



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

FEB 23 2008

In Reply Refer To:

Glen W. Grippen
Director
Clement J. Zablocki VA Medical Center
5000 West National Ave.
Milwaukee, WI 53295

Constance Ferentz, President
American Federation of Government Employees
Local 5032
5000 West National Ave.
Milwaukee, WI 53295

Dear Mr. Grippen and Ms. Ferentz:

I am responding to the issues raised in your memoranda of May 31, 2007, and October 15, 2007, concerning the grievances and request for arbitration filed by AFGE Local 5032 regarding the reassignment of [redacted] RN, BSN, Psych BA, from the midnight shift in the Spinal Cord Injury Division to the day shift in the Telephone Triage unit of the Primary Care Division at the Milwaukee VA Medical Center.

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the issues presented by these grievances are matters concerning or arising out of professional conduct or competence (i.e. direct patient care and clinical competence) and peer review or employee compensation within the meaning of 38 U.S.C. § 7422(b) and are therefore outside the scope of collective bargaining.

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- Milwaukee, WI
VA 07-XX

This matter involves a series of grievances filed through the negotiated grievance procedure relating to the reassignment of a registered nurse from the midnight shift in the Spinal Cord Injury Division (SCI) to the telephone/triage area of the Primary Care Division of the Clement J. VA Medical Center in Milwaukee, WI (the Milwaukee VAMC).

FACTS:

, RN, BSN, Psych BA, suffered three on-the-job injuries while working as a staff nurse on the night shift in the Milwaukee VAMC's SCI in 2005 and 2006. As a result of these injuries, the Milwaukee VAMC's Employee Health Provider¹ recommended work limitations that restricted his ability to perform the duties required of a staff nurse in the SCI. (Attachments 1-5) When Mr. tripped and fell again in May 2006, the Employee Health Provider placed him off-duty pending an examination by his personal physician. (Attachment 6) Mr. physician MD, extended the restrictions imposed by the Employee Health Provider and kept Mr. off-duty into August 2006. (Attachment 6)

On August 7, 2006 MD, Manager of the SCI, requested a Physical Standards Board Review to assess Mr. physical suitability for continued employment as a staff nurse in SCI. (Attachment 6) Mr. was sent a notice of the Physical Standards Board Review by certified mail on August 7, 2006. (Attachment 7) This notice informed Mr. that he had until August 18, 2007 to submit physical examination results or other medical evidence to the Physical Standards Board. He was also informed that he would remain in an approved leave status pending a determination by the Physical Standards Board.

On September 1, 2006, a second Milwaukee VAMC Employee Health Provider² completed an Employee Emergency Treatment Form (Attachment 8) indicating that Mr. was able to work but was restricted to sedentary³ work until a

¹ It should be noted that Mr. was examined by at least three different VA Employee Health Providers, one in September 2005 and February-March 2006; a second in September 2006; and a third in January 2007. The first two recommended different levels of work restriction while the third recommended no restrictions other than that Mr. work PM shifts. (Compare Attachments 2, 3, 4, 8 and 17)

² See footnote 1.

³ The Employee Emergency Treatment Form defines sedentary work as "Lifting 10 pounds maximum and occasionally lifting and/or carrying such articles as dockets, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required only occasionally and other sedentary criteria are met."