



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

OALJ 16-18

DEPARTMENT OF VETERANS AFFAIRS  
ATLANTA VETERANS AFFAIRS MEDICAL CENTER  
DECATUR, GEORGIA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2778

CHARGING PARTY

Case No. AT-CA-15-0567

Ayo A. Glanton  
For the General Counsel

Kevin L. Jones  
For the Respondent

JoAnne Iyamu  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On January 25, 2016, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA/Authority), issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, Atlanta Veterans Affairs Hospital\*, Decatur, Georgia (Respondent), violated § 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent failed to respond to the Union's request for information and failed to provide the requested information.

---

\* I have changed the case caption/name in my decision to read as the Atlanta Veterans Affairs *Medical Center*, instead of "Hospital" as listed on the Complaint and Notice of Hearing, but corrected on subsequent pleadings, as that is the correct name of the Respondent's facility in Decatur, Georgia.

The Complaint indicated that a hearing on the allegations would be held on March 15, 2016, and advised the Respondent that an Answer to the Complaint was due no later than February 22, 2016. The Complaint was served by first class mail on Respondent's agent, Kevin Jones, Chief, Human Resources Management Service, Department of Veterans Affairs, Atlanta Veterans Affairs Medical Center, 1670 Clairmont Road, Decatur, GA 30033, and the Respondent failed to file an Answer to the Complaint.

On March 1, 2016, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment based upon the Respondent's failure to file an Answer to the Complaint, contending that by application of 5 C.F.R. § 2423.20(b), the Respondent admitted all of the allegations set forth in the Complaint. Accordingly, the GC contends that there are no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) is proper. The Respondent failed to file a response to the motion for summary judgment. On March 7, 2016, I indefinitely postponed the hearing and cancelled the prehearing conference call. I am issuing my final ruling and decision in this matter, the hearing is hereby cancelled.

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

The relevant portion of the Authority's Rules and Regulations 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 the required documents. *See, e.g.*, sections 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 Respondent was required to file an Answer to the Complaint.

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. Envtl. Prot. Agency, 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 the failure to do so. In *U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008), the Authority held that the agency's misfiling of a complaint, resulting in its filing an answer two weeks after the deadline, did not demonstrate "extraordinary circumstances" that might constitute "good cause" for the late filing. *See also U.S. Dep't of VA Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996) and the cases cited therein. Moreover, after the General Counsel 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. Given the Respondent's failure to respond to the complaint or the motion for summary judgment, and the absence of good cause for such failures, application of the admission provision of 5 C.F.R. § 2423.20(b) is appropriate. Thus, Respondent has admitted each of the allegations set forth in the Complaint. Accordingly, there are no disputed factual issues and summary judgment in favor of the General Counsel is granted.

Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

#### FINDINGS OF FACT

1. The Department of Veterans Affairs, Atlanta Veterans Affairs Medical Center, Decatur, Georgia (Respondent) is an agency under § 7103(a)(3) of the Statute.
2. The American Federation of Government Employees (AFGE) is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.
3. AFGE Local 2778 (Union) is an agent of AFGE for the purpose of representing employees within the bargaining unit.
4. The Union filed the charge in Case No. AT-CA-15-0567 with the Atlanta Regional Director on May 26, 2015.
5. A copy of the charge was properly served on the Respondent.
6. At all material times, Judy Edge held the position of Associate Nurse Executive, Perioperative Services/Chief of SPS, Nursing and Patient Care for the Respondent and is an agent of Respondent acting upon its behalf.
7. On or about April 22, 2015, the Union, through Acting President JoAnne Iyamu, submitted an information request seeking all supporting documents and emails related to the detail of bargaining unit employee Rose Marie Dickens from the Operating Room (Surgical Tech) to Sterile Processing Service (SPS) and General Supply Logistics (GSL).

8. The information described in paragraph 7 is normally maintained by the Respondent in the regular course of business.
9. The information described in paragraph 7 is reasonably available.
10. The information described in paragraph 7 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.
11. The information described in paragraph 7 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, related to collective bargaining.
12. The information described in paragraph 7 is not prohibited from disclosure by law.
13. On or about April 30, 2015, after not hearing from the Respondent concerning the pending information request described in paragraph 7, the Union sent a follow-up request.
14. Since April 22, 2015, the Respondent has not replied to the Union's requests for information.
15. Since April 22, 2015, the Respondent has failed and refused to furnish the Union with the information requests set forth in paragraphs 7 and 13.
16. By the conduct described in paragraphs 14 and 15, the Respondent failed to comply with § 7114(b)(4) of the Statute.
17. By the conduct described in paragraphs 14, 15 and 16, the Respondent has failed and refused to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.
18. By the conduct described in paragraphs 14, 15 and 16, the Respondent violated § 7116(a)(1) and (8) of the Statute.

### **CONCLUSIONS OF LAW**

By the conduct described in the facts set forth in the Complaint containing allegations to which the Respondent failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it did not respond to the Union's multiple requests for information. Therefore, the Respondent violated § 7116(a)(1), (5) and (8) of the Statute.

As a remedy, the Respondent is ordered to cease and desist from failing to respond to information requests from the Union and refusing to provide information to the Union when a particularized need is established. The Respondent is ordered to post a notice, signed by the Respondent's Director, using bulletin boards and electronic mail, and to provide the Union with the information requested on April 22, 2105, and again on April 30, 2015.

### ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118(a)(7) of the Federal Service Labor-Management Relations Statute (Statute), the Department of Veterans Affairs, Atlanta Veterans Affairs Medical Center, Decatur, Georgia, shall:

1. Cease and desist from:

(a) Failing to respond to information requests and refusing to furnish information requested by the American Federation of Government Employees, Local 2778 (Union).

(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 actions in order to effectuate the purposes and policies of the Statute:

(a) Provide the information requested by the Union on April 22, 2015 and again on April 30, 2105, concerning the detail of a bargaining unit employee.

(b) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt, they shall be signed by the Director of the Veterans Affairs Medical Center, Decatur, Georgia, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other 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 any other material.

(c) In addition to physical posting of paper notices, Notices shall be distributed electronically, such as by email, posting on an intranet or internet site, or other electronic means, if such are customarily used to communicate with employees.

(d) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., March 14, 2016



CHARLES R. CENTER  
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, Atlanta Veterans Affairs Medical Center, Decatur, Georgia, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

**WE WILL NOT** fail to respond to information requests and refuse to furnish information requested by the American Federation of Government Employees, Local 2778 (Union).

**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** provide the information requested by the Union on April 22, 2015 and again on April 30, 2015, concerning the detail of a bargaining unit employee.

\_\_\_\_\_  
(Agency/Respondent)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) (Title)

This Notice must remain posted for sixty (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, Atlanta Region, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.