policy is not enough to convert that policy into a binding promise. Most employees feel obliged to follow their employers’ policies. If that were enough, no disclaimer would ever be effective.

C. Neither the Boeing Code of Conduct Nor Boeing’s Discipline Procedures Are an Actual or Implied Contract.

Another narrow exception to the employment at-will doctrine is if an employment policy becomes part of the employment contract and modifies the at-will relationship. *Thompson*, 102 Wn.2d at 228. Quedado argues that Boeing’s Code of Conduct and disciplinary procedures in PRO-1909 and BPI-2616 give rise to an implied contract that changed his at-will status and, thus, Boeing could not demote him for violating its hiring rules. He does not identify what parts of those documents actually say that, however.

Whether express or implied, “for a contract to exist there must be mutual assent to its essential terms.” *Weiss v. Lonnquist*, 153 Wn. App. 502, 511, 224 P.3d 787 (2009). Quedado must also show all “the requisites of contract formation: offer, acceptance, and consideration are

necessary predicates” of an implied contract. *Thompson*, 102 Wn.2d at 228; *see also Bulman*, 144 Wn.2d at 351-52. But as a matter of law, there can be no *mutual* assent between Boeing and Quedado to form a contract based on Boeing’s discipline policies because those policies expressly disavow the formation of any contract. CP 232, 248. Boeing’s unambiguous disclaimers make clear its intent to avoid any contract, implied or otherwise. Nor does it matter that Quedado claims that he never read the disclaimers. What matters is Boeing’s clear lack of intent to agree to the essential terms of the alleged implied contract. Quedado’s subjective intentions and understanding are irrelevant. *Hearst*, 154 Wn.2d at 503; *Weiss v. Lonquist*, 153 Wn. App. 502, 511, 224 P.3d 787 (2009).

Even apart from the disclaimers, there is no evidence that Boeing intended in its disciplinary policies “to surrender its power to determine whether an employee’s misconduct warranted his or her termination.” *Bulman*, 144 Wn.2d at 353.

The Code of Conduct does not help Quedado either. As explained above in Section V.B.2, the Code of Conduct is not a promise to all Boeing employees that no *other* Boeing employee will ever act unfairly or break a rule. Nor does it make third-party promises to employees who might themselves be affected if another Boeing employee fails to act in perfect conformance with the highest ethical standards. Again, the Code

of Conduct is simply “aspirational language” that does not support a claim for breach of contract under Washington law because there was “nothing specific in the quoted sections that would give rise to an enforceable promise.” *Evergreen Int’l*, 2010 U.S. Dist. LEXIS 140547, at *15-16.

D. Although Boeing Reached the Correct Decision, That Issue Is Irrelevant to Quedado’s Claims.

Quedado devotes much of his brief to arguing that Boeing’s investigation came to the wrong conclusion. Boeing disagrees, of course, but that is of no moment because absent some type of enforceable contract, of which there is none, Boeing was free to discharge Quedado for “no cause, good cause or even cause morally wrong without fear of liability.” *Thompson*, 102 Wn.2d at 226. Similarly, absent a contractual obligation of some sort, it is irrelevant whether Boeing conducted an “adequate” investigation or made its decision in “good faith.” There is no “good faith and fair dealing” standard for employment contracts. *Thompson*, 102 Wn. 2d at 227. Thus, “employer bad faith is irrelevant to the determination of whether an otherwise terminable-at-will employee has a cause of action for wrongful discharge.” *Birge*, 73 Wn. App. at 901.

Quedado argues that Boeing was required to conduct an adequate and good faith investigation, citing *Gaglidari v. Denny’s Restaurants, Inc.*, 117 Wn.2d 426, 437, 815 P.2d 1362 (1991). Open. Br. 48-49. But in

Gaglidari the court held that *there was* an enforceable contract, and the issue was whether the employer had followed the contract in good faith. *Id.* at 433, 438-39. Here there is no contract. *Gaglidari* is inapposite.

In any case, there is no evidence that calls the adequacy or good faith of Boeing's investigation into question. Here, Boeing conducted a thorough and fair investigation, and its conclusion that misconduct occurred was fully supported by independent witnesses, documents authored by Quedado, and Quedado's own admissions. CP 38, 42-45, 60-61, 85, 146-48, 153-63, 288-90, 292-97, 303, 367-68,

E. Quedado's Repeated Misstatements of Witness Testimony Do Not Create Material Issues of Fact.

Lastly, Quedado points to supposedly inconsistent statements from Boeing witnesses as "evidence" that Boeing did not conduct a reasonable investigation or have a good faith belief that misconduct occurred. Open. Br. 48-49. None of those statements create a genuine issue of material fact about the propriety of Boeing's investigation. And, on closer review, the statements are not inconsistent.

For example, Quedado claims that Garry Totman testified that Boeing manager Steve Miller was present during a meeting where Quedado's specific discipline was discussed, but that "Steve Miller tells a completely different story." Open. Br. 27. In fact, Totman did not testify

that Miller attended the meeting; rather, he said that Miller may have been “involved” in the corrective action *process*. CP 502.

Quedado also suggests that Totman testified that Boeing investigator Jana Lackie proposed demotion as the appropriate discipline, while Miller supposedly testified that it was Totman who selected demotion. Open Br. 27-29. Totman and Miller’s testimony do not conflict. Totman testified that his superior, Mike Denton, in consultation with Lackie and Miller, made the decision to demote Quedado. CP 499, 502. Miller testified that Lackie called him and told him that Quedado’s “management” had recommended demotion. CP 469. Miller never testified that he understood “management” to mean Totman and not Totman’s superiors.

Quedado also claims that Boeing employees O’Brian Woodfolk and Don Pennington gave two different accounts of what triggered Boeing’s investigation into Quedado’s actions. Open. Br. 15-16. As an initial matter, it is unclear why what triggered the investigation matters. In any event, there is no material inconsistency. Both Woodfolk and Pennington testified that the investigation was triggered when Pennington approached Woodfolk to report that there might be a problem because Quedado’s nephew was failing his training class. Specifically, Woodfolk testified that he thought he might have triggered the investigation after

Pennington came to him and told him that there was going to be a problem because a “neighbor of Rey’s”—Quedado’s cousin, Joven—was going to fail training class. CP 521. Pennington’s testimony was the same. Despite repeated attempts by Quedado’s counsel to elicit conflicting testimony, Pennington testified that he approached Woodfolk and that is what triggered the investigation. CP 481.

Lastly, Quedado argues that Pete Masten and Tom Hansen made “inaccurate “ statements in their declarations. Open. Br. 49. Those claimed inaccuracies related to how recently Masten and Hansen had reviewed different Boeing documents prior to signing their declarations. CP 437-48, 387-88. Moreover, the subject matter of those claimed inaccuracies related to undisputed background facts, such as when Quedado’s cousin applied at Boeing, CP 165, and thus are immaterial.

VI. CONCLUSION

For the reasons given above, this Court should affirm the trial court’s order granting summary judgment.

DATED: August 8, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2011, I caused the foregoing document to be served on the following counsel of record, via hand delivery:

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DATED this 8th day of August, 2011.



Janet Davenport, Legal Secretary

PRO-6477
Issue Date
December 12, 2005

Filling a Job Opening

Purpose/Summary

This procedure outlines requirements and responsibilities for filling a salaried or locally hired international job opening (excluding executive levels) with new hires, rehires, recalls, and current employees, including subsidiary transfers.

The following are excluded from this procedure and do not require a job requisition: a temporary position filled by an employee, a position filled by contingent labor, employee in-place promotions (reclassifications within non-management or management only), or re-allocation of work statement among current employees.

This procedure does not constitute a contract or contractual obligation, and the Company reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omissions, or statements to the contrary.

The foregoing statement has no effect on the terms of applicable collective bargaining agreements. Employees covered by a collective bargaining agreement will be governed by this procedure and the applicable agreement, with the agreement having precedence.

This procedure applies to all segments of The Boeing Company, including subsidiaries (as implemented by resolution of the subsidiary Board of Directors).

The Company recognizes laws and regulations in other countries may impose additional or different requirements related to the use and disclosure of personal data outside the United States. The Company may modify guidance in this procedure to comply with laws and regulations of countries other than the United States.

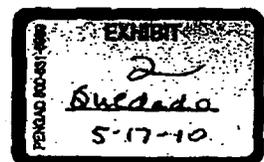
Supersedes

Procedure PRO-700, dated January 18, 2005

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Policy and Procedure System contains the most current version of this writing. Uncontrolled when printed.

EXHIBIT 2



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APPENDIX 1

Applies To

All Boeing

Maintained By

Shared Services Group, Global Staffing

Authority Reference

Policy POL-2, "Ethical Business Conduct"
Policy POL-3, "People"
Policy POL-5, "Equal Employment Opportunity"

Approved By

Rick Stephens
Senior Vice President, Human Resources and Administration

1. Introduction

The Boeing Company's objective is to maintain a highly skilled, motivated, and diverse workforce through the proper selection and assignment of individuals to fill job openings by:

- Utilizing a selection and hire process that is equitable, which supports business objectives;
- Providing a process where individuals can pursue their professional or career interests.

2. Definitions

The definitions of terms used herein are for purposes of this procedure only and have no effect on the meaning of the same or similar terms as otherwise defined by the Company in other documents or procedures.

A. Applicant

A job seeker who has applied to a specific job requisition and provided the required profile, job preference, voluntary self-identification, and resume information.

B. Applicant Tracking

A process to support affirmative action where applicant information, including ethnicity, race and gender, is voluntarily collected, and where

selection and non-selection decisions are documented for applicants at each stage of the selection and hire process.

C. Assigned Manager

A manager who has responsibility for the employees in a distinct work group (e.g. assigns work to the employees, authorizes employees' timekeeping, and evaluates employees' performance and salary).

D. Business Unit

A major segment of The Boeing Company and whose senior executive is a member of the Executive Council and reports to the chairman of the board, president and chief executive officer.

E. Competencies

The knowledge, skills, abilities, and other characteristics that employees need in order to perform the required job tasks. The competencies indicated on the job requisition are the primary basis for screening and assessing job applicants.

F. Contingent Labor

Includes Contract Labor, Industry Assist, Consultants, Professional Services, Technical Assist, and Purchased Services as defined in procedure PRO-13, "Consultant and Professional Service Agreements" and procedure PRO-91, "Utilization of Contract Labor and Industry Assist Personnel."

G. Employee Reassignment

A notification to an employee of a job assignment change directed by management to fill a job opening outlined in sections 3.H.1 through 3.H.6, which does not require a job offer (e.g. move memos and redeployment memos to mitigate surplus).

H. Executive Level

A job with an "E" grade within the U.S. E-series structure or a job classified as I-A or I-B on the International I-Band structure.

I. First Consideration Rehire

Consideration of an eligible non-union laid-off employee with active layoff status as an applicant to fill external job openings prior to other external applicants.

J. Hiring Manager

The manager responsible for the selection and hire decision. May be an Assigned Manager or Skills Manager.

K. In-Place Promotions

Expansion of an employee's current job responsibilities. A job opening if a reclassification from non-management to management.

L. Job Offer

A written presentation of terms and conditions of employment to an internal or external applicant.

M. Job Opening

A job that is vacant or will be vacant either due to a required increase in an assigned manager's staffing level or because of the departure or planned departure of its previous occupant.

The following examples are not considered a job opening for the purposes of this procedure: a temporary position (duration of less than six (6) months) filled by an employee or a position filled by contingent labor; in-place promotions (expansion of an employee's current job responsibilities); or re-allocation of work statement among current employees.

N. Job Posting

A method to provide job opening visibility to job seekers.

O. Job Requisition

Documentation of job specifications, including job competencies, and other job-relevant information to fill a job opening.

P. Job Seeker

An individual (internal or external) who has completed a profile, indicated their job preferences and, as requested from external job seekers, provided voluntary self-identification.

Q. Job Specifications

Includes all aspects of job classification (i.e. occupation, job family, responsibility level, and skills management code), the job description, educational requirements and the competencies (knowledge, skills, abilities, and other characteristics) to perform the job tasks.

R. Locally Hired International Employee

An employee who is paid as a local resident of the country in which he or she works (i.e. I-Band job classification).

S. Recall

Return of an eligible union-represented laid-off employee from active layoff status to fill an external job opening. The laid-off employee must have recall eligibility rights per their collective bargaining agreement.

T. Salaried Jobs

Jobs described in the Salaried Job Classification (SJC) system.

U. Skills Manager (e.g. Enrolled Manager)

Senior-level functional management responsible for managing employees within their function, discipline, or skill area, for purposes of acquisition, redeployment, or career development.

V. Structured Interview

A standardized method of evaluating applicants' job-related competencies (knowledge, skills, abilities and other characteristics). Structured interviews are designed to provide equitable treatment of all job applicants interviewed and enable managers to identify applicants who are best suited for the job. A structured interview typically includes the use of behavioral-based questions, where applicants describe situations where they have demonstrated the competencies for a specific job. Structured interviews also include rating scales that are used to evaluate the applicants' responses as compared to the expected effective behavior.

W. Temporary Position

A position with a duration of less than six (6) months.

3. Requirements

- A. Selection and hire decisions are made without regard to race, color, religion, national origin, gender, sexual orientation, age, physical or mental disability, veteran status, or any other characteristic as protected by applicable federal, state, and local law.
- B. Applicant, hire, recall, and employee information is managed in accordance with procedure PRO-98, "Employer-Employee Information Practices."
- C. Reasonable accommodation is provided when requested throughout the selection and hire process in accordance with procedure PRO-784, "Reasonable Accommodation."

- D. Proprietary (i.e. non-public) information of a third party is not solicited or accepted from job applicants during the selection and hire process. Refer to procedure PRO-6375, "Trade Secrets and Restrictions on Acquisition & Use of Third Party (Non-Boeing) Proprietary Information."
- E. Applicant tracking is required at each stage of the selection and hire process for each posted job opening.
- F. Selection and hire documentation is retained as defined in the Boeing's Master Record Retention Schedule (MRRS).
- G. Job offers, both internal and external, and employment processing requirements are managed in accordance with procedure PRO-2313, "Recruitment and Employment."
- H. A job opening is posted unless being filled using one of the business situations outlined below in sections 3.H.1 through 3.H.6. Additionally, when filling a job opening using one of these business situations, the selection and hire cannot result in a promotion within non-management or management or a reclassification and/or promotion into management from non-management.

1. Skills Utilization

Reassignment of an employee with the required competencies to perform another job within an assigned manager's or skills manager's boundaries. Employee reassignments must be within the same job family and level.

2. Surplus Mitigation

Reassignment of an employee into a job opening within the same job family where a surplus exists within Skills Manager boundaries.

a. A surplus is indicated by one of the following:

- Available employees where job assignments have been eliminated;
- Formal declarations in the job family have been made by Business Units;
- Employees have been identified with advanced notification of layoff.

b. Employees identified to fill job openings must be advised of their options should they refuse the offer.

3. Critical Situations

Where the flow time to fill a job opening with an employee would be significantly detrimental to the company, such as a program

performance situation or lack of cleared skills. Critical situations require approval by the Skills Manager or by the Business Unit Vice President of Human Resources or equivalent leader, where a Skills Manager does not exist. Employee reassignments must be in the same job family and level.

4. Developmental / Rotational Programs

Reassignment of an employee participating in a Development / Rotation program, where the program has been approved by the appropriate Business Unit Human Resources Executive(s), based on the program boundaries defined, and meets the following program criteria:

- a. Program eligibility boundaries are defined, including the job classifications and Business Unit / Organizations.
- b. Individual participation in the program is limited to a pre-determined maximum duration.
- c. The program has a formal, documented, and advertised process for self-nomination.
- d. Entry into the program is based on consistent selection criteria.
- e. There is a process for periodic review of the program's utilization of women and minorities and selection decisions (impact ratio analyses).
- f. There is a documented process for the lateral placement of individuals at the conclusion of the program.

5. Contractual Compliance

To support:

- a. collective bargaining agreement provisions (such as recall from layoff, rights to previously held jobs)
- b. company contracts / agreements (such as Department of Defense Request for Proposal (RFP), Customer Purchase Offset agreements, Program Special Access Requirement (SAR) agreements) where a job posting cannot be written without compromising the security of the program (SAR).

6. Regulatory Compliance

To support regulatory, legal or EEO obligations (e.g. Americans with Disabilities Act); return to work from medical, military, or family leaves of absence, or medical layoff.

- I. Internal posting is generally initiated prior to external posting, including the rehire of previously laid-off Boeing employees with Recall or First Consideration Rehire eligibility, unless enterprise skills assessment indicates a requirement for simultaneous internal / external posting or external posting only (e.g. to support college relations program recruiting plans or to promote diversity).
- J. Consideration when reviewing methods for filling a job opening should include medical reassignments per procedure PRO-784, "Reasonable Accommodation" or medical layoffs.
- K. For job openings filled by employees with an advanced notification of layoff and where relocation has not been authorized on the job requisition, a modified relocation benefit is provided as outlined in procedure PRO-6281, "Relocation: Domestic and International" and the Domestic Relocation Policy Handbook.
- L. Visibility of job postings is provided through a single source (e.g. Boeing Enterprise Staffing System (BESS)).
- M. Job posting and other advertising and recruiting requirements are defined in procedure PRO-2313, "Recruitment and Employment."
- N. Filling a job opening requires a job requisition and record of the selection or hire, whether or not the job opening is posted.
 - 1. A job requisition to be posted requires the following information: the job specifications, including job competencies, work location, Affirmative Action Plan information and, as applicable, security clearance requirements, relocation benefits, labor union representation, export controlled data access, and identification of the Hiring Manager.
 - 2. A job requisition which is filled by a business situation outlined in section 3.H and not posted requires the following information: the job specifications (job competencies are not required), work location, Affirmative Action Plan information and, as applicable, security clearance requirements, relocation benefits, labor union representation, export controlled data access, and identification of the Hiring Manager.
 - 3. A cancelled job requisition cannot be reopened. A new job requisition must be created to replace or reinstate a cancelled job requisition.
- O. A job requisition is not required for the following situations, which are not considered a job opening for the purpose of this procedure: an employee in-place promotion, reallocation of work statement among current employees, or when filling a temporary position with an internal employee. However, if the temporary position evolves into a permanent job opening, this procedure applies.

4. Applicant Screening / Assessment Requirements

- A. Job specifications, including job competencies, and job-relevant work experience, education, and other requirements as specified on the job requisition, are the basis for screening and assessing job applicants.
- B. Current and former government employees who are subject to employment restrictions and ongoing monitoring of job assignment changes require a written government conflict of interest review by the Law Department. If applicable, refer to procedure PRO-4825, "Recruiting and Hiring Current and Former Government Employees - Conflict of Interest."
- C. Selection and hire consideration, when filling posted job openings, is given only to applicants who have applied to the job requisition and participated in the structured interview process. Factors to consider when making the final decision include the structured-interview rating and job-relevant work history and education. Pre-interview phone screening, structured interviews by phone, and / or follow-on interviews may be conducted.
- D. Structured Interviews are conducted with a sufficient number of applicants to support a proper selection process when filling posted job openings. The number is based on the size of the applicant pool and the availability of the skills being recruited. Structured interviews require the following:
 - 1. An interview panel consisting of a minimum of two (2) panel members. One panel member must be a Human Resources representative or a manager other than the manager seeking to fill the job opening.
 - 2. Completion of the company's Structured Interview training by all interview panel members prior to the first interview.
 - 3. Structured interview questions aligning to the job specifications, including job competencies, on the job requisition consistently asked of all applicants interviewed. Behaviorally-based questions should be used, asking applicants to describe situations where they have demonstrated the job competencies.
 - 4. Documented rating criteria to evaluate the applicants' responses. The rating scales should document the specific behaviors expected for effective performance relevant to the competencies. The rating scales should be used to evaluate the applicants' responses to interview questions.
 - 5. Record of interview-rating results and the interview panel members prior to initiating an offer.
 - 6. Retention of interview documents for the remainder of the current year, plus four (4) additional years.

- E. Personnel tests, assessments, and other selection instruments / tools required to support the selection and hire process are developed and / or authorized in accordance with procedure PRO-2887, "Personnel Testing Process."
 - F. Job assignments with access to export-controlled data require verification of an individual's export-control status to comply with Export Administration Regulation (EAR) and International Traffic in Arms (ITAR) requirements. If applicable, refer to procedure PRO-2805, "Export and Import of Commodities, Software, Technology and Services."
 - G. Job assignments in a financial oversight role require a review of an individual's previous employment history to assess if the individual has non-Boeing employment within the past three (3) years with an independent auditor. If applicable, refer to procedure PRO-6449, "Hiring and Assigning Current or Former Employees of the Independent Auditor – Conflict of Interest."
 - H. Selection and hiring of individuals for job assignments that have a substantive impact on the value, content, or strategy on competitive U.S. Government procurement proposal teams must comply with the Proposal Team Brief training and the Team Member Certification requirements defined in procedure PRO-70, "Procurement Integrity and Restrictions on Use of U.S. Government and Third-Party Proprietary Information in U.S. Government Procurement," Section 3, paragraph E.1.
 - I. The hiring, transfer, or placement of relatives must not result in actual or perceived preferential treatment, improper influence, or other conflict. Refer to procedure PRO-58, "Employment of Relatives."
 - J. Background investigations, job requirement background investigations (e.g. credit history, certification / professional license verification, motor vehicle report) and job requirement occupational health examinations require successful completion prior to finalizing the hire or employee transfer. If applicable, refer to procedure, PRO-2313, "Recruitment and Employment."
5. **Applicant Eligibility and Employee Release Requirements**
- A. Former Boeing employees who have been terminated for cause or designated ineligible for rehire require review and approval prior to being considered for re-employment with Boeing.
 - B. Employees are considered "releasable" from their current job 12 months after:
 - 1. date of hire, rehire, or recall from layoff,
 - 2. being transferred at their own request, or

3. completing a formally recognized on-the-job or other part-time training program or while being in such a program.
- C. Release earlier than 12 months may be authorized when the releasing management determines such release to be in the best interest of the company and employee.
- D. An employee who is selected to fill a job opening should be released from their current assignment within 30 calendar days following offer acceptance. However, in situations where the employee has a special access clearance, and qualified and cleared employees are not available, release may extend to 90 calendar days.

Conflicts concerning an employee's release should be escalated to the appropriate Skills Manager or senior management. The releasing organization must demonstrate how the individual's loss would significantly affect the company's ability to meet specific commitments.

6. Responsibilities

A. Management for the Hiring Organization

1. Ensure fair and equitable selection and hire decisions by:
 - a. Defining staffing requirements and determining methods for filling a job opening through collaboration with the applicable Skills Manager.
 - b. Defining job requirements and other job related information to be documented on a job requisition.
 - c. Ensuring that structured interviews are conducted when filling posted job openings.
 - d. Communicating non-selection to applicants who were interviewed and not selected for a job offer.
 - e. Selecting the best applicant for the job.
2. Refer to sections 3. through 5. in this procedure to identify requirements in other procedures related to the selection and hire process.
3. Collect and retain interview records, including interview questions, ratings, and notes, as defined in the company MRRS.

B. Management in the Employee's Home (Releasing) Organization

1. Support employee requests to participate in job interviews as provided in sections 5.B and 5.C.

2. Establish and communicate the employee's release date on an accepted job offer to the employee, Hiring / Assigned Manager, Staffing / Employment organization, and Human Resources organization within the timeframe specified on the job offer.
 3. Release the employee for transfer in accordance with section 5.D.
If necessary, prepare documentation to support deviation from the maximum time allowed for transfer and escalate for resolution as appropriate.
- C. Staffing / Employment Organization
1. Provide oversight on and assist the Hiring Manager with filling job openings.
 2. Review job specifications, including job competencies, and other information on job requisitions for accuracy and appropriate content.
 3. Post job requisitions and manage recruiting, job offers, background investigations, and employment processing.
 4. Obtain applicant information (e.g. employment history, education) and provide visibility of employee and applicant information, as required, for screening, selection or non-selection decisions.
 5. Screen job applicants' qualifications against job specifications, including job competencies, and job-relevant work experience, education, and other requirements on the job requisition to create the manager's job applicant review pool.
 6. Coordinate government employment conflict of interest reviews as required.
 7. Retain records as defined in the company's MRRS.
 8. Provide interpretation of this procedure.
- D. Staffing / Assessment Services Organization
1. As requested, develop and/or review structured interview questions.
 2. As requested, establish rating scales and scoring process for structured interviews.
 3. Provide guidance on best practices for structured interviews.
 4. Conduct validation studies when feasible to evaluate the validity of the structured interview.

5. Establish content of Structured Interview training.
 6. Review and approve personnel tests, assessments and other selection instruments / tools in accordance with procedure.
- E. Human Resources supporting the Hiring Organization
1. Advise the Hiring Organization regarding obligations and methods for filling a job opening as outlined in section 3.H.
 2. Assist management in identifying appropriate job specifications, including job competencies, and other job-related requirements for job openings.
 3. Assist in the selection and hire process as delegated by the Hiring Manager and / or the Staffing / Employment organization.
 4. Provide the Staffing / Employment organization with affirmative action information regarding utilization.
 5. For employee reassignments outlined in sections 3.H.1 through 3.H.6 which do not require a job offer (e.g. move memos, redeployment memos):
 - a. Obtain authorization from the Staffing / Employment organization prior to reassignment of an employee with government conflict of interest ongoing monitoring status.
 - b. Prepare and coordinate employee reassignment notifications.
 - c. Update employee record in the company Human Resources information system.
 6. Retain records as defined in the company's MRRS.
- F. Human Resources supporting the Employee's Home (Releasing Organization)
1. Counsel employees on the job posting process, eligibility, and self-nomination process.
 2. For employee reassignments outlined in sections 3.H.1. through 3.H.6 which do not require a job offer (e.g. move memos, redeployment memos):
 - a. Release employee information for review, when requested.
 - b. Advise management to notify an employee within two working days of receiving the employee reassignment notification.

G. Human Resources Services – Central Records

1. Retain and provide completed Government Conflict of Interest questionnaires, legal department conflict of interest review memorandums, and related job descriptions as defined in the company's MRRS for employees requiring change of assignment monitoring in accordance with procedure PRO-4825, "Recruiting and Hiring Current and Former Government Employees - Conflict of Interest."
2. Provide employment history and associated employee information to support selection decisions.

H. Law Department

Conduct and provide written government conflict of interest reviews to the Staffing / Employment organization in accordance with procedure, PRO 4825, "Recruiting and Hiring Current and Former Government Employees - Conflict of Interest."

I. Human Resources Business Unit Vice President or Equivalent Leader

Review and approve as appropriate the following situations:

1. Developmental / rotational programs meet the criteria outlined in section 3.H.4.
2. Requests to fill job openings for a critical situation where a Skills Manager does not exist.

J. Skills Manager (e.g. Enrolled Manager)

1. As required by the Business Unit and/or applicable Process Council, review and approve job posting of job requisitions.
2. Assess, facilitate, and/or collaborate on methods to fill job openings, as outlined in sections 3.H.
3. As required, review and approve requests for critical situations.

K. Employees

1. Search for and apply to posted job openings which align with career goals and objectives.
2. Discuss career goals and objectives with the assigned manager and coordinate interview schedule with him / her.
3. Communicate offer decision to the assigned manager within three working days after an offer is extended.

4. If within 12 months from:
 - a. date of hire, rehire, or recall from layoff,
 - b. being transferred at their own request, or
 - c. completing a formally recognized on-the job or other part-time training program,then request and obtain authorization from assigned manager to apply to job openings.
5. Request counsel, if necessary, on the selection and hire process or other applicable information from the appropriate Human Resources organization.

7. Related Writings

PRO-1859, "Process Councils"

PRO-58
Issue Date
September 24, 2003

Employment of Relatives

Purpose/Summary

It is the intent of this procedure to prevent conflicts from occurring in the employment of employees' relatives. The Boeing Company recruits prospective employees from many sources in furtherance of our efforts to create a diverse workforce. While current employees may refer qualified candidates, including relatives, for positions within the Company, we need to avoid the conflicts that can result from such placements. This procedure sets forth the Company's expectations, and defines the responsibilities of management, regarding the hiring, transfer, and placement of relatives.

This procedure applies to all employees as well as personnel obtained through contract labor, temporary services, industry loan procurements, and consultants.

Employees covered by a collective bargaining agreement will be governed by this procedure and the applicable agreement, with the agreement having precedence.

This procedure does not constitute a contract or contractual obligation, and the Company reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omissions or statements to the contrary.

Supersedes

February 14, 2000

Applies to

All Boeing

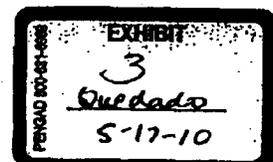
Maintained by

World Headquarters Global Diversity, Compliance and Policy Administration

Page 1 of 4

EXHIBIT 1

Policy and Procedure System contains the most current version of this writing. Uncontrolled when printed.



Authority Reference(s)Policy POL-3, "People"**Approved by**

Laurette T. Koellner
Office of the Chairman
Executive Vice President
Chief People and Administration Officer

Summary of Changes to the Title Page

The Issue Date, Purpose/Summary, Supersedes date, Applies to, Maintained by and Approved by information have changed.

1. Definitions

The definitions of the following terms used in this procedure are for purposes of this procedure only and have no effect on the meaning of the same or similar terms used in other documents.

- A. "Relatives" includes spouses, parents, stepparents, legal guardians, mothers-in-law, fathers-in-law, children, stepchildren, foster children, siblings, sons-in-law, daughters-in-law, sisters-in-law, brothers-in-law, grandparents, spouse's grandparents, grandchildren, great-grandparents, great-grandchildren, stepbrothers, stepsisters, half-brothers, half-sisters, uncles, aunts, nephews, nieces, and cousins.
- B. "Preferential treatment or improper influence" may include, but is not limited to, decisions regarding hire, transfer, promotion, downgrade, retention, compensation, layoff, recall, corrective-action decisions, or participation in any company-sponsored opportunity or benefit. It also includes influence that may be exerted through participation on teams that involve salary planning, retention exercises, advancement exercises, performance evaluations, or similar activities, which may influence decisions or otherwise affect the relative or his/her peers.
- C. "Peers" may include employees in a defined work group; similarly situated employees on totems, teams, layoff rosters, and in similar situations; as well as those employees collectively being considered for hire, promotion, or any other opportunity within the Company.

2. Policy

Relatives who are referred by employees for hire, promotion, transfer or other placement within the Company may be considered, along with other applicants for such employment or assignment, as long as:

- A. They possess the objective knowledge, skills, attributes, and abilities that meet the job requirements of the position for which they are being considered.
- B. Their placement in the position does not result in actual or perceived preferential treatment, improper influence, or other conflict.

3. Requirements

Relatives may be employed by the Company as long as these guidelines are followed:

- A. An employee may not supervise or manage a relative or supervise the supervisor of a relative.
- B. An employee may not audit, approve, evaluate, or otherwise review the work product, timekeeping records, expense reports, travel authorizations, budgets, or any other disbursement-related items of a relative.
- C. Relatives of executives (E1-E3) must work outside the chain of command of, and in organizations other than, where the subject executive is assigned.
- D. The employee's manager, with concurrence of the People Organization, will determine whether employment or placement of the employee's relative is appropriate within these procedural guidelines.
- E. If the relative is hired or placed and a conflict develops, management, in consultation with the People Organization, will take appropriate steps to resolve the conflict.
- F. Exceptions to the above guidelines (A-E) will be few and must be:
 - 1. Based on a critical business need.
 - 2. Limited to a specific time period necessary to meet the critical need.
 - 3. Strictly monitored by the appropriate People Organization director and management.

4. Responsibilities**A. Management**

1. Take appropriate action to address any situations that would conflict with this procedure.
2. Seek assistance from the People Organization regarding the interpretation of this procedure, including the proper placement of employees in situations that may be in conflict with this procedure.

B. People Organization

1. Advise and assist management in the interpretation and application of this procedure.
2. Investigate and resolve conflicts that may arise.

C. The group president will communicate requirements of this procedure to management and ensure compliance.

D. Situations not resolved by the application of this procedure will be referred to the senior vice president of the People Organization for further review and resolution.

E. The World Headquarters Vice President of Global Diversity, Compliance and Policy Administration will ensure that this procedure remains current.

F. Employees who are in conflict with this procedure should consult their management or People Organization.