



DEPARTMENT OF VETERANS AFFAIRS  
Veterans Health Administration  
Washington DC 20420

MAY 06 2002

In Reply Refer To:

Gary Whitfield  
Director (00)  
Sierra Nevada Health Care System  
1000 Locust Street  
Reno, Nevada 89520

Dear Mr. Whitfield:

I am responding to the issues raised in your December 19, 2001, memorandum concerning the grievance filed by the local unit of the American Federation of Government Employees. The issues pertain to the assignment of Dr. Edwin Savlov to full-time compensation and pension exams and the rescission of his scarce specialty pay component of special pay.

I have decided, on the basis of the enclosed decision paper, that the grievance arises out of professional conduct or competence and the establishment, determination or adjustment of employee compensation, and is thus exempted from collective bargaining and the negotiated grievance procedure by 38 U.S.C. 7422(b).

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert H. Roswell".

Robert H. Roswell, M.D.  
Under Secretary for Health

Enclosure

## Title 38 Decision Paper – VAMC Reno

### FACTS

Edwin Savlov, M.D. is a physician at the VAMC Medical Center in Reno, Nevada. Over a period of years, he allowed various surgical privileges to expire, resulting in a restricted surgical practice relative to other surgeons at the VAMC. In 1996, following a reduction in the surgical workload, Dr. Savlov was assigned to perform compensation and pension exams 70% of his regular duty time. The scarce specialty pay component of his special pay was also reduced by 30%.

Early in January 2000 VAMC management received notification that the University would be terminating its surgical resident agreement, which would significantly reduce the surgery workload for the VAMC. At the same time VAMC was failing to meet its performance measure for timeliness of compensation and pension examinations. On July 14, 2000, Dr. Savlov was reassigned to Primary Care to perform compensation and pension exams full-time. Because Dr. Savlov is not performing surgery, he is no longer being paid scarce specialty pay.

On August 8, 2000, the American Federation of Government Employees, Local 2152 (AFGE) filed a grievance under the negotiated grievance procedure. AFGE contends that management violated Article 17 of the Master Agreement because the reassignment was discrimination based on sex and age. AFGE also alleges that instead of reassigning Dr. Savlov, management should have followed reduction-in-force procedures in accordance with 5 CFR 351 and Article 27 of the Master Agreement. As a remedy, the union requests that Dr. Savlov be restored to his former condition and made whole. AFGE invoked arbitration in this matter on September 12, 2000.

The Secretary has delegated to the Under Secretary for Health the final authority in VA to decide whether a matter concerns professional conduct and competence, peer review, or compensation matters, and is thus exempted from collective bargaining and grievance procedures thereunder by 38 USC § 7422.

When labor and management disagree over whether a matter or question is exempted under 38 USC § 7422, "The VA Partnership Council's Guide to Collective Bargaining and Joint Resolution of 38 USC 7422 Issues" provides a procedure for labor and management to attempt resolution through involvement of the local and national partnership councils. If the parties are unable to resolve the dispute, the Under Secretary for Health is asked to render a decision.

In a memorandum dated December 19, 2001, the Director of the Reno VA Medical Center requested that the Under Secretary for Health make a determination as to whether the issues in the grievance fall within the scope of 38 USC § 7422. On February 12, 2001, the local parties were unable to resolve their dispute during a conference call with representatives from the national AFGE and the Office of Labor-Management Relations in Central Office.

## ISSUE

Whether Dr. Savlov's grievance concerning the medical center's determination to assign Dr. Savlov to Primary Care and require him to perform compensation and pension exams full-time is a matter concerning or arising out of: (1) professional competence; or (2) the establishment, determination, or adjustment of compensation under Title 38, and is thus exempted from collective bargaining by 38 USC § 7422.

## DISCUSSION

Dr. Savlov asserts that Management discriminated against him in its reassignment decision based on sex and age. Management asserts that it reassigned Dr. Savlov from surgery to Primary Care for the purpose of performing compensation and pension exams full-time. It determined that a staffing change was necessary for reasons of direct patient care related to a decrease in the surgical workload, a substantial backlog of compensation and pension exams, and a need to reduce patient waiting times for compensation and pension examinations. Management asserts that Dr. Savlov was the most qualified physician to be shifted to additional compensation and pension examinations because he had been performing them 70% of his time since 1996 and had gained more experience and expertise in this area than other available physicians. Dr. Savlov was the only physician doing surgery part-time, and had allowed his surgical privileges to expire over the years so that he was qualified to do only very limited types of surgery.

The Secretary has prescribed regulations, VHA Handbook 5111, pursuant to 38 USC § 7421(a), to implement assignments, staff adjustments and furloughs. Paragraph 7 of Handbook 5111 authorizes officials of VA to effect the reassignment of Title 38 employees over whom they have personnel management approval authority.

Because Dr. Savlov accuses management of discriminatory motives for assigning him full-time to compensation and pension examinations, and management has asserted that its decision was driven by the specific patient care needs discussed above, Dr. Savlov's competence in compensation and pension examinations, and his restricted surgical privileges relative to other available surgeons at the medical center, his grievance concerns matters or questions of professional competence.

Further, while management's selection of Dr. Savlov over other surgeons may not have been based on concerns about his competency to perform the surgery for which he was privileged and which he had been performing regularly, management acknowledges that the limits on Dr. Savlov's surgical privileges were significant in its decision to reassign Dr. Savlov, rather than another surgeon, to compensation and pension examinations. Clinical privileging is VHA's process for determining the patient care that a medical practitioner will be permitted to provide to patients "based on the individual's clinical competence as determined by peer references, professional experience, health status, education, training, and licensure." VHA Handbook 1100.19, para. 4 c. Privileging (or the lack thereof) is thus VA's official

indicator of a physician's competence to perform particular surgical procedures. Dr. Savlov's restricted surgical privileges, whether or not self-imposed, thus necessarily raise concerns about his competence to perform those surgical procedures for which he is not privileged.

Similarly, the appropriateness of the remedy requested by Dr. Savlov, restoration to his former condition, (30% surgery) involves issues of professional conduct and competency. The assignment of another surgeon with a substantially broader range of surgical privileges than Dr. Savlov's to compensation and pension examinations, so as to allow Dr. Savlov to maintain a percentage of his surgeon's pay, would necessarily affect the availability of surgeons at the Medical Center competent to perform the surgical procedures needed by VA's patients, directly impacting the quality of patient care.

For the foregoing reasons, Dr. Savlov's grievance clearly concerns or arises out of questions or issues of professional conduct or competence.

In addition, Dr. Savlov appears to be challenging the Agency's authority to reduce or eliminate a physician's scarce specialty pay by reassignment of duties without employing Reduction-in-Force procedures. Thus, Dr. Savlov's grievance concerns or arises out of a matter or question of the establishment, determination, or adjustment of compensation under Title 38. See 38 U.S.C. §§7432, 7433(b)(3)(A); MP-5, Part II, Ch. 3, Appendix F (regarding entitlement to scarce specialty pay). For these reasons, Dr. Savlov's grievance involves matters excluded from collective bargaining or a grievance thereunder pursuant to 38 U.S.C. §7422(b).

#### DECISION

Dr. Savlov's grievance concerns and arises out of professional conduct or competence and the establishment, determination or adjustment of employee compensation under Title 38 United States Code, and is thus exempted from collective bargaining and the negotiated grievance procedure by 38 U.S.C. §7422(b).

APPROVED

DISAPPROVED



Robert H. Roswell, M.D.  
Under Secretary for Health