



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

OALJ 24-06

DEPARTMENT OF VETERANS AFFAIRS  
COLUMBIA VA HEALTH CARE SYSTEM  
COLUMBIA, SOUTH CAROLINA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1915, AFL-CIO

CHARGING PARTY

Case No. AT-CA-22-0509

Melissa K. Coward  
For the General Counsel

Christopher M. Chouinard  
For the Respondent

Raymond Mitchell  
For the Charging Party

Before: DAVID L. WELCH  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On July 12, 2023, the Acting Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this matter. The Complaint alleged that the Department of Veterans Affairs, Columbia VA Health Care System, Columbia, South Carolina (the Respondent) terminated bargaining unit podiatrists' compressed work schedules without providing the American Federation of Government Employees, Local 1915, AFL-CIO (the Union) with notice and opportunity to negotiate over the proposed termination and thus refused to negotiate in good faith with the Union, in violation of § 7116(a)(1) and (5) of the Statute.

The Complaint indicated that a hearing on the allegations would be held on April 4, 2024. The Complaint also advised the Respondent that an Answer to the Complaint was due

no later than August 7, 2023, and that a failure to file an answer or respond to any allegation would constitute an admission of those allegations, absent a showing of good cause. The Complaint was sent by regular mail to the Respondent's designated representative, Christopher M. Chouinard, CP, SJM, ABN-RGR, Supervisory Human Resources Specialist, ER/LR, VA Southeast Network VISN 7 HR Office, 3700 Crestwood Parkway, Suite 220, Duluth, GA 30096, and a courtesy copy of the Complaint was sent to Chouinard via email. The Respondent did not file an Answer to the Complaint.

On August 23, 2023, the General Counsel (GC) filed a Motion for Summary Judgment, along with a Brief in Support of Motion for Summary Judgment. The GC notes that the Respondent failed to file an Answer to the Complaint, and the GC argues that the Respondent has therefore admitted all the allegations of the Complaint. The GC asserts that since there are no factual or legal issues in dispute, the case is ripe for summary judgment in its favor. The Respondent has not filed a response to the GC's Motion for Summary Judgment.

### **DISCUSSION OF MOTION FOR SUMMARY JUDGMENT**

The Authority has held that motions for summary judgment, filed under § 2423.27 of its Regulations, 5 C.F.R. § 2423.27, serve the same purpose, and are governed by the same principles, as motions filed in United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

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

(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. Furthermore, in the body of the Complaint, the Acting Regional Director provided the Respondent with detailed instructions concerning the requirements for its Answer, including the date on which the Answer was due, persons to whom it must be sent, and references to the applicable regulations. The Acting Regional Director also advised the Respondent that, absent a showing of good cause, the failure to answer any allegation of the Complaint would constitute an admission.

Moreover, the Authority has held, in a variety of factual and legal contexts, that 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 did not file an Answer. 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 file an Answer to the Complaint. In these circumstances, § 2423.20(b) clearly requires that the Respondent's failure to file a timely 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 against the Respondent is appropriate. Therefore, the GC's Motion for Summary Judgment is granted.

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 1915, AFL-CIO (the Union) filed the charge in this proceeding on August 11, 2022, and a copy was served on the Department of Veterans Affairs, Columbia VA Health Care System, Columbia, South Carolina (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 (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a nationwide consolidated unit of 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 material times, the following individuals held the positions opposite their names and have been supervisors or management officials of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and agents of the Respondent acting upon its behalf:

Eladia D. Smith	Administrative Officer
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Dr. Ashley Nettles, DPM	Chief, Podiatry
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6. On March 7, 2022, the Respondent, through Smith, emailed bargaining unit employees in Podiatry of the Respondent's intent to eliminate the four-day, ten-hour a day work schedule for podiatrists in that department.
7. The work schedule described in paragraph 6 is a compressed work schedule subject to § 6131 of the Work Schedules Act (5 U.S.C. §§ 6120-6133).
8. The decision to eliminate the compressed work schedule as described in paragraph 6 was a mandatory subject of bargaining and negotiable as to the substance of the decision.
9. On or about June 19, 2022, the Respondent, by Nettles, terminated bargaining unit podiatrists' compressed work schedules.
10. The Respondent terminated the podiatrists' compressed work schedules without providing the Union with notice and opportunity to negotiate over the proposed termination.
11. By the conduct described in paragraphs 9 and 10, the Respondent has been refusing to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.

### CONCLUSIONS OF LAW

By the conduct set forth in Case No. AT-CA-22-0509, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it violated § 7116(a)(1) and (5) of the Statute when it terminated bargaining unit podiatrists' compressed work schedules without providing the Union with notice and opportunity to negotiate over the proposed termination.

As a remedy, the GC requests that the Respondent be ordered to restore the four-day, ten-hour a day work schedule option (also referred to as the 4/10 alternative work schedule option) for bargaining unit podiatrists as it existed prior to the June 19, 2022 termination, and to restore any annual or sick leave utilized by the podiatrists for time during which they would have been off work had the 4/10 alternative work schedule option not been terminated on June

19, 2022. In addition, the GC requests that the Respondent be ordered to post a notice, signed by the Respondent's Director, on all bulletin boards where notices to employees are customarily posted, and to email the notice to all bargaining unit employees at the Respondent.

The undersigned finds that the GC's requested remedies are appropriate. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 222-26 (2014) (providing for electronic notice posting); *U.S. DOJ, INS, L.A., Cal.*, 59 FLRA 387, 388-90 (2003) (ordering a restoration of the alternative work schedule and any lost annual or sick leave); *F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 149, 161 (1996) (noting that notice posting is provided in virtually all cases where a violation is found).

In conclusion, the undersigned recommends that the Authority grant the GC's Motion for Summary Judgment and issue the following Order:

### ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), it is hereby ordered that the Department of Veterans Affairs, Columbia VA Health Care System, Columbia, South Carolina (the Respondent), shall:

1. Cease and desist from:
  - (a) Terminating the 4/10 alternative work schedule (AWS) option for bargaining unit employees in the Podiatry unit without first completing bargaining with the American Federation of Government Employees, Local 1915, AFL-CIO (the Union), the exclusive representative of bargaining unit employees.
  - (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) Restore the 4/10 AWS option for Podiatrists in the bargaining unit represented by the Union.
  - (b) Restore to the Podiatrists in the bargaining unit any annual or sick leave that they utilized for the time during which they would have been off work if the 4/10 AWS option had not been terminated on June 19, 2022;

- (c) Post the attached Notice, signed by the Respondent's Director on bulletin boards where it customarily posts notices to employees, for 60 days and distribute the Notice by email to all bargaining unit employees of the Respondent. The forms for the Notice will be supplied by the Federal Labor Relations Authority;
- (d) Pursuant to Section 2423.41(e) of the Authority's Rules and Regulations, notify the Acting Regional Director, Atlanta 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 9, 2023



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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, Columbia VA Health Care System, Columbia, South Carolina (the Agency), 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** terminate the 4/10 Alternative Work Schedule (AWS) option for bargaining unit employees in the Podiatry unit without first completing bargaining with the American Federation of Government Employees, Local 1915, AFL-CIO (the Union), the exclusive representative of our bargaining unit employees.

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

**WE WILL** restore the 4/10 AWS option for the Podiatrists in the bargaining unit represented by the Union.

**WE WILL** restore to Podiatrists in the bargaining unit any annual or sick leave that they utilized for the time during which they would have been off work if the 4/10 AWS option had not been terminated on June 19, 2022.

\_\_\_\_\_  
(Agency)

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 any of its provisions, they may communicate directly with the Acting Regional Director of the Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 229 Peachtree Street NE, Ste. 900, Atlanta, GA 30303, and whose telephone number is: 470-681-7630.