

CASE DIGEST: *U.S. DHS, U.S. CBP, U.S. Border Patrol, Laredo Sector, Laredo, Tex., 71 FLRA 106 (2019) (Member DuBester dissenting)*

This case concerned an Agency ethics official's determination that the grievant's employment during his off-duty time as an emergency medical technician (EMT) would create an appearance of a conflict of interest with his duties as a border patrol agent. The Arbitrator found the Agency's determination was "arbitrary and capricious" and that the grievant would not violate his duty as an EMT to maintain patient confidentiality by adhering to his obligation, as a border patrol agent, to report a patient's undocumented immigration status to the Agency. On exceptions, the Agency argued that the award failed to draw its essence from the collective bargaining agreement because it reasonably denied the off-duty work request because of a potential conflict of interest between the grievant's border patrol duties and his duties as an EMT. The Authority found the Arbitrator analyzed whether the grievant's duties as an EMT would create an actual conflict of interest but disregarded the Agency's contractual authority to avoid even the appearance of a conflict of interest. Accordingly, the Authority concluded that the Agency's determination that the grievant's outside employment would create the appearance of a conflict of interest was neither arbitrary nor capricious, and vacated the award.

Member DuBester dissented, finding that the award reflects a plausible interpretation of the parties' agreement, and the Arbitrator properly considered whether the state law requiring patient confidentiality would bar the grievant from reporting someone's immigration status to the Agency. Member DuBester also noted that the Agency's prior conduct supporting the Arbitrator's finding that the Agency acted arbitrarily and capriciously.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.