

107 FLRR-2 24

106 LRP 69755

**American Federation of Government
Employees, Local 31 and Department of
Veteran's Affairs, Cleveland (Brecksville),
Ohio**

Federal Arbitration

06-52716

November 29, 2006

Related Index Numbers

1.051 Discipline

1.063 Management Rights

37.010 Aggravating Factors

37.116 Seriousness of Offense

37.117 Severity

37.130 Suspensions

73.003 Carelessness

**73.016 Failure to Follow Correct Operating
Procedures**

109.005 Basis For

109.015 Management Rights

152.015 Health Employees

152.020 Hospital Employees

153.015 Disregard for Patients' Rights

**153.025 Hospital Employees' Special
Responsibility**

Judge / Administrative Officer

Thomas J. Coyne

Ruling

In a strongly worded opinion, Arbitrator Thomas J. Coyne upheld the grievant's three day suspension for abandoning a veteran in the parking lot of a non-veteran hospital.

Meaning

The arbitrator concluded the grievant's action was not malicious. However, it was job related, he was being paid and the action was very serious. "Poor judgment in the extreme," the arbitrator ruled.

Case Summary

The grievant, a professional social worker, drove a veteran in need of treatment to a non-veteran hospital, dropped him off in the parking lot and left. The hospital complained that the veteran was found wandering the parking lot, not knowing his name or the circumstances. The grievant was suspended for three days for poor judgment, ignoring the veteran's need for treatment and placing him in a potentially dangerous situation.

In the grievant's defense, the union claimed no incident occurred. The veteran asked for transportation to the other hospital and the grievant provided it. According to the union, the grievant had not been trained in the procedure to follow in such circumstances. The proper course of action, rather than discipline, would be to explain what is required and give him an opportunity to improve, the union argued.

The arbitrator declared the case simple, but "muddied and delayed" by the union's attempt to introduce irrelevant evidence regarding the treatment of other employees who violated agency policies.

The arbitrator found the treatment of other employees of no consequence. He determined that the severity of the agency's action was not an issue. The only question, in the arbitrator's view, was whether the agency violated the agreement.

The arbitrator concluded that, once the grievant assumed responsibility on behalf of the agency for transporting the veteran, he was required to exercise good judgment and hand him off to the other hospital on paper. The arbitrator concluded that when the grievant failed to do this, the agency was free to take whatever action it considered appropriate. The arbitrator explained that the grievant may have been fortunate to retain his position.

Finding the grievant received an "uncommonly high salary" and was being paid "handsomely" at the time he abandoned the veteran, the arbitrator simply ruled his behavior "unacceptable."

Full Text

Background

This grievance represents continuation of a complaint filed by an employee of the Veteran's Administration Hospital (VA) in Cleveland, Ohio, the facility located in Brecksville, Ohio, a professional person complaining party, one charged with neglecting care of a patient, a veteran.

A two-day oral hearing of this matter was held at the V. A. Hospital, Brecksville, Ohio, on Thursday, September 28, 2006 and Monday, October 2, 2006, beginning at or near 9:00 AM each day, ending at or near 4:00 PM each day. The grievance had been filed initially on March 4, 2005.

The complaining party was made subject to an unpaid three day suspension (3) to include this stipulation: The suspension shall remain a permanent part of complaining party's personnel file. A major purpose of this grievance is to expunge the employee's record of this three day unpaid suspension and circumstances surrounding why Agency thought it necessary to impose it.

Representing Management for the Agency:

Gladys Crider, Employee and Labor Relations Specialist

Rolanda Webb, Employee and Labor Relations Specialist

Tom Szczepanski, Legal Department Assistant

Representing the Complaining Party:

Victor Gadson, AFGE Local 31, President

George Otto, Complaining Party

A duly qualified court reporter prepared cassette tapes of the proceedings, reduced notes taken from the tapes to writing, and presented a 495 page document depicting the "true and accurate translation" of what was said. The arbitrator studied this document, all exhibits, and personal notes in arriving at this Finding and Award.

Each party stipulated this matter as being before this arbitrator at this time for a final, binding Award.

Post-hearing briefs, two copies, were to be provided by each party postmarked no later than

Monday, October 16, 2006 after which they would be exchanged by the arbitrator. The Agency sent the requisite two copies in full and on time, the union did not; consequently, no exchange of post-hearing briefs was possible. The Union sent one copy and the arbitrator studied it as part of his preparation for this Finding and Award.

Introduction

The V. A. Hospital at Brecksville, Ohio, to include professional and non-professional persons located at its Wade Park facility, employees approximately 3,500 persons. This hospital is charged with the responsibility of caring for many thousands of American veterans. On July 16, 2004 a veteran who was well known to a social worker employed by the VA telephoned the hospital saying he was coming in. Upon arrival it was obvious to the social worker the veteran had had "a few beers" and might need the detoxification treatment requested by the veteran over the phone earlier. Beds normally used for this kind of treatment, sleeping it off, were unavailable according to union testimony, but a bed could have been made available according to Agency testimony; regardless, the veteran said he wanted to go elsewhere. He asked the social worker to transport him to a local non-veteran's hospital. The social worker did so.

Upon arrival at the non-veteran hospital the social worker let the veteran out of the car near the entrance to the hospital, but did not park the car, enter with the veteran, gain acceptance of the hospital for the safety and security of the veteran. No. Quite simply, he watched the veteran walk away and he drove off. Shortly after this event, the VA hospital was notified by the non-veteran hospital that the patient was found wandering around the parking lot, in need of help, and hospital personnel hadn't a clue concerning his name, address or other essential information such as what he might have wanted, needed or anything about him. It had been a parking lot attendant who found the veteran.

The suspended social worker who had transported the veteran was disciplined for exercising

extreme poor judgment, for placing a veteran in need of help in a potentially dangerous situation, for ignoring the veteran's right to proper treatment -- the social worker had simply dropped him off at another hospital, an Agency alleged unacceptable practice, especially in view of the social worker's academic and other background. Much more, much better judgment is expected of professional persons than of non-professional persons at this VA facility, the arbitrator was told.

Union Position

The complaining party holds improper training with respect to how a veteran should be processed and/or transported when the veteran refuses treatment at a V.A. hospital; thus, this complaining party should not have his otherwise impeccable credentials tarnished by improper entries into his personnel record for this alleged incident. In fact, no real incident occurred. Quite simply, a veteran who had had "a couple of beers" arrived at a VA facility, refused treatment, requested transportation to a non-VA hospital, and was given that transportation as requested by the VA social worker who only later was told the receiving hospital should have been notified the man with a couple of beers was arriving. The social worker simply "dropped him off at the non-VA facility, and left, going back to work at the VA. What else was this social worker to do? No one at the VA ever told him, no one ever said verbally or in writing a social worker should have remained at the non-VA hospital with the veteran until s/he was accepted and/or admitted by the non-VA hospital.

This VA social worker should have been given instruction on how to behave in matters such as these, and he should have been given an opportunity to correct his performance. Also, of course, no emergency existed and no harm came to the patient; moreover, no witnesses to the event appeared at the oral hearing to testify the event occurred as presented by Agency management.

The complaining party is employed as a board certified social worker, holds a license as an

independent social worker (LISW), has graduated from Woodrow Wilson College of Law in Atlanta, Georgia, has completed his "CCDC III" credentials, has a Master's Degree in Social Work, but explained to the arbitrator the total lack of training received by him with respect to transportation of veterans who arrive at a VA facility, refuse to be treated, and request transportation to a non-VA facility as happened in this case before the arbitrator.

This suspended employee has never violated any policies and/or procedures at the VA hospital, transports veterans from one location to another frequently, on this occasion and at the request of the veteran who had just refused treatment at the VA hospital, transported the veteran to a non-veteran's hospital, a private hospital, watched the veteran leave his car and approach the non-veteran hospital, and returned to employment at the VA. The veteran allegedly was found later by employees of the non-veteran hospital wandering around aimlessly in the parking lot of the hospital. The condition of the veteran is not something caused by the VA employee social worker who simply transported him; the VA employee cannot be punished for attempting to do something nice for the veteran. Besides, uncontested testimony at the oral hearing revealed the veteran was not in an unsafe condition before, during, or after being transported -- no emergency of any sort existed here.

This VA social worker takes patients in the VA car quite often, no problem. The problem here may stem in large part from the fact that a VA employee took a patient to a non-VA facility when, in fact, VA claims "ownership" of sorts of veterans and resents any employee taking a person to a non-VA hospital, despite the fact that this particular veteran refused to be treated at the VA and he specifically requested transportation to another hospital. The veteran was well within his rights to deny treatment at the VA, and the social worker was kind, courteous and professional in accommodating the request for transportation across town.

Agency Position

The patient transported appears to us to have been a "high risk" person, by definition. He arrived by taxi, but was taken by a VA employee to another hospital, a non-veteran hospital in the community. The social worker who drove him to the other hospital was reprimanded for abandoning the veteran/patient in or near the parking lot of this other hospital. The patient was alcohol impaired at the time. He needed help. He needed attention. The veteran was found by a parking lot attendant at the non-veteran hospital. No information, not even the patient's name, was available to this other hospital at the time.

The VA Chief of Psychiatry testified correctly that the complaining party, the VA social worker who dropped the veteran off near the parking lot, was well educated, at least well enough to know one should not "drop-off a veteran at a non-VA hospital with no instructions and/or information of any sort being given to that hospital. To do so is unprofessional, at a minimum. The patient could have and should have been escorted into the hospital and handed over properly to qualified medical personnel at that hospital, at a minimum.

The "other" hospital complained about the incident, both verbally and in writing.

The VA Assistant Chief of Human Resources and Acting Chief of Human Resources, one who oversees approximately forty (40) employees told the arbitrator the complaining party was negligent, his unpaid suspension was a minimal punishment for the real or potential harm that was or could have been done to the veteran, and the employee's record should reflect that fact permanently. Other witnesses told the arbitrator the same thing.

A VA Ph.D. psychologist and supervisor said the transportation of veterans to non-VA hospitals in the manner done by the now complaining party was "not the norm" and this credentialed social worker most certainly should have known better than to have handled the matter as he handled it. The now complaining social worker was fortunate in receiving only a three (3) day suspension, and permanency of the event on his employment record.

The VA Chief of Staff, M.D., a person of significant seniority at this VA hospital, told the arbitrator he was the final authority on the matter at hand, he had reviewed the entire situation in detail when it arose, three days of unpaid suspension was lenient but valid, very serious poor judgment was exercised by the now complaining employee, and permanent entry of his behavior should remain in the employee's personnel file. This physician said matters of this sort require good judgment and the suspended person failed to use good judgment; however, he, too, must use good judgment and in his judgment as Chief of Staff the discipline in this case is and was a matter of management's right to management. Management behaved properly!

The complaining social worker told the arbitrator he was unaware of his rights to representation by the union, but his allegation is false.

Issue

Did Agency violate its contract with the union, or past practice, by disciplining the complaining party with a three day unpaid suspension, to include insistence upon retention of the event as part of his permanent employment record?

Finding

No!

Nothing in the contract between the parties speaks to the issues of this case. Absent specific language to the contrary, language limiting Agency's prerogatives, management reserves the right to manage. Management has a right and a responsibility to exercise its judgment in all matters not specifically restricted by contract language with its union.

It is a simple case, yet one muddied and delayed unnecessarily by exhibits and testimony irrelevant to the case. The arbitrator pursued, studied every argument presented by the union, including verbose, unnecessary "CIWA" scores; yet, not one word contained in any of the Joint Exhibits, and nothing in any of the Master Agreement Articles cited by the union (i.e., 13.1; 13.5; 13.10; 10a; 10b; 16; 1c; 16c;

21; 1 abed; 21 abed; 2h, and so on) support allegations of violations as claimed by the union. Nothing in past practice supports the union position. Nothing associated with spurious union statements concerning severity of discipline in this case relative to average discipline imposed on other employees at other times for other violations of VA policy are meritorious in this instance.

At issue here is not management's judgment, whether it was too severe, just about right, or too lenient as one person suggested to the arbitrator. The issue here is whether management violated one or more articles of the contract, or violated past practice, in reprimanding an employee for failure to behave in a professional manner, and to record for posterity the employee behaved inappropriately, and to retain in the record the suspension that resulted. Nothing more is at issue here. That management may have been too lenient, less lenient, or about right in leniency relative to other discipline imparted to other employees at other times and under other circumstances, as claimed by the union, is of no consequence.

The social worker complained he had not been given proper education and/or training in how to behave in situations such as this one. He should not be punished for doing something that resulted in no harm whatsoever to the veteran, he told the arbitrator. Regardless of whether this position is correct, the complaining social worker should have exercised better judgment. He should have known the veteran, after having a couple of beers, and after coming to the VA for detoxification treatment, was in need of some attention, regardless of how minimal, regardless of how severe his condition may or may not have been.

The arbitrator is convinced the use of the VA car was not involved in management's decision to discipline this social worker; moreover, the arbitrator believes the veteran was not in a medical emergency condition as implied by more than one Agency witness at the oral hearing.

Nothing out of the ordinary may have happened in the mind of this veteran as this veteran may have believed he was simply being given a free automobile

ride, this time from one hospital to another. He had arrived by private taxi. No person at the VA before and/or after the free ride was responsible for the veteran who had quite simply refused treatment at the VA, after he, the veteran, had had a beer or a couple of beers, and every veteran has a right to refuse treatment at a VA hospital; however, the social worker assumed responsibility when he gave the man a ride. The point is this: If a person refuses treatment at a VA hospital s/he is responsible for going elsewhere. The VA is not responsible for such a veteran until and unless a professional employee makes the VA responsible, as was done in this case by this now-disciplined social worker.

As a representative of VA, the social worker needed to use, and he was required as a condition of continued employment to use, good judgment. He needed to hand-off the veteran to the other hospital, and he needed to do so on paper. Some kind of paper trail should have been created. The social worker did none of this. He may be fortunate under the circumstances to have retained his position with nothing more than a three day suspension and retention of his behavior in his permanent personnel file. The social worker in this case acted inappropriately, at which point management at the Agency was free to handle the matter in whatever manner thought appropriate by management -- and it did so. The social worker was correctly disciplined in this instance.

The complaining party used to the maximum his rights under the union contract, but where rights exist, responsibility exists. When one assumes the right to transport a veteran to or from a hospital, s/he has a responsibility to do it correctly, something not done in this case. That no harm befell the veteran because of the transport is of no consequence in this Finding and Award.

This VA social worker took one veteran (1) to a non-veteran hospital and left him in the parking lot, or similar area, unattended, with no paper work indicating the veteran's name, address or other information. If this social worker thinks his judgment

should be upheld in this matter he should ask and answer this question: What did he expect the non-veteran hospital to do with this person, and what should the non-veteran hospital do if he or one or more of his fellow employees at the VA decided to bring ten (10) veterans to this same non-veteran hospital? What if he were to bring twenty (20), thirty (30) or some other number of veterans and do so, of course, without any paperwork or identification of any sort outlining the name and condition of the would-be patient, and abandon them in the parking lot? Absurd, of course, but for a social worker to complain about being reprimanded, and to seek revocation of the reprimand, as in this case, is downright silly. The very existence of the complaint reveals unsound judgment, illogical thinking. Were he an uneducated man some lenience could be considered, perhaps, and leniency was given by Agency management by assigning only a three (3) day suspension, but this social worker argued his case strongly, almost passionately, telling the arbitrator he is a professional person, a credentialed lawyer, one who has practiced law, as well as an accomplished, heavily licensed social worker. He told the arbitrator he is a combat veteran (Vietnam).

Progressive discipline in this instance would be unfair to management, and to the veterans they attempt to serve.

The act speaks for itself and no eye witness to the event was or is needed. What was the act: A veteran in need was abandoned about sixty feet (60) from the entrance of a non-veterans hospital subsequent to having been driven there by a salaried, full time professional employee of the VA in Brecksville, Ohio. The matter was investigated and reported upon properly by Agency management.

The arbitrator has never known a combat veteran who could abandon another such person in this manner; moreover, the arbitrator is cognizant of the uncommonly high salary and fringe benefits enjoyed by this person, to include high retirement income, and realizes this social worker was being paid handsomely the very minute he abandoned the person he was

being paid to protect. Unacceptable!

The complaining social worker told the arbitrator he was not properly informed about his rights to representation, but the arbitrator finds it inconceivable to believe as (1) Agency management denies the charge and importantly, very importantly, the employee says he is an experienced lawyer; (2) How can any lawyer, regardless of the quality of the law school giving the degree, not know about legal rights to representation; and, (3) Keep in mind as well, the employee belongs now and for a prolonged period of time has belonged, to a strong union.

The social worker's action was job-related, one for which he was being paid, and the action was very serious; however, no maliciousness was involved. The incident is a matter of poor judgment, in the extreme.

"CIWA" and similar drug induced/dependent scores or indicators discussed at great length at the oral hearing are of no value here. Elongated testimony at the oral hearing concerning them is considered mostly irrelevant and deliberation and in-depth study of these scores by the arbitrator did not enter into this Finding and Award. Quite simply testimony and time taken with talk about "CIWA" at the oral hearing has proven to be unnecessary.

The union in its post-hearing brief concerns itself with whether "the Agency may be using (name) case to set tone (sic) for any other employee committees (sic) the same in fraction (sic) of transporting patients." As with other Agency actions, that very thing would be reasonable; after all, as argued by the union, Agency "is responsible for ensuring that all employees received the training necessary for the performance of the employees assigned duties."

This worker was negligent. Just and sufficient cause exists for the suspension, and for memorializing the event in his employment file permanently.

Award

This grievance is denied in its entirety.