

SEP 11 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN DAVID MITCHELL,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>U.S. DEPARTMENT OF THE AIR FORCE, JOINT BASE ELMENDORF/RICHARDSON, 732 AIR MOBILITY SQUADRON,</p> <p>Defendant - Appellee.</p>
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No. 12-35322

D.C. No. 3:10-cv-0263-TMB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Alaska  
Timothy M. Burgess, District Judge, Presiding

Argued and Submitted August 14, 2013  
Anchorage, Alaska

Before: KOZINSKI, Chief Judge, BERZON, and IKUTA, Circuit Judges.

The record reveals sufficient evidence to support the district court’s  
conclusion that an authorized employee or officer appointed Mitchell to his  
position and that he performed a federal function in the course of his employment

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

with the government. *See* 5 U.S.C. § 2105(a). The form used to memorialize Mitchell’s employment references his appointee status multiple times, and an authorized designee of the Secretary of the Air Force appointed Mitchell to his position. 5 U.S.C. § 2105(a)(1)(C)–(D); *see* 5 U.S.C. § 302(b)(1) (“[T]he head of an agency may delegate to subordinate officials the authority . . . to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency.”). This conforms with the statutory requirements for appointment. 5 U.S.C. § 2105(a)(1)(C)–(D). Finally, his work as an Air Force employee handling cargo at a military base is a federal function under 5 U.S.C. § 2105(a)(2).

**AFFIRMED.**