



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR
LABOR-MANAGEMENT RELATIONS
WASHINGTON DC 20420

April 27, 2007

Jacqueline M. Sims
Assistant General Counsel, AFGE, NVAC
80 F Street, N.W.
Washington, D.C. 20001

Dear Ms. Sims:

We acknowledge receipt of your National Grievance, dated both March 16, 2007 and December 8, 2006.¹ In the grievance, the American Federation of Government Employees ("AFGE" and "Union") alleges violations of 38 U.S.C. § 7411 as well as "any other relevant governing laws and regulations, Master Agreement and past practice."

AFGE claims that "...many VA physicians and dentists have been denied reimbursement..." of their continuing professional education expenses in violation of section 7411. 38 U.S.C. § 7411 provides that:

"The Secretary shall reimburse any full-time board-certified physician or dentist appointed under section 7401 (1) of this title for expenses incurred, up to \$1,000 per year, for continuing professional education."

As a remedy, the Union is requesting that the Agency:

"(1) immediately cease and desist from violating the statutory mandates set forth in 38 U.S.C. § 7411; and

(2) reimburse any full-time board certified physician or dentist appointed under 7401 (1) of this title for expenses incurred, up to \$1, 000 per year, for continuing professional education. *See Asheville, supra*²."

The Union further requests "...that VA management officials should follow the remedy fashioned by the arbitrator in *Asheville, supra* (pp.7-10) in determining eligibility for reimbursements for VA physicians and dentists."

¹ VA received the National Grievance on March 16, 2007. The Union submitted the first page of an earlier-dated grievance, dated December 8, 2006, to the Department along with the March 16, 2007 grievance, but did not submit that earlier grievance to the Department at any time prior to March 16, 2007.

² *The Matter of Arbitration Between American Federation of Government Employees, Local 446 and Department of Veterans Affairs Medical Center, Asheville, N.C.* (April 28, 2006) (FMCS No. 05-02813)

We agree that 38 U.S.C. § 7411 entitles board-certified physicians or dentists to reimbursement for expenses incurred, up to \$1,000 per year, for continuing professional education. However, the reimbursement remedy requested by the Union is defective, since “the remedy fashioned by the arbitrator in *Asheville*” is contrary to law.

The *Asheville* arbitrator’s decision to award relief for a period of fourteen years is contrary to the Back Pay Act (“Act”). The Act specifically limits relief to six (6) years from the filing date of the appeal. 5 U.S.C. § 5596(b)(4)). The Authority has ruled that this six year limitations period is binding on Federal labor arbitrators. *AFGE, Local 1156 and Laborers' International Union, Local 1170 (Unions) and United States Department of The Navy, Naval Inventory Control Point and Defense Logistics Agency, Mechanicsburg, Pennsylvania*, 57 F.L.R.A. 602 (Nov. 30, 2001). Applying the Act to the case at hand, it is clear that an award, if any were appropriate, must be limited to no more than the six year period prior to March 16, 2007. As such, the award of relief for a fourteen year period by the *Asheville* arbitrator is clearly contrary to law.

The *Asheville* arbitrator’s determination that physicians and dentists should be reimbursed based on “self certification” of incurred expenses is also contrary to VA statute because it fails to provide sufficient evidence that the employees incurred the claimed expenses. The *Asheville* arbitrator thus fashioned a remedy that is contrary to law when he determined that “[f]or years prior to 2003, eligible employees can obtain reimbursement for costs incurred by certifying, under oath, that they incurred costs for obtaining required continuing medical education and the amount of those costs to the best of their knowledge, information and belief.” *Asheville*, pp.7-8.

The Agency asserts that the Matter of Melvin Holt, 6 Comp. Gen. 116; 1926 U.S. Comp. Gen. LEXIS 351, and the Matter of Paul Eschner, 8 Comp. Gen. 391; 1929 U.S. Comp. Gen. LEXIS 166, are dispositive of this issue. In Holt, the Comptroller General stated that the General Accounting Office must, and generally will, require receipts in all cases where necessary to establish the actuality and correctness of any expenditure for which reimbursement is claimed.

It is the Agency’s position that presentment of a receipt to ensure the accuracy and correctness of the expenses incurred is necessary because a sworn affidavit does not ensure that the Agency is reimbursing the correct and actual amount incurred by the particular individual requesting reimbursement. In addition, a receipt fulfills the Agency’s fiscal obligation to ensure federal dollars are spent legally. Thus, it is evident that the *Asheville* arbitrator exceeded his authority when he approved “self certification” for expenses incurred prior to 2003, as it is contrary to law.

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The *Asheville* arbitrator's award is also contrary to 38 U.S.C. § 7411. Section 7411 authorizes reimbursement for continuing medical education expenses for full-time board certified physicians or dentists. The Award does not limit recovery to providers with full-time appointments and board certifications, as held by the *Asheville* arbitrator. As a result, the award is contrary to the express terms of the statute.

Because the National Grievance requests the same remedy as that awarded by the *Asheville* arbitrator, a remedy that is contrary to law, the National Grievance is denied.

We note that management at Asheville discussed the above-noted deficiencies with the local union. The result was a settlement that is consistent with the statute of limitations and documentation requirements. We propose that we meet with representatives of AFGE in order to reach a similar equitable resolution that is consistent with applicable legal requirements.

Finally, we note that numerous AFGE locals have filed local grievances over this matter. We believe that the national grievance supersedes them and that they should be closed.

I hope to hear from you soon so that we may reach a mutually acceptable resolution.

Sincerely yours,

for 
Meghan Flanz

Deputy Assistant Secretary
for Labor-Management Relations