

**CASE DIGEST:** *U.S. Dep't of the Navy, Puget Sound Naval Shipyard & Intermediate Maint. Facility, Bremerton, Wash.*, 71 FLRA 240 (2019) (Member DuBester Concurring)

This case concerned a grievant who had been suspended by the Agency for ten days due to off-duty misconduct while on temporary duty overseas. The Agency reduced the suspension to seven days but denied the grievance. The Arbitrator found that, while there was a nexus between the off-duty misconduct and the efficiency of the service, the suspension was excessive when compared to other suspensions for the same charge and considering the grievant's otherwise exemplary work history. The Arbitrator directed the Agency to reduce the suspension to five days and provide two days backpay. Before the Authority, the Agency argued that the award was contrary to Executive Order (EO) 13839, the Back Pay Act (BPA), and the Agency's right to discipline under § 7106(a). The Authority found that EO 13839 did not retroactively apply to the collective-bargaining agreement (CBA). The Authority dismissed as unsupported the BPA exception. The Authority also found that the award was reasonably and proportionally related to the violation of the CBA and that the Agency failed to show how a two-day mitigation excessively interfered with a § 7106(a) management right. Accordingly, the Authority concluded that the award was not contrary to law and denied the Agency's exceptions.

Member DuBester concurred in the decision to deny the Agency's exceptions.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.