

66 FLRA No. 117

UNITED STATES
DEPARTMENT OF THE AIR FORCE
OFFUTT AIR FORCE BASE, NEBRASKA
(Activity)

and

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS
LOCAL F-191
(Petitioner/Exclusive Representative)

DE-RP-11-0005

ORDER DENYING
APPLICATION FOR REVIEW

April 26, 2012

Before the Authority: Carol Waller Pope, Chairman, and
Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

The International Association of Fire Fighters, Local F-191 (Union) filed a petition seeking clarification of the bargaining unit status of thirteen employees in three positions: Station Chief, Crew Chief, and the Assistant Chief for Training (Assistant Training Chief). The Regional Director (RD) concluded that the Activity had not established that the Federal Service Labor-Management Relations Statute (the Statute) barred the employees from inclusion in the unit.

The Activity filed an application under § 2422.31 of the Authority's Regulations seeking review

of the RD's conclusion.¹ For the reasons that follow, we deny the Activity's application for review.

II. Background and RD's Decision**A. Background**

The Activity – a component of the United States Department of the Air Force (Air Force) – has its own fire department (the department). RD's Decision at 4. The department has two shifts, each of which is supervised by a Station Chief. Station Chiefs are responsible for overseeing the "day-to-day operations" of the department, such as vehicle and department maintenance, training, equipment inspections, and mentoring. *Id.* at 4, 10. They prepare daily schedules for firefighters and, along with the Assistant Chief of Operations (Assistant Chief), create a three-month rotational schedule. *Id.* at 5, 10-11. Several crews of firefighters work during a shift; each crew has its own Crew Chief. *Id.* at 4. Crew Chiefs provide firefighters with administrative and operational supervision.² *Id.* The parties stipulated that the bargaining unit includes "supervisory fire fighters, fire fighters and fire protection inspectors." *Id.* at 3.

Firefighters work 144 hours per pay period on 24-hour shifts and have one day off every other week. *Id.* at 5. On an average day, each shift begins with roll call. *Id.* During roll call, oncoming firefighters receive information about vehicle assignments and other updates, and trucks are checked out to crews. *Id.* Roll call is conducted by the Assistant Chief or the Station Chief. *Id.*

¹ Section 2422.31 of the Authority's Regulations provides, in pertinent part:

(c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:

- (1) The decision raises an issue for which there is an absence of precedent;
- (2) Established law or policy warrants reconsideration; or
- (3) There is a genuine issue over whether the Regional Director has:
 - (i) Failed to apply established law;
 - (ii) Committed a prejudicial procedural error; or
 - (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

² The parties stipulated that Station Chief F and Crew Chief B perform duties that are "representative of the duties" performed by their respective positions. RD's Decision at 4 n.4.

Crew Chiefs have crew duties as part of roll call and perform some supervisory tasks as well. *See id.* After roll call, the firefighters perform daily station maintenance. *Id.* at 5-6. Crew Chiefs serve as team leaders during this period. *Id.* at 6. They also conduct daily training for their crew of firefighters. *Id.* at 6, 10. Each firefighter also is allotted one hour for daily fitness training. *Id.* at 5.

On average, firefighters on each shift respond to emergency calls 475 times per year. *Id.* On such calls, the most senior firefighter is the commanding officer while the remaining crew works to resolve the situation. *Id.* at 10. Crew Chiefs often work as part of the crew, but they also may act as the commanding officer if no other senior firefighter is present. *Id.* at 6, 10. That command ends once a senior firefighter, usually the Assistant Chief, arrives. *Id.* at 10. Crew Chiefs may reassign firefighters to different positions during an emergency call and may recommend disciplinary action stemming from conduct that occurs during such calls. *Id.* at 8. The Station Chief on duty accompanies the firefighters and may serve as a safety officer until a senior firefighter arrives. *Id.* at 11. After the senior firefighter arrives, the Station Chief becomes an “accountability officer” and helps the senior firefighter inform other agencies about the situation and direct the crew. *Id.*

The department also has an Assistant Training Chief who is responsible for implementing the Activity’s “training program encompassing certification and proficiency training requirements” for firefighters.³ *Id.* at 13. The Assistant Training Chief drafts various training schedules and materials that are based on pre-existing materials. *See id.* at 14-15. He also works with various other officials to develop exercises and drills for “emergency operations” that occur at the Activity. *Id.* at 14. The Assistant Training Chief has no subordinate employees or administrative assistants and, with a few exceptions, does not conduct training. *Id.* at 15.

B. RD’s Decision

The RD considered whether the Station Chiefs and Crew Chiefs should be excluded from the bargaining unit because they are supervisors within the meaning of

³ Before the RD, the Activity argued that the Assistant Training Chief should not be included in the bargaining unit because he does not engage in firefighting duties within the meaning of the parties’ unit description. *See* RD’s Decision at 20-21. The RD determined that the Assistant Training Chief engages in such duties. *See id.* The Activity does not dispute this conclusion in its application. *See, e.g.,* Application at 88 (asserting that RD erroneously concluded that the Assistant Training Chief is not a management official within the meaning of § 7103(a)(11) of the Statute). Thus, we do not address it further.

§ 7103(a)(10) of the Statute.⁴ He stated that, for firefighters, the Authority examines whether the incumbent of a disputed position: (1) exercises supervisory authority that requires the consistent exercise of independent judgment; and (2) if so, whether a preponderance of the incumbent’s employment time is devoted to exercising that authority. *See* RD’s Decision at 16 (citations omitted). He noted that “[t]he burden of proving the supervisory exclusion falls upon the party asserting it.” *Id.* (citations omitted).

Relying on this framework, the RD found that, although Station Chiefs perform “daily supervisory duties,” the Activity had not established that those duties constitute a preponderance of their employment time. *Id.* at 20. He first found that the Chiefs’ “day-to-day general administrative oversight” does not require the “consistent exercise of independent judgment” because it merely involves the enforcement of pre-existing policies and regulations. *See id.* at 19. Additionally, he noted that Station Chiefs may or may not participate during roll call. *Id.* at 5.

The RD also found that, although Station Chiefs exercise independent judgment when they prepare daily schedules for firefighters, the time spent on this activity amounts to roughly 30 minutes per day or “something less than 90 hours per year.” *Id.* at 19. Additionally, the RD found that Station Chiefs prepare annual performance appraisals for Crew Chiefs, serve as the approving official for firefighter evaluations, and recommend awards for both groups of employee. *Id.* at 11-12. The RD found that the time spent on these duties “involves about 30 hours per year.” *Id.* at 19 (noting that Station Chief F testified that he spends 20 hours to prepare evaluations for Crew Chiefs and 9 hours for firefighters). He further determined that, when Station Chiefs are on emergency calls, they perform supervisor functions “for only about five minutes” per call, which amounts to roughly “20 hours per year.” *Id.* The RD also found that Station Chiefs have minimal authority to grant

⁴ Title 5 U.S.C. § 7103(a)(10) provides:

“[S]upervisor” means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority.

unscheduled leave requests, must request overtime authorization from higher officials, have little involvement in resolving disciplinary matters, spend little time resolving worker compensation matters, and have served on only a few hiring boards. *Id.* at 12, 20. Although Station Chief F testified that he spent over 51 percent of the day performing supervisory duties, the RD found that “the record [did] not provide examples of his supervisory duties for this amount of time.” *Id.* at 13; *see so id.* (noting that Station Chief F had difficulty determining “exactly how much time he spends per day on supervisory duties”).

The RD next determined that Crew Chiefs are not supervisors within the meaning of the Statute because, although they exercise “independent judgment and supervisory authority,” *id.* at 17 (citation omitted), they do not do so for a “majority of their time,” *id.* at 18. He found that Crew Chiefs spend little time assigning work to firefighters because Station Chiefs perform that task. *Id.* at 16; *see also id.* at 5 (noting that Crew Chiefs have no “official role” during roll call and directly supervise employees during roll call only if a problem arises). He also determined that Crew Chiefs spend, on average, only 20 hours per year as the commanding officer during emergency calls. *Id.* at 16. Moreover, the RD found that crew members observe Crew Chief B “directing or guiding” crews during emergency calls only “about ten to twenty percent of the time.” *Id.* at 6. Further, the RD determined that, although Crew Chiefs prepare both performance evaluations and award recommendations for firefighters, they spend only approximately 38 hours per year performing these tasks. *See id.* at 8-9. The RD also found that there was no record evidence indicating how much time Crew Chiefs spend supervising firefighters during daily training sessions. *See id.* However, he assumed that Crew Chiefs spend one hour to one hour and forty-five minutes per day directly supervising firefighters during daily training. *See id.* at 18 n.17. Moreover, the RD found that Crew Chiefs lack authority to discipline employees or to approve leave requests and have had minimal involvement with hiring boards, subordinate workers’ compensation matters, and labor disputes. *Id.* at 8-9, 17.

The RD found that Crew Chiefs spend approximately 400 of the 1,080 hours they work per year performing supervisory duties. *Id.* at 18. The RD acknowledged that Crew Chief B testified that he was a supervisor “100 percent of the time, always thinking and acting responsibly, demonstrating proper procedures, and making himself available to provide guidance at any time.” *Id.* (citation omitted). However, the RD found that this assertion was not supported by the record. *Id.*

The RD next addressed whether the Assistant Training Chief is a management official within the meaning of § 7103(a)(11) of the Statute.⁵ He noted that, under Authority precedent, an employee is a management official if he or she: (1) creates, establishes or prescribes general principles, plans or courses of action for an agency; (2) decides upon or settles upon general principles, plans or courses of action for an agency; or (3) brings about or obtains a result as to the adoption of general principles, plans or courses of action for an agency. *Id.* at 21 (citation omitted). He further noted that an employee is not a management official if he or she merely implements an activity’s policy, or if he or she is: (1) a valuable and knowledgeable resource person; (2) who does not prescribe, establish, determine, or bring about the adoptions of Activity policy; and (3) interprets and applies already established policy and standards, operating within the regulatory and policy framework of an activity. *Id.* (citation omitted).

The RD concluded that the Activity had not proved that the Assistant Training Chief is a management official because he does not “formulat[e], determin[e], or influenc[e]” the Activity’s policies. *Id.* Rather, according to the RD, he is “a knowledgeable resource person . . . who interprets and applies already existing policies and standards.” *Id.* at 22 (citations omitted). The RD found that, although the Assistant Training Chief creates and tailors “local policies,” he “generally implement[s] directives already in place.” *Id.*; *see also id.* at 14-15 (finding that “[m]uch” of the Assistant Training Chief’s scheduled training has been developed nationally by the Air Force). The RD also determined that, although the Assistant Training Chief has authority to implement, enforce, and administer exercises concerning Activity safety policies, he must obtain input and approval from other Activity officials when he prepares these exercises. *Id.* at 22. Moreover, the RD found that higher-ranking officials ultimately decide how to conform these safety policies to national policies. *Id.* Additionally, the RD found that the written materials that the Assistant Training Chief prepares for safety policies concern the implementation of policies, not their creation. *Id.* 14, 22. The RD further determined that the Assistant Training Chief assists department officials with the development of training schedules for firefighters, but has no authority to approve or allocate funds for such training independently. *Id.* at 22. The RD concluded that, although the Assistant Training Chief “updates training and maintains training records, . . . he effects no changes in policy not previously developed and approved by higher levels in the Air Force.” *Id.*

⁵ Section 7103(a)(11) of the Statute defines a “management official” as “an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.” 5 U.S.C. § 7103(a)(11).

The RD concluded that the Activity had failed to meet its burden of establishing that the positions should be excluded from the bargaining unit. *See id.* at 22-23.

III. Positions of the Parties

A. Activity's Application for Review

The Activity claims that the RD failed to apply established law when he concluded that all three positions in dispute should be included in the bargaining unit. *See* Application at 3. It also avers that the RD "erroneously failed to apply the actual facts . . . which affected his legal analysis and conclusion." *Id.* at 3-4.

The Activity argues that the RD's conclusion regarding Station Chiefs is erroneous because he failed to "provid[e] . . . full credit" to Station Chief F's testimony regarding his supervisory duties. *Id.* at 54-55. It also contends that the RD erroneously concluded that Station Chiefs do not perform joint duties with higher-ranking officers and also failed to consider the Station Chief's participation during morning roll call. *Id.* at 53-54. The Activity avers that this matter is analogous to the Authority's decision in *U.S. Department of the Army, U.S. Army Garrison, Fort Lee, Virginia*, 63 FLRA 145 (2009) (*Fort Lee*), in which the Authority concluded that a regional director's determination regarding a supervisory firefighter was based on substantial factual errors. *Id.* at 58-59.

The Activity avers that the RD's conclusion regarding Crew Chiefs is based on "numerous erroneous statements of fact." *Id.* at 63. It primarily challenges the RD's evaluation of Crew Chief B's testimony. *See, e.g., id.* at 67, 73. The Activity also claims that the RD incorrectly determined that Crew Chiefs have no official role during roll call. *Id.* at 63-65. Moreover, the Activity asserts that the RD improperly evaluated the evidence regarding the role of Crew Chiefs in assigning clean-up duties. *See id.* at 65-67. The Activity asserts that the RD's Decision is contrary to *Fort Lee, id.* at 84, and the Authority's decision in *Veterans Administration Medical Center, Fayetteville, N.C.*, 8 FLRA 651 (1982) (*VAMC*), Application at 67-69.

Finally, the Activity contends that the RD's conclusion that the Assistant Training Chief is not a management official is based on "an erroneous analysis and mistake of facts." *Id.* at 88. The Activity avers that the record establishes that the Assistant Training Chief is an employee "whose duties and responsibilities require or authorize him to formulate, determine, or influence the policy of the [Activity]." *Id.* Specifically, the Activity contends that the Assistant Training Chief develops "various training scenarios" that result in the "formulation/reformulation of the [Activity's] training

program." *Id.* at 96. Moreover, the Activity avers that an Air Force instruction identifies him as part of the Activity's "management staff." *Id.* at 93 (citation omitted).

B. Union's Opposition

The Union rejects the Activity's claims that the RD's Decision is based on substantial factual errors or a misapplication of law.⁶ Opp'n at 2. It avers that "well-established Authority precedent" supports the RD's conclusion that Station and Crew Chiefs are not supervisors and that the RD properly concluded that the Assistant Training Chief is not a management official. *Id.* at 6, 10-11. Moreover, it contends that the record evidence supports the RD's conclusions regarding the positions at issue. *See id.* at 12-16.

IV. Analysis and Conclusions

A. The RD did not commit clear and prejudicial errors concerning substantial factual matters and did not fail to apply established law with respect to the Station Chiefs.

1. Factual matters

The Activity contends that the RD's conclusion that Station Chiefs do not devote a preponderance of their time to supervisory duties is based on "numerous erroneous mistakes of fact." Application at 53. The Activity claims primarily that the RD did not credit properly Station Chief F's testimony with respect to the amount of time he spends on certain supervisory duties. *See, e.g., id.* at 54 (asserting that RD "summarily dismissed" Station Chief F's claim that he spends 51 percent of his employment time performing supervisory duties); *id.* at 54-55 (averring that RD did not give "full credit" to Station Chief's testimony regarding amount of time spent on supervisory duties); *id.* at 56 (RD's conclusions regarding time Station Chief F spent assigning work to subordinates was "short-sighted"); *id.* at 61 (claiming that RD diminished Station Chief's role in averting disciplinary problems). These assertions challenge the weight that the RD attributed to certain evidence and do not provide a basis for concluding that the RD committed clear errors in making factual findings. *See, e.g., U.S. Dep't of Veterans Affairs, N. Cal. Health Care Sys., Martinez, Cal.,*

⁶ The Union also contends that the Activity "has not complied" with § 2422.31(b) of the Authority's Regulations, Opp'n at 2, which states that parties "may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director," 5 C.F.R. § 2422.31(b). The Union does not elaborate on this claim. We therefore do not address it further.

66 FLRA 522, 525 (2012) (*Martinez*) (Member Beck dissenting on other grounds) (citations omitted).

The Activity also contends that the RD erroneously concluded that Station Chiefs do not perform any joint duties or make joint decisions with higher-ranking officers. See Application at 53 (quoting RD's Decision at 11). However, the Activity does not dispute that the RD found that Station Chiefs perform "coordinate[d]" duties with the Assistant Chief, such as creating daily schedules. RD's Decision at 11. The Activity does not explain how the RD's classification of these duties as coordinated duties rather than as joint duties establishes that his conclusion regarding how much time is devoted to them is erroneous. The Activity also claims that the RD did not consider the Station Chief's participation in roll call. See Application at 54. Contrary to the Activity's claim, the RD *did* consider this participation. See RD's Decision at 5 (noting that a senior official or Station Chief F "conducts roll call"); *id.* (noting that Station Chief F "may or may not conduct roll call"); see also *id.* at 20 (noting that there was no record evidence regarding Station Chiefs' duties during roll call). Moreover, the Activity does not dispute the RD's finding that the record does not establish how much time Station Chiefs actually spend on roll call duties. See *id.*

We find that the Activity has not established that the RD committed clear and prejudicial errors concerning substantial factual matters.

2. Established law

The Activity claims that the RD's conclusion that Station Chiefs are not supervisors within the meaning of § 7103(a)(10) of the Statute is based on a misapplication of established law. We find that, contrary to the Activity's arguments, the RD's conclusion is consistent with Authority precedent.

As stated above, in assessing whether a firefighter is a supervisor within the meaning of § 7103(a)(10) of the Statute, the Authority examines whether that employee: (1) engages in supervisory authority that requires the consistent exercise of independent judgment; and (2) spends a preponderance of his or her employment time exercising that authority. See, e.g., *U.S. Dep't of the Army, Parks Reserve Training Ctr., Dublin, Cal.*, 61 FLRA 537, 543 (2006) (*Parks Reserve*) (Chairman Cabaniss concurring) (citation omitted). Although the Activity challenges the RD's determination that Station Chiefs are not supervisors within the meaning of § 7103(a)(10), see, e.g., Application at 62, it does not dispute the RD's conclusion that they engage in supervisory authority that requires the consistent exercise of independent judgment, see RD's Decision at 19-20. Thus, we solely examine

whether Station Chiefs devote a preponderance of their employment time exercising that authority.

The Authority has stated that "preponderance" refers to the "majority" of an employee's employment time. E.g., *U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Seagoville, Tex.*, 65 FLRA 239, 241 (2010) (citations omitted). Thus, the Authority will find that a firefighter may be included in a bargaining unit if he or she does not spend a majority of his or her employment time performing supervisory duties. See, e.g., *Parks Reserve*, 61 FLRA at 543-44 (firefighters were not supervisors because record established that they did not spend preponderance of time on supervisory duties); *U.S. Dep't of the Navy, Marine Corps Base, Camp Pendleton, Cal.*, 8 FLRA 276, 278 (1982) (*Camp Pendleton*) (same).

Relying on this framework, the RD reviewed the time Station Chiefs spend on supervisory duties per year and concluded that they do not spend a preponderance of their time on those duties. Specifically, the RD found that they spend 20 hours per year supervising firefighters during emergency calls, 30 hours per year preparing performance appraisals and awards, and less than 90 hours per year creating work schedules for employees. See RD's Decision at 19. The RD also found that Station Chiefs spend a minimal amount of time granting leave and overtime requests, resolving disciplinary matters, and participating in hiring boards. See *id.* at 20. Additionally, he found that the daily administrative oversight Station Chiefs provide does not require the consistent exercise of independent judgment. *Id.* at 19. Moreover, the RD determined that Station Chief F's claim that he spends more than 51 percent of each day performing supervisory duties was not supported by the record. See *id.* at 13. As discussed above, the Activity has not established that the RD's factual findings are erroneous. Thus, the RD's findings support his conclusion that Station Chiefs do not devote a preponderance of their employment time performing supervisory duties. As a result, the RD concluded properly that, under established law, Station Chiefs do not meet the definition of "supervisor" within the meaning of § 7103(a)(10) of the Statute. See, e.g., *Parks Reserve*, 61 FLRA at 541 (finding regional director applied established law by concluding that firefighters were not supervisors because preponderance of their time was not devoted to supervisory duties); *Camp Pendleton*, 8 FLRA at 278 (same).

The Activity also asserts that this matter is analogous to the Authority's decision in *Fort Lee*. Application at 58-59. In *Fort Lee*, the Authority determined that a regional director's conclusion regarding how much time a supervisory firefighter devoted to supervisory duties was based on substantial factual errors. See *Fort Lee*, 63 FLRA at 148. Unlike the circumstances

in *Fort Lee*, the Activity has not established that the RD made any factual errors. Thus, the Activity's reliance on *Fort Lee* is misplaced.

Accordingly, we find that the RD's conclusion that Station Chiefs are not supervisors within the meaning of § 7103(a)(10) of the Statute is not based on a misapplication of law.

- B. The RD did not commit clear and prejudicial errors concerning substantial factual matters and did not fail to apply established law with respect to the Crew Chiefs.

1. Factual matters

The Activity asserts that the RD's determination that Crew Chiefs do not spend a preponderance of their time performing supervisory duties is based on substantial factual errors. As with the Station Chiefs, the Activity primarily challenges the weight the RD attributed to certain evidence. *See, e.g.*, Application at 67 (accusing RD of "summarily dismiss[ing]" Crew Chief B's testimony regarding how much time he spent performing supervisory duties during emergency calls in favor of another employee's testimony); 73 (challenging RD's conclusions regarding how much time Crew Chief spends away from subordinates receiving CPR and emergency training); 79, 82 (averring that RD inappropriately "diminished" time Crew Chief spent preparing appraisals and performance awards). As stated above, these challenges do not provide a basis for concluding that the RD committed clear and prejudicial errors concerning substantial factual matters. *See, e.g.*, *Martinez*, 66 FLRA at 525.

The Activity also argues that the RD erred by concluding that Crew Chiefs have no official role during roll call and do not supervise firefighters directly during this time. *See* Application at 63-65. However, the RD found that Crew Chiefs participate in roll call and may supervise an employee directly if a problem arises during that time. *See* RD's Decision at 5. The Activity also contends that the RD erroneously concluded that Crew Chiefs do not assign cleaning duties or supervise firefighters during morning cleaning duties. *See* Application at 65-66. The RD found that cleaning duties are "pre-assigned" by Station Chiefs, RD's Decision at 16, but that Crew Chiefs act as "team leader" during the cleaning period and that each firefighter knows what to do without any "direct supervision." RD's Decision at 5-6. The Activity offers no evidence concerning how much time Crew Chiefs actually devote to making cleaning assignments. Moreover, although the Activity offers evidence that Crew Chiefs may assign some cleaning duties, it offers no evidence that Crew

Chiefs supervise employees directly while they perform these duties. *See* Application at 66-67.

The Activity further avers that the RD inappropriately included as part of the Crew Chiefs' workday their one hour of daily physical training. *See id.* at 69. According to the Activity, this inclusion incorrectly increases the Crew Chiefs' workday from six hours to seven. *See id.* This assertion is without merit. The RD specifically considered this issue, noting that a Crew Chief's duty day lasts "six hours or seven hours." RD's Decision at 18; *see also id.* at 18 n.16 (noting that parties disagreed whether the hour of daily physical training made the duty day six or seven hours). Further, the RD stated that his conclusion that Crew Chiefs do not spend more than 50 percent of their "active duty day" on supervisor duties was based on his determination that Crew Chiefs have "six hours of active duty per day." *Id.* at 18 (emphasis added).

Accordingly, we find that the Activity has not established that the RD committed clear and prejudicial errors concerning substantial factual matters.

2. Established law

The Activity contends that the RD's conclusion that Crew Chiefs are not supervisors within the meaning of § 7103(a)(10) of the Statute was based on a misapplication of law. *See* Application at 63. As with the Station Chiefs, although the Activity challenges the RD's conclusion that Crew Chiefs are not supervisors within the meaning of § 7103(a)(10) of the Statute, *see id.* at 87-88, it does not dispute the RD's conclusion that they engage in supervisory authority that requires the consistent exercise of independent judgment, *see* RD's Decision at 17-18. Thus, we solely examine whether Crew Chiefs devote a preponderance of their employment time exercising that authority. We find that the RD's conclusion is consistent with established law.

The RD found that Crew Chiefs work 1,080 hours per year, but that no more than 400 of those hours are devoted to supervisory duties. *See id.* at 18. The RD reached this conclusion by examining the record and finding that Crew Chiefs spend approximately 20 hours per year supervising firefighters during emergency calls, 38 hours per year preparing performance evaluations and awards, 3 hours per year preparing workers' compensation paperwork, and 315 hours per year directly supervising firefighters during daily training. *See id.* at 16-17, 18 n.17. The RD also found that Crew Chiefs spend "little or no time in directing the work of . . . subordinates," *id.* at 16, or addressing disciplinary matters, *see id.* at 17. He also found that they serve on only one hiring board per year. *Id.* Moreover, the RD rejected Crew Chief's B testimony that he spent

100 percent of his time “thinking and acting” as a supervisor. *Id.* at 18. The Activity has not established that the RD’s conclusion that Crew Chiefs do not spend a preponderance of their duty time performing supervisory duties was based on substantial factual errors. The record therefore supports the RD’s conclusion that Crew Chiefs do not devote a preponderance of their employment time to supervisory duties. Thus, the RD’s conclusion that Crew Chiefs are not supervisors within the meaning of § 7103(a)(10) is consistent with law. *See, e.g., Parks Reserve*, 61 FLRA at 541.

The Activity also asserts that this matter is analogous to *Fort Lee*. *See* Application at 84 (citing *Fort Lee*). However, for the reasons discussed above, the Activity’s reliance on *Fort Lee* is misplaced.⁷

Accordingly, we find that the RD’s conclusion that Crew Chiefs are not supervisors within the meaning of § 7103(a)(10) is not based on a misapplication of law.

- C. The RD did not commit clear and prejudicial errors concerning substantial factual matters and did not fail to apply established law with respect to the Assistant Training Chief.

1. Factual matters

The Activity claims that the RD’s conclusion regarding the Assistant Training Chief is based on substantial factual errors. Application at 88. However, unlike its claims regarding the Station Chiefs and Crew Chiefs, the Activity does not cite any factual errors that the RD made. *See id.* at 88-101. Rather, it challenges solely the legal conclusion that the RD reached based on the record. We therefore find that the Activity has not established that the RD committed clear and prejudicial

⁷ Relying on the Authority’s decision in *VAMC*, the Activity also argues that the RD should have considered the time Crew Chiefs spent performing duties with subordinate firefighters as time spent performing supervisory duties. *See* Application at 67-69 (citing *VAMC*, 8 FLRA at 664-65). The record contains no indication that the Activity presented this argument to the RD. *See, e.g.,* Activity’s Post-Hearing Brief at 20-22, 24-27 (setting forth arguments as to why Activity believed Crew Chiefs are not supervisors within the meaning of the Statute). Under § 2429.5 of the Authority’s Regulations, “[t]he Authority will not consider any . . . arguments . . . that could have been, but were not, presented in the proceedings before the [RD].” 5 C.F.R. § 2429.5. *See also* 5 C.F.R. § 2422.31(b) (an application for review of an RD’s decision “may not raise any issue . . . not timely presented to the . . . [RD]”). Because the Activity could have raised its argument concerning *VAMC* to the RD, but did not do so, the argument is barred by § 2429.5. *See, e.g., Fraternal Order of Police*, 66 FLRA 285, 287 (2011) (Authority barred activity’s argument because it failed to present the argument to the regional director).

errors concerning substantial factual matters. *Cf. Martinez*, 66 FLRA at 525.

2. Established law

The Activity argues that the RD failed to apply established law when he concluded that the Assistant Training Chief is not a management official within the meaning of § 7103(a)(11) of the Statute. *See* Application at 3. Although the Activity discusses the legal framework for exclusion under § 7103(a)(11) of the Statute, *see id.* at 48-52 (citations omitted), it does not explain how the RD’s decision conflicts with any of this precedent, *see id.* at 88-101.

The RD’s conclusion that the Assistant Training Chief is not a management official within the meaning of § 7103(a)(11) is consistent with Authority precedent. As the RD stated, an employee is a management official within the meaning of § 7103(a)(11) of the Statute if he or she formulates, determines, or influences an activity’s policies. *See* RD’s Decision at 21 (citations omitted). However, that employee is not a management official if he or she merely implements activity policies. *See, e.g., U.S. Dep’t of Veterans Affairs, Wash., D.C.*, 60 FLRA 749, 751 (2005) (*Veterans Affairs*); *Nat’l Credit Union Admin.*, 59 FLRA 858, 861-62 (2004) (*NCUA*).

The Activity argues that the Assistant Training Chief is a management official because he effectuates Activity policy by developing “various training scenarios resulting in [the] formulation/reformulation of the [Activity’s] training program.” Application at 96. However, as the RD found, the Assistant Training Chief actually does not create Activity policies; rather, he merely drafts training schedules and materials that implement pre-existing policies and rules. *See* RD’s Decision at 21-22. Specifically, he generally implements policies and guidelines that have “already been developed” nationally by the Air Force or local sources, such as the Coast Guard. *See id.* at 14-15, 21; *see also* Application at 99 (acknowledging that seventy percent of Assistant Training Chief’s training is “prescribed by [the] Air Force while the other [thirty] percent is local”) (citing Tr. 363-64, 380, 401-02). Moreover, although the Assistant Training Chief may conduct training drills and exercises based on the guidelines and materials he creates, those drills also are based on policies that were created by the Air Force and local sources. *See* RD’s Decision at 21. Accordingly, the RD properly concluded that the Assistant Training Chief is not responsible for creating Activity policies. *See, e.g., Veterans Affairs*, 60 FLRA at 751 (employee that drafted documents that implemented activity policies was not a management official); *NCUA*, 59 FLRA at 861-62.

The Activity also avers that the Assistant Training Chief is a management official because an Air Force instruction classifies him as “management staff.” Application at 93 (citation omitted). However, an employee is classified based on the actual duties he or she performs, not on how he or she is labeled by an activity or activity documents. *See, e.g., Veterans Admin. Med. Ctr., Prescott, Ariz.*, 29 FLRA 1313, 1315 (1987) (citations omitted). Thus, the Activity’s reliance on the description set forth in the instruction is unavailing. *See id.*

We find that the RD’s conclusion that the Assistant Training Chief is not a management official within the meaning of § 7103(a)(11) of the Statute is not based on a misapplication of law.

V. Order

The Activity’s application for review is denied.