73 FLRA No. 127

NATIONAL TREASURY
EMPLOYEES UNION
CHAPTER 46
(Union)

and

UNITED STATES
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
DALLAS, TEXAS
(Agency)

0-AR-5863

_____

DECISION

September 19, 2023

_____

Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

Arbitrator M. Zane Lumbley issued an award finding the Agency did not violate the Rehabilitation Act (the Act)[1] or the parties' collective-bargaining agreement when the Agency denied an employee's (the grievant's) request for advanced annual leave. The Union excepted to the award on nonfact, essence, and contrary-to-law grounds. For the reasons explained below, we deny the Union's exceptions.

II. Background and Arbitrator's Award

The grievant suffers from migraines and associated hypertension, and the Agency had previously approved her for Family and Medical Leave Act (FMLA) leave due to those conditions. After the grievant exhausted her approved FMLA leave, she was absent from work the weeks of February 4 and February 11, 2019. When she returned to work, she requested 63.5 hours of advanced annual leave for that period because she had used her maximum 480 hours of FMLA leave for the year.

The grievant's third-line supervisor denied the grievant's request, and instead provided her with 63.5 hours of leave without pay (LWOP). The Union filed a grievance, which went to arbitration. At arbitration, the parties did not stipulate an issue, and the Arbitrator adopted the Union's proposed issue statement, which pertinently stated:

> Did the Agency violate the . . . Act . . . , or Article 55, Section 1 or Article 32, Section 6 of the [parties' agreement,[2]] when the Agency denied the [g]rievant's request for 63.5 hours of advanced paid annual leave during the period of February 4 through February 15, 2019?[3]

The Arbitrator found the third-line supervisor gave two reasons for denying the request: (1) he would not approve advanced annual leave for employees who had used their maximum annual FMLA entitlements (the purported FMLA policy), and (2) "the [g]rievant did not provide medical documentation that justified the request at issue during the contractual interactive reasonable[-]accommodation process."[4]

The Arbitrator noted that two FMLA documents the grievant provided the Agency in 2018 stated, respectively, that: the grievant's migraines would occur "[one to four] times per month," with incapacitation lasting "[one to eight] hours" per episode; and the grievant's hypertension and migraines would prevent her from working "[eight] times per month or [sixty] hours," with incapacitation lasting "[four to eight] hours or [one to two] day(s) per episode."[5] The Arbitrator also reviewed a medical form the grievant submitted on February 12, 2019 – "*in the very midst of the period in question*" – to support her FMLA request covering the prospective period from February 14, 2019 through February 13, 2020.[6] The Arbitrator noted that form stated the grievant's incapacity would occur "[one to four] times per month" for "[one to

[1] 29 U.S.C. §§ 701-796.

[2] Article 55, Section 1 of the parties' agreement provides, in pertinent part:

> A. The Employer will afford reasonable accommodation to qualified disabled employees, unless the accommodation would impose an undue hardship on the operation of the Employer's program. . . .
>
> B. Examples of reasonable accommodations could include:
>
> . . . .
>
> 9. granting . . . advanced annual leave beyond the criteria for such benefits in this Agreement.

Award at 5-6. The pertinent wording of Article 32, which concerns annual leave, is set forth below.

[3] *Id.* at 3.

[4] *Id.* at 8.

[5] *Id.* at 12.

[6] *Id.*

eight] hours per episode."[7] The Arbitrator determined that "none of the cited documentation support[ed] the [g]rievant's asserted need for 63.5 hours of leave during the two-week period in question."[8]

The Arbitrator found that the Agency requested additional medical information to support the grievant's advanced-annual-leave request, but that the grievant failed to provide it. The Arbitrator acknowledged that, on each day of her absence, the grievant emailed her first-line supervisor to say that she would be absent that particular day. However, the Arbitrator found that all but the final email gave no details, and instead merely requested on the email subject line, "Provisional RA Adv Annual for Today," or some "variation thereof."[9] The Arbitrator stated that, "as the [Equal Employment Opportunity Commission (EEOC)] noted in *Tom S. v. Department of Energy* [(*Tom S.*),[10]] 'to have the open-ended ability to report to work (or call in absent) . . . as []an accommodation is not reasonable on [its] face.'"[11]

In addition, the Arbitrator found that, "while the [g]rievant may be entitled to a reasonable accommodation for her serious health condition, she was not entitled to select her *preferred form of accommodation* absent justification."[12] The Arbitrator noted that, at arbitration, the third-line supervisor testified that he also offered the grievant the ability to work part-time during the period, but she declined. Citing the EEOC's decision in *Shae M. v. Department of the Treasury* (*Shae M.*),[13] the Arbitrator concluded that it was not improper for the Agency to grant the grievant LWOP, instead of advanced annual leave, for the period in question.

Further, the Arbitrator determined that the grievant "failed to satisfy" the requirements for advanced annual leave in the parties' agreement.[14] Article 32, Section 6.A. of the parties' agreement sets a forty-hour limitation on advanced annual leave, but Section 6.B. provides an exception to that limitation. The Arbitrator noted that, to qualify for that exception, Article 32, Section 6.B. requires that "the employee *must be* absent from work either due to (1) a serious health condition of the employee or (2) to care for a family member . . . with a serious health condition."[15] The Arbitrator stated that, "[w]hile it is undisputed the [g]rievant suffers from chronic migraines, nothing in the record confirms her need to be absent for 63.5 hours during the period at issue, i.e., that her serious health condition demonstrably required the amount of time requested between February 4 and 15, 2019."[16] The Arbitrator also found the FMLA documentation the grievant provided did not demonstrate the grievant qualified for the exemption set forth in Article 32, Section 6.B. of the parties' agreement.[17]

The Arbitrator noted that the Union raised additional claims, specifically involving discrimination, disparate treatment, and retaliation. However, the Arbitrator stated that "the [g]rievant's failure to cooperate in the interactive process by supplying requested additional medical documentation on which management could base a decision to grant her request for advanced annual leave during the period . . . prevents me from deciding the Union's other claims."[18] The Arbitrator noted that resolving the Union's other claims would have "include[d] an analysis of the fact that [the third-line supervisor] *also* grounded his decision to grant the [g]rievant LWOP instead of advanced annual leave on the" purported FMLA policy,[19] and that "the [g]rievant was treated disparately or retaliated against because of her disability when compared to other employees."[20] The Arbitrator stated that the latter argument, "even if found arbitrable, also [could not] be tested" because the Union's evidence regarding the other employees was "insufficient."[21]

The Arbitrator concluded that the Agency did not violate the Act or the parties' agreement when it denied the grievant's request for 63.5 hours of advanced annual leave. Therefore, he denied the grievance.

The Union filed exceptions to the award on February 8, 2023, and the Agency filed an opposition on March 10, 2023.

III. Analysis and Conclusions

A. The award is not based on nonfacts.

The Union contends that, for several reasons, the award is based on nonfacts.[22] To establish that an award is based on a nonfact, the excepting party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different

[7] *Id.*
[8] *Id.*
[9] *Id.* at 7.
[10] EEOC Doc. 0120180345, 2019 WL 7603041 (2019).
[11] Award at 12-13 (quoting *Tom S.* at *8).
[12] *Id.* at 13.
[13] EEOC Doc. 2020000951, 2020 WL 7014966 (2020) (notwithstanding employee's preference for advanced sick leave, employer did not violate the Act by granting LWOP as an accommodation instead).
[14] Award at 11 n.4.
[15] *Id.*
[16] *Id.*
[17] *Id.* at 12 n.8.
[18] *Id.* at 13.
[19] *Id.* (emphasis added).
[20] *Id.*.
[21] *Id.* at 13 n.10.
[22] Exceptions Br. at 7-15.

result.[23] The Authority will not find an award deficient on the basis of an arbitrator's determination of any factual matter that the parties disputed at arbitration.[24] Disagreement with an arbitrator's evaluation of evidence, including the weight to be accorded such evidence, does not provide a basis for finding that an award is based on a nonfact.[25] Further, challenges to an arbitrator's interpretation of a collective-bargaining agreement or the arbitrator's legal conclusions do not provide a basis for finding an award deficient on nonfact grounds.[26]

The Union argues that the Arbitrator erred in finding that the grievant failed to provide additional medical information requested by her third-level supervisor.[27] In this regard, the Union claims that the grievant provided additional medical information for February 7, 8, and 11, which accounted for twenty-four of the hours she requested.[28] This argument merely disagrees with the Arbitrator's evaluation of the evidence, which, as stated above, does not provide a basis for finding the award based on a nonfact.[29] Therefore, we reject this argument.

The Union also argues the Arbitrator erred in finding that the Agency *needed* additional medical information to evaluate the grievant's request.[30] According to the Union, the Arbitrator determined that the Agency granted LWOP as an alternative accommodation under the Act for the same number of hours, and that determination "refutes . . . the Arbitrator's dispositive finding that the Agency needed additional medical information or more participation from the [g]rievant."[31] The Union also claims that the third-line supervisor admitted at arbitration that the sole reason he refused to grant the grievant advanced annual leave was because of the purported FMLA policy, which further shows that the Agency did not need additional medical information.[32]

At arbitration, the parties disputed whether the Agency needed additional medical information to evaluate the grievant's request.[33] Thus, there is no basis for setting that finding aside on nonfact grounds.[34] In reaching this conclusion, we note that the Union cites – and we have found – no support for the notion that the Agency's grant of *LWOP* necessarily meant that the grievant was entitled to *advanced annual leave* for the specific period in question. Further, the record does not support the Union's claim that the third-line supervisor admitted that he relied *solely* on the purported FMLA policy in denying the grievant's request. Although the third-line supervisor testified he would not grant employees paid leave based on the purported FMLA policy,[35] he also testified – in discussing an email he sent to the grievant – that "I believe my decision was based on *two* factors; she had exhausted her 480 hours, [and] she was requesting advanced leave for the same medical reason on her FMLA documentation."[36] That email indicates that he denied the request, at least in part, because of the grievant's failure to provide documentation.[37] Accordingly, we reject the Union's arguments.

Further, the Union contends that it was a nonfact for the Arbitrator to conclude that the grievant failed to cooperate in the interactive process.[38] For support, the Union cites the Arbitrator's finding that the grievant communicated with her first-line supervisor daily during her absences.[39] As the Agency argues,[40] the Authority has held that a conclusion that a party failed to engage in the interactive process under the Act is a legal conclusion.[41] As such, it may not be challenged on nonfact grounds,[42] and we reject the Union's contention.

The Union also challenges, on nonfact grounds, the Arbitrator's characterization of the grievant's actions as seeking an "open-ended ability to report to work (or call

[23] *AFGE, Loc. 4156*, 73 FLRA 588, 590 (2023) (*Loc. 4156*).
[24] *Int'l Bhd. of Boilermakers, Loc. 290*, 72 FLRA 586, 588 & n.28 (2021) (*Loc. 290*) (citing *U.S. Dep't of the Treasury, IRS, Greensboro, N.C.*, 61 FLRA 103, 105 (2005) (*IRS*); *SSA, Off. of Hr'gs & Appeals*, 58 FLRA 405, 407 (2003)); *AFGE, Loc. 1698*, 70 FLRA 96, 99 (2016).
[25] *AFGE, Loc. 12*, 70 FLRA 582, 583 (2018) (*Loc. 12*) (citing *U.S. Dep't of the Air Force, Whiteman Air Force Base, Mo.*, 68 FLRA 969, 971 (2015)).
[26] *AFGE, Loc. 3601*, 73 FLRA 515, 517 (2023) (*Loc. 3601*) (citing *AFGE, Loc. 1802*, 50 FLRA 396, 398 (1995)) (challenges to interpretations of collective-bargaining agreements); *NTEU, Chapter 298*, 73 FLRA 350, 351 n.19 (2022) (*Chapter 298*) (citing *Pension Benefit Guar. Corp.*, 64 FLRA 692, 696 (2010)) (challenges to legal conclusions).
[27] Exceptions Br. at 10.
[28] *Id.*
[29] *Loc. 4156*, 73 FLRA at 590; *Loc. 12*, 70 FLRA at 583.
[30] Exceptions Br. at 8-10.
[31] *Id.* at 8.
[32] *Id.* at 9 n.6.
[33] *See, e.g.*, Exceptions, Combined Attachs., Union's Post-Hr'g Br. (Union's Post Hr'g Br.) at 47 (Union argued "[t]here was no need for additional medical information to justify the use of [the] leave"); Exceptions, Combined Attachs., Agency's Post-Hr'g Br. at 31 (Agency argued that, "[w]hile the [g]rievant had medical documentation on file regarding a serious health condition, that documentation did not support the [g]rievant's requests for advanced annual leave on the days at issue").
[34] *Loc. 290*, 72 FLRA at 588.
[35] *See* Exceptions, Combined Attachs., Tr. at 353-55.
[36] *Id.* at 364 (emphasis added).
[37] Exceptions, Combined Joint Exs., Joint Ex. 11 at 1-2.
[38] Exceptions Br. at 7-12.
[39] *Id.* at 8.
[40] Opp'n Br. at 11.
[41] *U.S. Dep't of the Treasury, IRS, Wage & Inv. Div., Austin, Tex.*, 64 FLRA 39, 56 (2009) (finding that an exception disputing a party's failure to "properly initiate and participate in the required interactive process" was "a challenge to the [a]rbitrator's legal conclusions" that could not be challenged on nonfact grounds).
[42] *Chapter 298*, 73 FLRA at 351 n.19.

in absent)."[43] In this regard, the Union notes the Arbitrator's acknowledgment that the grievant was asking for a specific number of hours for a specific number of days.[44] The Union does not demonstrate that the Arbitrator made a clear factual error in analogizing the grievant's claim that she did not need to provide additional medical support for her request to seeking an "open-ended ability to report to work (or call in absent)."[45] Therefore, the Union's argument does not demonstrate that the award is based on a nonfact.

Finally, the Union challenges, on nonfact grounds, the Arbitrator's finding that the Agency did not violate the parties' agreement.[46] As noted above, challenges to arbitrators' contract interpretations do not provide a basis for finding their awards based on nonfacts.[47] Thus, we reject this nonfact argument.

Accordingly, we deny the Union's nonfact exceptions.

B. The award draws its essence from the agreement.

The Union argues that the award fails to draw its essence from Article 32.[48] The Authority will find that an arbitration award is deficient as failing to draw its essence from a collective-bargaining agreement when the excepting party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement.[49]

The Union challenges the Arbitrator's finding that the grievant did not satisfy Article 32's requirements.[50] According to the Union, nothing in Article 32 requires employees to engage in the Act's interactive process or to submit any medical information, "let alone . . . information the Agency [does not] need."[51] The Union contends that, "when read together," Article 32, Sections 6.A.5. and 6.B. require only that an employee requesting advanced annual leave establish she has a serious health condition as defined in the FMLA – a requirement that the grievant met.[52] The Union argues that the Arbitrator imposed additional requirements, in violation of Article 43, Section 4.A.18's statement that arbitrators "have no authority to add to" the agreement "or impose on either [party] any limitation or obligation not specifically provided for under the terms of" the agreement.[53]

Article 32, Section 6.A. provides, in pertinent part, that the Agency will grant advanced annual leave to an employee only if the employee has "an outstanding advanced annual leave balance of no more than forty . . . hours at any given time."[54] Article 32, Section 6.B. states, in relevant part, that "[a]s an exception to th[at forty-]hour limitation . . . , the [Agency] will grant additional advanced [annual] leave if the employee *must* be absent from work . . . due to . . . a serious health condition."[55]

The Arbitrator interpreted the quoted wording of Section 6.B. as requiring an employee to provide *evidence* that she "must" be absent from work during the time period at issue in order to receive advanced annual leave.[56] This interpretation required the Arbitrator to assess how an employee could satisfy Section 6.B.'s conditions, but did not improperly add limitations or obligations to the agreement. The Union does not cite any provision of the agreement that prohibited the Arbitrator from interpreting Article 32 as imposing such a burden on the requesting employee.

The Union's arguments do not demonstrate that the Arbitrator's interpretation of Article 32 is irrational, unfounded, implausible, or in manifest disregard of the agreement.[57] Thus, we deny the essence exception.

C. The award is not contrary to law.

The Union argues that the Arbitrator's award is contrary to law.[58] When an exception challenges an award's consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.[59] In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.[60] In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the

[43] Exceptions Br. at 7 & n.4.
[44] *Id.* at 7 n.4.
[45] Award at 13.
[46] Exceptions Br. at 12-15.
[47] *Loc. 3601*, 73 FLRA at 517.
[48] Exceptions Br. at 27-29.
[49] *Loc. 3601*, 73 FLRA at 518 (citing *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990)).
[50] Exceptions Br. at 27-28.
[51] *Id.*
[52] *Id.* at 28.
[53] *Id.*
[54] Award at 4.
[55] *Id.* (emphasis added).
[56] *Id.* at 11 n.4.
[57] *NTEU*, 73 FLRA 431, 433 (2023).
[58] Exceptions Br. at 16-20.
[59] *U.S. Dep't of the Army, U.S. Army Garrison Redstone Arsenal, Huntsville, Ala.*, 73 FLRA 210, 211 (2022).
[60] *Id.*

excepting party establishes that they are nonfacts.[61] Further, in conducting de novo review, the Authority assesses whether the arbitrator's legal conclusion – not the arbitrator's underlying reasoning – is consistent with the relevant legal standard.[62]

The Union argues the Arbitrator erred, as a matter of law, in finding the grievant failed to cooperate with the interactive process.[63] According to the Union, 29 C.F.R. § 1630.2(o)(3) provides that the purpose of the interactive process is to allow the Agency to understand the grievant's disability and determine what an effective accommodation would be.[64] The Union claims that, by granting the grievant 63.5 hours of LWOP as an accommodation for a disability, the Agency recognized the grievant has a disability, was incapacitated because of it, and needed 63.5 hours of leave to accommodate it.[65] Thus, the Union contends, the Agency demonstrated that it had sufficient information to determine the grievant needed the advanced annual leave, and the extent of the grievant's cooperation during the interactive process became "irrelevant."[66]

The Act sets forth a process for requesting reasonable accommodations and responding to those requests.[67] Specifically, a qualified individual's request for a reasonable accommodation triggers an "interactive process" during which the employer must act in good faith to assist the employee in determining the appropriate accommodation.[68] As part of this process, "both employee and employer must 'exchange essential information"' related to the request.[69] Although neither party "can delay or obstruct the process,"[70] employers are entitled to "gather sufficient information from the applicant and qualified experts as needed to determine what accommodations are necessary."[71]

In determining whether an agency has met its obligation to provide a reasonable accommodation, it is important to "look for signs of failure to participate in good faith or failure by one of the parties to make reasonable efforts to help the other party determine what specific accommodations are necessary."[72] More specifically, it is important to "isolate the cause of the breakdown" in the communication between the parties "and then assign responsibility."[73] The breakdown could be related to missing information and "where the missing information is of the type that can only be provided by one of the parties . . . the party withholding the information may be found to have obstructed the process."[74] Thus, where the failure to provide a reasonable accommodation for a qualified employee with a disability is traceable to the fact that the employee did not provide necessary information, the agency is not liable for that failure.[75]

In this case, the medical information available to the Agency related to the grievant's FMLA status and provided only general information about the frequency with which the grievant may experience incapacity due to her disability. That information did not necessarily support the grievant's request for the specific, 63.5 hours for which she was requesting advanced annual leave. The Arbitrator found that the Agency therefore needed additional information.

The Union cites, and we have found, no authority for the notion that the Agency's grant of LWOP means that, as a matter of law, the Agency had sufficient information to assess the grievant's request for advanced annual leave for the specific hours at issue. Thus, there is no basis for finding the interactive process "irrelevant," as the Union claims.[76] Because the breakdown in the interactive process is traceable to the grievant's failure to provide the Agency with additional medical information,

[61] *U.S. Dep't of VA, Robley Rex Med. Ctr.*, 73 FLRA 468, 469 (2023).
[62] *AFGE, Council 222*, 73 FLRA 54, 55 n.19 (2022) (*Council 222*) (citing *U.S. DHS, U.S. CBP*, 68 FLRA 276, 277 (2015)).
[63] Exceptions Br. at 16.
[64] *Id.* at 17-18.
[65] *Id.* at 17.
[66] *Id.*
[67] *AFGE, Loc. 1992*, 69 FLRA 567, 568 (2016) (*Loc.1992*) (Member Pizzella concurring) (citing *IRS*, 64 FLRA at 49); *see also* 29 C.F.R. § 1630(o)(3).
[68] *Loc. 1992*, 69 FLRA at 568.
[69] *Carroll v. Dep't of the Navy*, 321 F. Supp. 2d 58, 69 (D.D.C. 2004) (quoting *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1114-15 (9th Cir. 2000)).
[70] *Id.* (quoting *Barnett*, 228 F.3d at 1114-15); *accord Complainant v. Dep't of Com. (Bureau of the Census)*, EEOC Doc. 0120112930, 2015 WL 1399390, at *5 (2015) ("An employer should respond expeditiously to a request for reasonable accommodation.").
[71] *Carroll*, 321 F. Supp. 2d at 69 (quoting *Barnett*, 228 F.3d at 1115 n.6); *see also IRS*, 64 FLRA at 49 (where the disability and/or need for accommodation is not obvious, the employer may ask for information and documentation).
[72] *U.S. Dep't of the Army Corps of Eng'rs, Huntington Dist., Huntington, W. Va.*, 59 FLRA 793, 797 (2004) (quoting *Beck v. Univ. of Wis. Bd. of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996)).
[73] *Beck*, 75 F.3d at 1135.
[74] *Id.* at 1136.
[75] *Id.* at 1136-37; *see also Templeton v. Neodata Servs. Inc.*, 162 F.3d 617, 618-19 (10th Cir. 1998) (employee's failure to provide medical information necessary to the interactive process precludes them from claiming employer committed a violation by failing to provide reasonable accommodation); *Conneen v. MBNA Am. Bank, N.A.*, 334 F.3d 318, 333 (3rd Cir. 2003) (no violation because parties understood accommodation was temporary and employee would, if condition persisted, need to provide further documentation to substantiate need for additional accommodation, but employee failed to do so).
[76] Exceptions Br. at 17.

the burden of that breakdown falls on the grievant and precludes her from claiming that the Agency failed to provide her a reasonable accommodation.

The Union also claims that *Shae M.* supports its assertion that the Agency violated the Act by denying the grievant advanced annual leave because she qualified for such leave under the parties' agreement.[77] This claim is premised on the Union's position that the grievant was entitled to advanced annual leave under Article 32.[78] As discussed above, the Arbitrator found to the contrary, and the Union does not demonstrate that the award fails to draw its essence from the agreement. Thus, the Union's claim is unavailing.

The Union also challenges the Arbitrator's reliance on *Tom S.*, claiming that decision is inapposite.[79] However, as noted above, in resolving contrary-to-law exceptions, the Authority assesses the Arbitrator's legal conclusion, not the Arbitrator's underlying reasoning.[80] The Union's argument challenges the Arbitrator's underlying reasoning. As such, it does not provide a basis for finding the award contrary to law.[81]

Next, the Union alleges that the award is contrary to law because the Arbitrator failed to address the Union's discrimination, disparate-treatment, and retaliation claims.[82] According to the Union, "[e]ven assuming the [g]rievant failed to engage in the interactive process, the Arbitrator was still legally required to analyze, for example, whether the Agency's request for additional medical information . . . violated the . . . Act or was even the real reason the Agency denied the [g]rievant's request," and "to analyze whether the Agency engaged in reprisal, disparate treatment, or per se discrimination based on the [g]rievant's disability when it denied her request for advanced annual leave under the contract and as a reasonable accommodation."[83] The Union also asserts that the EEOC has held that "agencies are not liable solely because they failed to engage in the interactive process," and contends that "[t]he Arbitrator is holding the [g]rievant to a higher standard than the EEOC holds agencies to by finding he cannot evaluate the [g]rievant's other claims despite the Agency's having granted her an accommodation" of LWOP.[84]

As noted above, the parties did not stipulate the issue before the Arbitrator, so the Arbitrator – adopting the Union's proposed issue statement – framed the issue. That generally worded issue involved whether the Agency violated the Act or the parties' agreement "when the Agency denied the [g]rievant's request for 63.5 hours of advanced paid annual leave during the [relevant] period."[85] The issue did not explicitly set forth specific theories of legal violations, such as discrimination, disparate treatment, or retaliation. Moreover, the Union did not file an exceeded-authority exception alleging that the Arbitrator failed to address an issue submitted to arbitration.[86] Further, the Union's additional arguments focused primarily on the third-line supervisor's reliance on the purported FMLA policy.[87] As the Arbitrator relied on the third-line supervisor's *other* reason for denying the grievant's request – the lack of additional medical information – it was reasonable for the Arbitrator to find it unnecessary to address the Union's additional claims. In any event, the Union does not cite any authority for the notion that the Arbitrator was required, as a matter of law, to address the additional issues. Therefore, the Union's arguments do not demonstrate that the award is contrary to law.

For the foregoing reasons, we deny the Union's contrary-to-law exceptions.

IV. Decision

We deny the Union's exceptions.

[77] *Id.* at 18-19.
[78] *See id.* (noting that *Shae M.* upheld lawfulness of LWOP as accommodation because "an agency is not obligated to provide a complainant with paid leave *beyond that which is provided to similarly situated employees*" and arguing that Article 32 establishes that employees similarly situated to the grievant are entitled to advanced annual leave (quoting *Shae M.*, 2020 WL 7014966 at *4 (Union's emphasis))).
[79] *Id.* at 17-18.
[80] *Council 222*, 73 FLRA 55 n.19.
[81] *AFGE, Loc. 1441*, 70 FLRA 161, 164 (2017).
[82] Exceptions Br. at 20.
[83] *Id.* at 21.
[84] *Id.* at 17 n.15 (citing *Pitts v. U.S. Postal Serv.*, EEOC Doc. 0120130039, 2013 WL 1182336 (2013) (citing *Doe v. SSA*, EEOC Doc. 01A14791, 2003 WL 660618 (2003))).
[85] Award at 3.
[86] *AFGE, Loc. 2092*, 73 FLRA 596, 597-98 (2023) ("[A]rbitrators exceed their authority when they fail to resolve an issue submitted to arbitration.").
[87] *See, e.g.*, Union's Post-Hr'g Br. at 1 ("The Agency's denial treated [the grievant] disparately compared to other similarly situated employees *because of a discriminatory policy regarding her use of FMLA leave*." (emphasis added)); *id.* at 40 (The third-line supervisor's reliance on the purported FMLA policy was "really a pretext for discrimination."); *id.* at 57-58 ("[T]he Agency relied on the fact that [the grievant] requested an accommodation to deny her a benefit available to non-disabled employees who meet the requirements of Article 32.").