



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 22-05

DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER, PHOENIX, ARIZONA

RESPONDENT

AND

Case No. DE-CA-19-0456

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 2382, AFL-CIO

CHARGING PARTY

Adam Johnson
For the General Counsel

Vanessa Lawson
For the Respondent

Joshua Klinger
For the Charging Party

Before: DAVID L. WELCH
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On August 11, 2021, the Regional Director of the Denver Region of the Federal Labor Relations Authority (FLRA or Authority) issued a Complaint and Notice of Hearing in this matter, alleging that the Department of Veterans Affairs (VA), Medical Center, Phoenix, Arizona (the Respondent), violated § 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing and refusing to comply with a final and binding arbitration award. The Complaint indicated that a hearing on the allegations would be held on January 4, 2022, and advised the Respondent that an Answer to the Complaint was due no later than August 31, 2021. The Complaint was faxed to the Respondent's designated representative, Vanessa Lawson, VA Medical Center, 650 East Indian School Road, Phoenix,

AZ 85012, fax number: (602) 222-6554. The Respondent failed to file an Answer to the Complaint.

On September 16, 2021, Counsel for the Acting General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent failed to file an Answer to the Complaint, and arguing therefore that the Respondent had admitted all allegations of the Complaint. Accordingly, the GC asserted that there were no factual or legal issues in dispute, and the case was ripe for summary judgment in its favor. The Respondent has not filed a response to the Motion for Summary Judgment.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

Section 2423.20(b) of the Authority's Regulations, 5 C.F.R. § 2423.20(b), provides:

(b) *Answer.* Within 20 days after the date of service of the complaint . . . the Respondent shall file and serve . . . an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission. . . .

The Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing answers and other required documents. *See, e.g.*, §§ 2429.21 through 2429.23.

In the text of the Complaint, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its Answer, including the date on which the Answer was due, the persons to whom it must be sent, and references to the applicable regulations. The plain language of the notice leaves no doubt that the Respondent was required to file an Answer to the Complaint.

Moreover, the Authority has held in a variety of factual and legal contexts that the parties are responsible for being aware of the statutory and regulatory requirements in proceedings under the Statute. *U.S. EPA, Envtl. Research Lab., Narragansett, R.I.*, 49 FLRA 33, 34-36 (1994) (answer to a complaint and an ALJ's order); *U.S. Dep't of VA Med. Ctr., Waco, Tex.*, 43 FLRA 1149, 1150 (1992) (exceptions to an arbitrator's award); *U.S. Dep't of the Treasury, Customs Serv., Wash., D.C.*, 37 FLRA 603, 610 (1990) (failure to file an answer due to a clerical error is not good cause sufficient to prevent a summary judgment).

In this case the Respondent has not filed an Answer, nor has it demonstrated any "good cause" for its failure to do so. *See, e.g.*, *U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008); *U.S. Dep't of VA Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996) and the cases cited therein. Moreover, after the GC filed its Motion for Summary Judgment, the Respondent did not file a response or otherwise offer any explanation for its failure to answer the Complaint. In these circumstances, § 2423.20(b) clearly requires that the Respondent's failure to file an Answer be treated as an admission of each of the allegations of the Complaint.

Accordingly, there are no disputed factual issues in this case, and summary judgment in favor of the GC is justified. Therefore, the GC's Motion for Summary Judgment is granted, and the hearing scheduled for January 4, 2022, is vacated.

Based on the existing record, the undersigned makes the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The American Federation of Government Employees, Local 2382, AFL-CIO (the Union) filed the charge in this proceeding on August 28, 2019, and a copy was served on the Respondent.
2. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
3. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of VA employees, which includes employees of the Respondent (the unit).
4. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
5. At all times material, the following individuals held the positions opposite their names and have been supervisors or management officials of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and agents of Respondent acting upon its behalf:

Ahmed Barton	Supervisor, Employee/Labor Relations
Vanessa Lawson	Supervisor, Employee/Labor Relations
6. The Union and the Respondent are parties to a collective-bargaining agreement covering employees in the bargaining unit described in paragraph 3.
7. On January 7, 2019, Arbitrator Christel Jorgensen issued a decision and award finding that Respondent violated the parties' collective bargaining agreement described in paragraph 6.¹

¹ Paragraph numbers referenced in paragraphs 7, 9 & 10 of the Complaint are incorrect. The undersigned has corrected these typographical errors, as well as inadvertent misspellings of Arbitrator Jorgensen's last name.

8. Arbitrator Jorgensen directed in her award that Respondent make Bolding whole at the Fair Labor Standards Act non-exempt wage rate for all regular overtime hours worked as well as all on-call hours for a period of three years.
9. No exceptions to the award described in paragraphs 7 and 8 were filed with the Authority.
10. Since on or about February 6, 2019, Respondent has failed to perform the acts ordered by Arbitrator Jorgensen described in paragraph 8.
11. By the conduct in paragraph 10, Respondent has been failing and refusing to comply with a final and binding arbitration award as required by §§ 7121 and 7122 of the Statute.
12. By the conduct described in paragraphs 10 and 11, Respondent has violated § 7116(a)(1) and (8) of the Statute.

CONCLUSIONS OF LAW

By the conduct set forth in Case No. DE-CA-19-0456, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits it failed and refused to comply with Arbitrator Jorgensen's final and binding arbitration award. Therefore, the Respondent failed to comply with §§ 7121 and 7122 of the Statute and thereby violated § 7116(a)(1) and (8) of the Statute.

REMEDY

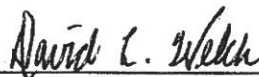
As a remedy to the conduct alleged in Case No. DE-CA-19-0456, the Respondent is ordered to cease and desist its failure and refusal to comply with Arbitrator Jorgensen's award, to cease and desist from interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute, to comply with Arbitrator Jorgensen's award, and to post and disseminate a copy of the attached notice.

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the Department of Veterans Affairs, Medical Center, Phoenix, Arizona, shall:

1. Cease and desist from:
 - (a) Failing and refusing to comply with the Final Award of Arbitrator Christel Jorgensen issued on January 7, 2019.
 - (b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute.
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:
 - (a) Comply with the Final Award of Arbitrator Christel Jorgensen issued on January 7, 2019, by ensuring that Bernell Bolding is made whole at the Fair Labor Standards Act non-exempt wage rate for all regular overtime hours worked as well as all on-call hours for a period of three years.
 - (b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 2382, AFL-CIO (Union) are located copies of the attached Notice on forms to be furnished by the FLRA. Upon receipt of such forms, they shall be signed by the Medical Center Director and shall be posted and maintained for 60 consecutive days in places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by other material. In addition to the physical posting of paper notices, the Notice to Employees shall be distributed by email to bargaining unit employees represented by the Union.
 - (c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Denver Region, Federal Labor Relations Authority, in writing within 30 days from the date of this Order as to what steps have been taken to comply.

Issued, Washington, D.C., November 1, 2021



DAVID L. WELCH
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Veterans Affairs, Medical Center, Phoenix, Arizona, violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail or refuse to comply with the Final Award of Arbitrator Christel Jorgensen issued on January 7, 2019.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of the rights assured by the Statute.

WE WILL comply with the Final Award of Arbitrator Christel Jorgensen issued on January 7, 2019 by ensuring that Bernell Bolding is made whole at the Fair Labor Standards Act non-exempt wage rate for all regular overtime hours worked as well as all on-call hours for a period of three years.

(Agency/Activity)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Blvd., Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.