68 FLRA No. 98

FRATERNAL ORDER OF POLICE
LODGE 12
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
(Agency)

0-AR-5078

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DECISION

May 19, 2015

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

Arbitrator Jill Klein issued an award finding that the Agency's physical-agility-testing requirement (the testing requirement) for Agency civilian police and guards does not violate the Rehabilitation Act of 1973[1] (Rehabilitation Act) or the Civil Service Reform Act of 1978[2] (CSRA) because the test does not screen out, or tend to screen out, individuals with disabilities, or any class of individuals with disabilities. We must decide four substantive questions.

The first question is whether the Arbitrator exceeded her authority when she found that the issue of whether a different requirement – the Agency's annual physical-examination requirement (the examination requirement) – violated the Rehabilitation Act and the CSRA was not before her. Because the Authority applies the same deferential essence standard to an arbitrator's interpretation of a stipulated issue as it does to an arbitrator's interpretation of a collective-bargaining agreement, and the Union has not shown that the Arbitrator's interpretation of the parties' stipulated issue is irrational, implausible, unfounded, or in manifest disregard of the stipulation, the answer is no.

The second question is whether the award is based on nonfacts because the Arbitrator concluded that: (1) the examination requirement is "only found in Section 4c" of the Agency's Standard Operating Procedure 4029b (the procedure); and, therefore, (2) based on the parties' stipulation, only the testing requirement was at issue in the arbitration. Because the Union has failed to show that a central fact underlying the award is clearly erroneous, the answer is no.

The third question is whether the award is contrary to law because the Arbitrator failed to find that the testing requirement violates the Rehabilitation Act. Because the Union has failed to show that the testing requirement screens out, or tends to screen out, an individual with a disability or a class of individuals with disabilities, and making such a showing is required in order to establish a violation of the Rehabilitation Act, the answer is no.

The fourth question is whether the award is contrary to law because the Arbitrator failed to find that an Agency program director violated the Rehabilitation Act, and therefore the CSRA, by implementing the procedure. Because the Union has not shown that the Agency's implementation of the procedure violated the Rehabilitation Act, and the Union's CSRA claim is premised on its Rehabilitation Act claim, the answer is no.

II. Background and Arbitrator's Award

As set out in the procedure, the Agency requires civilian police officers and security guards in its employ to undergo annual physical-agility testing. The basic physical-agility test (the basic test) requires participants to execute nineteen push-ups in two minutes and run or walk one-and-a-half miles in seventeen-and-a-half minutes. If an employee fails the basic test, then he or she may re-take the test up to two times. Further, if an employee cannot pass the basic test as a result of "long-term medical restrictions or disabilities," then he or she may take an alternate physical-agility test (the alternate test), which requires participants to walk two miles in thirty-two-and-a-half minutes and drag a dummy weighing 140 to 150 pounds twenty-five feet in fifteen seconds.[3] An employee who is unable to pass either the basic or alternate test may ask to take a common-core-appeal test (the appeal test), which requires participants, while in uniform and wearing a weapon, to: (1) run forty meters; (2) climb a one-and-a-half meter wall; (3) run another forty meters; (4) perform a running or standing one-and-a-half-meter broad jump; (5) run another forty meters; (6) climb up two flights of stairs; (7) climb down two flights of stairs; and (8) move a

[1] 29 U.S.C. § 701.
[2] Pub. L. No. 95-454, 92 Stat. 1111.
[3] Award at 14.

dummy weighing 150 pounds forty meters from the base of the steps. The Agency's policy is to refer an employee who cannot pass any of the three tests to the Agency's human resources department (human resources) for reasonable accommodation of a long-term medical restriction or disability.

The Union filed a grievance alleging that the testing requirement discriminates against persons with disabilities, in violation of the Rehabilitation Act. In pertinent part, the Rehabilitation Act prohibits federal agencies from "using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities," unless the standard, test, or criterion, "is shown to be job-related for the position in question and is consistent with business necessity."[4] In its grievance, the Union alleged that the testing requirement violates the Rehabilitation Act because it tends to screen out individuals with disabilities such as asthma and "those affecting the upper and lower extremities," and is neither job-related nor consistent with business necessity.[5]

In its grievance, the Union also claimed that the testing requirement violates the CSRA. The CSRA provides, in pertinent part, that "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not . . . discriminate for or against any employee or applicant for employment . . . as prohibited under . . . the Rehabilitation Act."[6] The Union argued that the testing requirement implicated the CSRA because, by implementing that requirement, an Agency employee took a personnel action discriminating against employees in violation of the Rehabilitation Act.

According to the Arbitrator, the parties stipulated that "only the annual requirements set forth at Sections 4g and 5 through 9 of [the procedure] were at issue."[7] Thus, the Arbitrator considered only whether the testing requirement violates the Rehabilitation Act and the CSRA. The Arbitrator noted that the Union also challenged the legality of the examination requirement, but she found that issue was not before her because that requirement is found at Section 4c of the procedure.

The Arbitrator concluded that the testing requirement does not violate either the Rehabilitation Act or the CSRA because it does not screen out, or tend to screen out, individuals with a disability, or a class of individuals with disabilities. She reasoned that "[t]here are numerous accommodations" built into the requirement, including "the opportunity to repeat [the basic] test, to take [the] alternate test, to take [the] appeal test, and to be referred to [h]uman [r]esources for a reasonable accommodation."[8] Moreover, the Arbitrator found that no one has either lost his or her job, or required a referral to human resources for a reasonable accommodation, since the Agency first implemented the testing requirement in 2011. Even employees with disabilities such as asthma and knee problems, she found, successfully passed either the basic, alternate, or appeal test. Given her determination that the testing requirement did not screen out, or tend to screen out, individuals with disabilities, the Arbitrator found it unnecessary to determine whether the requirement is job-related and consistent with business necessity.

The Union filed exceptions to the Arbitrator's award, and the Agency filed an opposition to the Union's exceptions.

III. Preliminary Matter: Sections 2425.4(c) and 2429.5 of the Authority's Regulations do not bar the Union's exceeded-authority exception.

The Union asserts that the Arbitrator exceeded her authority when she failed to determine whether the examination requirement violates the Rehabilitation Act and the CSRA.[9] Specifically, the Union claims that the parties "intended to submit the [examination-requirement] issue" to the Arbitrator, but the Arbitrator "misconstrued" their stipulation of the issue.[10] According to the Union, the parties agreed that the issue would be "whether the requirements of [the procedure] violate the Rehabilitation Act and[] the [CSRA]."[11] And while they "agreed that issues relating to pre-employment and promotional exams were not at issue," the parties "at no time agreed to exclude . . . the [examination requirement]" from the issue to be decided by the Arbitrator.[12]

The Agency contends that the Authority should dismiss this exception under § 2429.5 of the Authority's Regulations because the Union failed to raise this argument before the Arbitrator.[13] According to the Agency, the Arbitrator "clearly indicated . . . that she would be deciding the issue based on the parties' stipulation that only the annual requirements found at Sections 4g, 5, 6, 7, 8, and 9 of the [procedure] were at issue."[14] The Agency argues that the Union could have

[4] 42 U.S.C. § 12112(b)(6).
[5] Award at 26.
[6] 5 U.S.C. § 2302(b)(1)(D).
[7] Award at 25 n.4.
[8] *Id.* at 35.
[9] Exceptions at 17-18.
[10] *Id.* at 18.
[11] *Id.*
[12] *Id.*
[13] Opp'n at 11-12.
[14] *Id.* at 11.

corrected, but did not correct, the Arbitrator's statement of the issue.[15]

Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any evidence or arguments that could have been, but were not, presented to the arbitrator.[16] However, when an issue arises from the issuance of the award and could not have been presented to the arbitrator, §§ 2425.4(c) and 2429.5 do not preclude a party from raising that issue on exceptions.[17] Here, the record shows that – after stipulating to the scope of the issue[18] – both parties made opening statements discussing the examination requirement at the arbitration hearing.[19] In addition, the Union questioned witnesses,[20] and the Agency submitted documentary evidence,[21] with respect to that requirement at the hearing. Moreover, both parties addressed the issue in their post-hearing briefs.[22] The record does not indicate that the Arbitrator at any point notified the parties that she considered the examination requirement to fall outside the scope of the stipulated issue. Therefore, the record provides no basis for finding that the Union was on notice of the Arbitrator's position on this matter until the issuance of the award. Thus, the Union had no earlier opportunity to challenge the Arbitrator's failure to address the legality of the examination requirement,[23] and we find that §§ 2425.4(c) and 2429.5 do not bar the Union's exceeded-authority exception.

IV. Analysis and Conclusions

A. The Arbitrator did not exceed her authority.

As noted above, the Union claims that the Arbitrator exceeded her authority when she failed to determine whether the examination requirement violates the Rehabilitation Act and the CSRA.[24] As relevant here, an arbitrator exceeds his or her authority when he or she fails to resolve an issue submitted to arbitration.[25] In determining whether an arbitrator has exceeded his or her authority, the Authority accords an arbitrator's interpretation of a stipulated issue the same substantial deference that it accords an arbitrator's interpretation and application of a collective-bargaining agreement.[26] Under the deferential "essence" standard that the Authority applies to an arbitrator's interpretation of a collective-bargaining agreement, the Authority will uphold the arbitrator's interpretation unless the interpretation: (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 collective-bargaining 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.[27]

Here, the parties stipulated that only Sections 4g and 5 through 9 of the procedure were at issue at arbitration.[28] Those sections do not contain the examination requirement,[29] but only mention that Agency employees must fulfill the testing requirement upon completion of the examination requirement.[30] The Arbitrator found that the examination requirement is contained in Section *4c* of the procedure (a finding that, as discussed in Section IV.B. below, the Union has not shown to be a nonfact), and that Section 4c was not one of the sections contained in the stipulated issue.[31] For these reasons, it was not irrational, unfounded, implausible, or in manifest disregard of the stipulation for the Arbitrator to conclude that the examination requirement was not before her. Accordingly, we deny the Union's exceeded-authority exception.[32]

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[15] *Id.* at 11-12.
[16] 5 C.F.R. §§ 2425.4(c), 2429.5; *see also U.S. DOL*, 67 FLRA 287, 288 (2014); *AFGE, Local 3448*, 67 FLRA 73, 73-74 (2012).
[17] *U.S. Dep't of VA, Veterans Canteen Serv., Dayton, Ohio*, 66 FLRA 985, 988 (2012).
[18] *See* Exceptions, Ex. C, Tr. at 5-6.
[19] *See id.* at 7-8, 10-12 (Union's opening statement), 17 (Agency's opening statement).
[20] *See, e.g., id.* at 58-61, 83-84, 146-50.
[21] *See generally* Exceptions, Ex. K, U.S. OPM, Optional Form 178, Certificate of Med. Examination (July 2009); Exceptions, Ex. M, U.S. DOD, Under Sec'y of Def. for Acquisition, Tech. and Logistics, Occupational Med. Examinations and Surveillance Manual (Sept. 16, 2008).
[22] *See* Exceptions, Ex. D, Union's Post-Hr'g Br. at 10-28; Opp'n, Attach. 7, Agency's Post-Hr'g Br. at 10-11.
[23] *Cf. NAIL, Local 17*, 68 FLRA 97, 98 (2014) (where arbitrator raised issue in award sua sponte, union could not have raised its contrary-to-law exception on that issue before the arbitrator and was not precluded from doing so before the Authority under §§ 2425.4(c) and 2429.5).
[24] Exceptions at 17-18.
[25] *U.S. Dep't of the Treasury, IRS*, 66 FLRA 325, 331 (2011).
[26] *See U.S. Dep't of the Army, Army Tank-Automotive Command*, 67 FLRA 14, 17 (2012).
[27] *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990).
[28] Award at 25 n.4.
[29] Exceptions, Ex. B., Navy Region Sw. Operations, Force Protection Non-Guard Services Standard Operating Procedures 4029b: Physical Agility Testing for DON 0083 and 0085 Series Personnel, 2-3 & 5-7 (Nov. 13, 2013).
[30] *Id.* at 2.
[31] Award at 25 n.4.
[32] *E.g., U.S. Dep't of VA Med. & Reg'l Ctr., Togus, Me.*, 55 FLRA 1189, 1191 (1999) (exceeded-authority exception

B. The award is not based on nonfacts.

The Union also argues that the award is based on two nonfacts.[33] To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[34] In addition, neither an arbitrator's legal conclusions, nor an arbitrator's conclusions based on his or her interpretation of a collective-bargaining agreement, may be challenged as nonfacts.[35]

First, the Union disputes the Arbitrator's conclusion that the examination requirement is "only found in Section 4c" of the procedure.[36] But the Union provides no basis for finding that the Arbitrator's interpretation of the procedure is a "fact" underlying the award.[37] Accordingly, we find that this argument does not provide a basis for finding that the award is based on a nonfact.

Second, the Union claims that the Arbitrator erroneously found that, based on the parties' stipulation, only the testing requirement was before her.[38] As mentioned in Section IV.A. above, the Union has not shown that the Arbitrator's interpretation of the stipulated issue was irrational, unfounded, implausible, or in manifest disregard of the stipulation. Therefore, even assuming that the interpretation of a stipulation may be challenged on nonfact grounds, there is no basis for finding that the Arbitrator clearly erred in her interpretation of the stipulation. Accordingly, we find that this claim does not demonstrate that the award is based on a nonfact.[39]

C. The award is not contrary to law.

The Union claims that the award is contrary to the Rehabilitation Act and the CSRA.[40] When an exception involves an award's consistency with law, rule, or regulation, the Authority reviews any question of law raised by the exception and the award de novo.[41] In applying the standard of de novo review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[42] The Authority defers to the Arbitrator's underlying factual findings unless the appealing party establishes that those findings are "nonfacts."[43]

1. The award is not contrary to the Rehabilitation Act.

The Union argues that the award is contrary to the Rehabilitation Act because the Arbitrator erroneously found that the Agency's testing requirement does not screen out, or tend to screen out, individuals with disabilities.[44] As an initial matter, the Agency claims this is a "factual finding" to which the Authority should defer.[45] We assume, without deciding, that this is a legal question, and we review the Arbitrator's conclusion de novo.[46] But, for the reasons stated below, we find that the Union has not shown that the award is contrary to the Rehabilitation Act.

First, according to the Union, the existence of multiple physical-agility tests in the procedure indicates that the procedure violates the Rehabilitation Act.[47] Specifically, the Union claims that the plain wording of the Agency's procedure "is significant," asking: "If the standard [physical-agility test] did not screen out disabled individuals[, then] why would an alternate [physical-agility test] exist?"[48] And the Union claims that the existence of the appeal test, and the option to refer an employee to human resources for reasonable

denied where arbitrator's interpretation of stipulated issue was not irrational, unfounded, implausible, or in disregard of the stipulation); *cf. U.S. DOD, Dependents Sch.*, 49 FLRA 658, 663 (1994) (exceeded-authority exception denied because arbitrator's formulation of issue did not disregard the issue and was not implausible, unfounded, or irrational).

[33] Exceptions at 12-16.

[34] *E.g., U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593 (1993).

[35] *United Power Trades Org.*, 67 FLRA 311, 315 (2014) (*United Power*); *SSA, Balt., Md.*, 57 FLRA 538, 540 (2001).

[36] Exceptions at 16.

[37] *See U.S. DHS, CBP*, 68 FLRA 157, 161 (2015) ("An arbitrator's interpretation of an agency regulation is a legal conclusion that cannot be challenged as a nonfact."); *cf. United Power*, 67 FLRA at 315 (interpretation of parties' agreement cannot be challenged as nonfact); *SPORT Air Traffic Controllers Org.*, 64 FLRA 606, 608-09 (2010) (interpretation of law cannot be challenged as nonfact).

[38] Exceptions at 16.

[39] *See, e.g., U.S. DHS, U.S. CBP*, 68 FLRA 253, 259 (2015) (denying nonfact exception where agency failed to identify a clearly erroneous central fact underlying the award); *AFGE, Local 3495*, 60 FLRA 509, 512 (2004) (same).

[40] Exceptions at 4-11.

[41] *U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Nat'l Weather Serv.*, 67 FLRA 356, 358 (2014) (citing *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995)).

[42] *Id.* (citing *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998)).

[43] *U.S. DHS, U.S. CBP, Brownsville, Tex.*, 67 FLRA 688, 690 (2014) (citing *U.S. Dep't of the Treasury, IRS, St. Louis, Mo.*, 67 FLRA 101, 104 (2012)).

[44] Exceptions at 4-7.

[45] Opp'n at 14.

[46] *See U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Nat'l Weather Serv.*, 67 FLRA 356, 358 (2014) (citing *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995)) ("When an exception involves an award's consistency with law, rule, or regulation, the Authority reviews any question of law raised by the exception and the award de novo.").

[47] *See* Exceptions at 6-7.

[48] *Id.* at 6.

accommodation, are further evidence that the testing requirement tends to screen out individuals with disabilities.[49] Second, the Union alleges that, "[a]t a minimum," the testing requirement "diminish[es] disabled individuals' chances of retaining their job positions and job duties."[50] It cites the example of an individual who was cleared by her physician to take the alternate test, but not the basic test.[51] Although the individual "passed the alternate [test]," the Union contends, "undoubtedly the [procedure]'s requirements placed additional burdens upon her due to her disability and diminished her chances of remaining a full-duty detective."[52] In support of this argument, the Union cites *Guckenberger v. Boston University*.[53] In that case, a U.S. district court found that a university violated the public-accommodation provisions of the Americans with Disabilities Act of 1990[54] (ADA) when it imposed documentation requirements for disability-accommodation requests that tended to screen out disabled students.[55] Although the plaintiffs in that case met the documentation requirements, the court nevertheless found the requirements to be "unnecessarily burdensome" to disabled students.[56] Third, the Union asserts that, while "no employee has been fired because he/she cannot pass" the testing requirement, that fact alone "does not lead to a finding that disabled individuals are not unduly burdened by these requirements."[57]

As discussed above, the Rehabilitation Act, in pertinent part, prohibits federal agencies from "using qualification standards, employment tests[,] or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities," unless the standard, test, or criterion "is shown to be job-related for the position in question and is consistent with business necessity."[58] Thus, the Rehabilitation Act "makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate" in a program or activity.[59] As the Union acknowledges,[60] in resolving whether an award is contrary to the Rehabilitation Act, the Authority applies the standards of the ADA because Congress specifically incorporated the ADA's standards for determining whether there has been disability discrimination into the Rehabilitation Act.[61] And, in the ADA context, courts have found no violation where there is no evidence that the standard, test, or other criteria actually screened out any disabled individual.[62]

Here, the Arbitrator concluded that the testing requirement does not screen out, or tend to screen out, individuals with disabilities. In particular, she emphasized that "[t]here are numerous accommodations" built into the testing requirement, including "the opportunity to repeat [the basic] test, to take [the] alternate test, to take [the] appeal test, and to be referred to [h]uman [r]esources for a reasonable accommodation."[63] The Union cites no legal support for its claim that the existence of these accommodations indicates that the testing requirement is discriminatory. In fact, these built-in accommodations for disabled individuals lend support to a conclusion that the testing requirement, as a whole, does not screen or tend to screen them out.

Further, the Union offers no evidence to support its assertion that the testing requirement "diminish[es] disabled individuals' chances of retaining their job positions and job duties."[64] Indeed, the only example that the Union cites to support this argument is an individual who passed the alternate test.[65] The Union also offers no support for its allegation that the testing requirement "undoubtedly . . . placed additional burdens" on that individual "due to her disability and diminished her chances of remaining a full-duty detective."[66] Although the Union cites *Guckenberger v. Boston University*, its reliance on that decision is misplaced. Whereas the plaintiffs in that case established that the university's policy "unnecessarily burden[ed]" disabled students, the Union has failed to make a similar showing with respect to the Agency's testing requirement.[67]

Moreover, the Arbitrator found that no Agency employee has either lost his or her job or required a referral to human resources for a reasonable accommodation since the testing requirement was first implemented in 2011.[68] Even employees with disabilities such as asthma and knee problems, the Arbitrator found, successfully passed either the basic, alternate, or appeal

[49] *Id.* at 7.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] 974 F. Supp. 106 (D. Mass. 1997).
[54] 42 U.S.C. §§ 12101-12213.
[55] *Guckenberger*, 974 F. Supp. at 135-38.
[56] *Id.* at 135.
[57] Exceptions at 7.
[58] 42 U.S.C. § 12112(b)(6).
[59] *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980, 996 (N.D. Cal. 2010) (internal quotation mark omitted); *see also Doukas v. Metro. Life Ins. Co.*, 950 F. Supp. 422, 426 (D.N.H.1996).
[60] Exceptions at 4.
[61] *See* 29 U.S.C. § 791(f); *see also OPM*, 61 FLRA 358, 361 (2005).
[62] *EEOC v. Hibbing Taconite Co.*, 720 F. Supp. 2d 1073, 1084-85 (D. Minn. 2010) (holding that pre-employment test did not violate ADA).
[63] Award at 35.
[64] Exceptions at 7.
[65] *Id.*
[66] *Id.*
[67] *Guckenberger*, 974 F. Supp. at 135.
[68] Award at 35.

test.[69] And the Union has not challenged these findings as nonfacts. Accordingly, the Union has provided no basis for concluding that the testing requirement screens out, or tends to screen out, any individuals with disabilities, or a class of individuals with disabilities. Therefore, we reject the Union's arguments regarding the Rehabilitation Act.

2. The award is not contrary to the CSRA.

The Union also argues that the award is contrary to the CSRA because the Arbitrator failed to find that an Agency program director violated the Rehabilitation Act, and therefore the CSRA, by implementing the procedure.[70] As discussed above, the CSRA provides, in pertinent part, that "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not . . . discriminate for or against any employee or applicant for employment . . . as prohibited under . . . the Rehabilitation Act."[71] The Union's CSRA claim is premised on its Rehabilitation Act claim. As we have found that the Arbitrator did not err in concluding that the Agency did not violate the Rehabilitation Act, we further reject the Union's CSRA claim.

D. We deny the Union's attorney-fee request.

The Union also asks the Authority to find that it is the prevailing party and to award it attorney fees.[72] The Authority has long held that the expenditure of funds by a federal agency to pay attorney fees must be pursuant to specific statutory authorization.[73] Under the Rehabilitation Act, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."[74] Generally, a plaintiff may be considered a prevailing party if he or she "succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."[75] Because we have denied the Union's exceptions, the Union is not the prevailing party. Accordingly, we deny the Union's attorney-fee request.[76]

V. Decision

We deny the Union's exceptions.

[69] *Id.*
[70] Exceptions at 10.
[71] 5 U.S.C. § 2302(b)(1)(D).
[72] Exceptions at 19.
[73] *U.S. Dep't of VA, Veterans Integrated Serv. Network, 7 Network Bus. Office, Duluth, Ga.*, 60 FLRA 122, 123 (2004).
[74] 29 U.S.C. § 794a(b).
[75] *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (internal quotation mark omitted).
[76] *See Haas v. Wyo. Valley Health Care Sys.*, 553 F. Supp. 2d 390, 392 (M.D. Pa. 2008) (denying attorney-fee request where court rejected plaintiff's Rehabilitation Act claim).