



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

FEB 22 2008

In Reply Refer To:

Michael S. Finegan
Director
Buffalo VAMC
Western New York Healthcare System
3495 Bailey Avenue
Buffalo, NY 14215

Ronald S. James
Labor Specialist
United American Nurses, AFL-CIO
8515 Georgia Avenue, Suite 400
Silver Spring, MD 20910

Dear Mr. Finegan and Mr. James:

I am responding to the issues raised in your correspondence dated August 14, 2007 and September 4, 2007, concerning a grievance filed by the UAN, Local 41, over management's decision to deny three nurse practitioners Saturday premium pay for Saturday work at a Community Based Outpatient Clinic having no established Saturday tour of duty.

Pursuant to delegated authority, I have determined, on the basis of the enclosed decision paper, that the issue presented is a matter or question that concerns or arises out of the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. 7422(b).

Please provide this decision to your Regional Counsel as soon as possible.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Kussman".

Michael J. Kussman, MD, MS, MACP
Under Secretary for Health

Enclosure

Title 38 Decision Paper – VA Medical Center, Buffalo, New York

FACTS

In an attempt to reduce a backlog of work at the Olean Community Based Outpatient Clinic (CBOC), management at the VA Medical Center, Buffalo, New York (VAMC) asked for volunteers to see patients at the CBOC on Saturdays. Three nurse practitioners were selected and worked the following Saturdays at the CBOC: June 3, 2006; June 24, 2006; July 8, 2006; July 22, 2006; December 16, 2006; February 3, 2007; March 3, 2007; and March 31, 2007. (Attachment A) The regular tour of duty for two of the nurse practitioners is 7:30 AM to 4:00 PM, Monday through Friday and the regular tour of duty for the third nurse practitioner is 8:00 AM to 4:30 PM, Monday through Friday. The CBOC is generally open Monday through Friday and has no established Saturday tour of duty. All three of the employees who volunteered to work the Saturdays identified above were paid overtime for the extra work or given compensatory time in lieu of overtime.

On March 9, 2007, the United American Nurses (UAN) filed a grievance alleging that management violated 38 U.S.C. § 7453(c) and VA Handbook 5007/6, Part V, Chapter 6, paragraph 1.b. by failing to pay the three nurse practitioners Saturday premium pay in addition to the overtime pay they received for working on the Saturdays. (Attachment B) The language in 38 U.S.C. § 7453(c) provides:

A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

Likewise, VA Handbook 5007/6, Part V, Chapter 6, paragraph 1.b. provides:

A nurse ... who performs service on a tour, any part of which is between midnight Friday and midnight Sunday, shall receive premium pay for each hour of service on such tour. Premium pay for service under this subparagraph is equal to 25 percent of the employee's basic hourly rate of pay....

In a memorandum dated March 19, 2007, Sherrie Krzeminski, Program Director, Primary Care, denied the grievance. (Attachment C) Ms. Krzeminski stated that the cited regulations require a nurse to perform work on an established tour of duty in order to be eligible for the premium pay. The CBOC does not have established tours of duty on the weekend because patients are normally seen Monday through Friday. Since the work the grievants performed on Saturdays was outside an established tour of duty, Ms. Krzeminski explained, they were not entitled to Saturday premium pay.