Department of Veterans Affairs

CONDUCT

05

JUL 0 7 1992

Reply Refer to

Mr. Roderick L. Turcotte
Director (00)
VA Medical Center
4101 Woolworth Avenue
Omaha, NE 68105

Dear Mr. Turcotte:

I am responding to the enclosed grievance filed by the American Federation of Government Employees on behalf of Ms. Cynthia Bowles.

Under 38 USC Section 7422, any matter affecting registered nurses hired pursuant to Title 38 and concerning or arising out of professional conduct or competence, is nongrievable. The law authorizes the Secretary, or delegatee, to determine the grievability of any question arising under its provisions. The Secretary has delegated to my office the authority to make any such determinations, which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that this grievance concerning the counseling of a nurse for sleeping on the job involves professional conduct. Employees are expected to be alert and awake when they are in a duty status in order to meet the patient care requirements established by the Department of Veterans Affairs. Such requirements concern the conduct of the staff at the facility and their ability to perform without compromising patient care. Consequently, this grievance concerns or arises out of professional conduct under Title 38. Accordingly, in answer to your request, this grievance concerning sleeping on the job is non-grievable.

Sincerely yours,

for James W. Holsinger, Jr., M.D.
Chief Medical Director

Enclosure

TITLE 38 GRIEVABILITY
Decision Paper

FACTS:

On April 9, 1992, Cynthia Bowles was given a formal counseling letter for what appeared to be sleeping while on duty.

The American Federation of Government Employees (AFGE) Local union at Omaha, Nebraska, has filed a timely grievance on this matter under the local negotiated grievance procedure.

AFGE has requested the following remedies:

(1) That all copies of documents including all witnesses' statements and the counseling letter be given to Ms. Bowles;

(2) That the nurse who accused Ms. Bowles of sleeping on the job be given a formal counseling.

On May 26, 1992, the union invoked arbitration on this grievance.

ISSUE:

Since AFGE has filed a grievance on this counseling it is necessary for a decision to be made by the Chief Medical Director regarding whether this matter is grievable.

DISCUSSION:

Under Public Law 102-40, the Department of Veterans Affairs Labor Relations Improvement Act of 1991 (the Act), employees in positions described in 38 USC 7421 (b), have the right to engage in collective bargaining pursuant to the Federal Labor-Management Relations Statute, except as to any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation. 38 U.S.C. sec. 7422. The Act also authorizes the Secretary of Veterans Affairs, or designee, to decide any issue of whether a matter or question concerns or arises from any of these issues. The Chief Medical Director has been delegated authority to decide these matters. That decision may not be reviewed by any other agency and is not subject to collective bargaining.

This grievance concerns the counseling of a nurse for sleeping on the job. Employees are expected to be alert and awake when they are in a duty status in order to meet the patient care requirements established by the Department of Veterans Affairs. Such requirements concern the conduct of the staff at the facility and their ability to perform without compromising patient care. It is clear from AFGE's requested remedies that the issue in question concerns or arises out of professional conduct or competence since they are requesting that someone else be counseled for reporting on Ms. Bowles. Consequently, this grievance raises "a matter or question concerning or arising out of professional conduct or competency." Accordingly, this grievance is non-grievable under the Act.

RECOMMENDATION:

We recommed that the Chief Medical Director determine that this grievance concerns or arises out of professional conduct or competency under Section 7422 of Public Law 102-40.

Approve Recommendaton ✓

Disapprove Recommendation _____

for John J. Farrar 7/7/92

James W. Holsinger Jr., M.D.
Chief Medical Director