

70 FLRA No. 74

SPORT AIR TRAFFIC CONTROLLERS
ORGANIZATION
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
EDWARDS AIR FORCE BASE, CALIFORNIA
(Agency)

0-AR-5225
(70 FLRA 274 (2017))

ORDER DENYING
MOTION FOR RECONSIDERATION

December 15, 2017

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members

I. Statement of the Case

Arbitrator Richard B. Danehy found that the Agency's denial of the grievant's reimbursement request for medical tests related to maintaining his air-traffic-controller certification was not contrary to an Office of Personnel Management (OPM) regulation, 5 C.F.R. § 339.304. In 2016 – when the Union filed the grievance – § 339.304 provided: “Agencies shall pay for all examinations ordered or offered under this subpart” and employees pay for exams “where the purpose of the examination is to secure a benefit sought by the applicant or employee.”¹ Filing exceptions, the Union alleged that the award was contrary to this regulation.

In *Sport Air Traffic Controllers Organization (SATCO)*,² the Authority denied the Union's exceptions and held that the regulation does not obligate the Agency to reimburse the grievant for the medical tests at issue in the case. Agreeing with the Arbitrator, the Authority found that under the regulation: (1) the “[a]gency” that ordered the medical tests is the Federal Aviation Administration (FAA), not the Agency, as the FAA is in charge of the recertification process;³ and (2) although the medical tests may benefit the

Agency, the retention of an employee's job “secure[s] a benefit” sought by the employee.⁴ The Authority also found that the revised version of § 339.304 “does not alter [its] opinion” concerning the proper interpretation of § 339.304.⁵

The Union now files a motion for reconsideration (motion) of the Authority's decision in *SATCO* under § 2429.17 of the Authority's Regulations, alleging errors in the Authority's factual findings and conclusions of law.⁶ In its motion, the Union also requests that the Authority stay *SATCO* while the Authority considers the motion.

The primary substantive question before us is whether the Union's arguments that the Authority erred in its factual and legal determinations establish extraordinary circumstances warranting reconsideration of *SATCO*. Because the Union's arguments attempt merely to relitigate the Authority's conclusions in *SATCO*, the answer is no. Further, because denying the Union's motion renders the stay request moot, we deny the stay request.

II. Analysis and Conclusion: We deny the motion for reconsideration and the stay request.⁷

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to move for reconsideration of an Authority decision.⁸ The Authority has repeatedly recognized that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.⁹ Errors in the Authority's remedial order, process, conclusions of law, or factual findings may justify granting reconsideration.¹⁰ But attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances warranting reconsideration.¹¹

⁴ *Id.* (quoting § 339.304).

⁵ *Id.*

⁶ 5 C.F.R. § 2429.17.

⁷ The Agency requested permission to file – and did file – an opposition to the Union's motion. We grant the Agency's request. See 5 C.F.R. § 2429.26 (the Authority “may in [its] discretion grant leave to file” documents other than those specifically listed in the Authority's Regulations).

⁸ 5 C.F.R. § 2429.17.

⁹ *E.g., U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000).

¹⁰ *E.g., Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010).

¹¹ *Bremerton Metal Trades Council*, 64 FLRA 543, 545 (2010) (*Bremerton*) (Member DuBester concurring).

¹ 5 C.F.R. § 339.304 (2016).

² 70 FLRA 274 (2017).

³ *Id.* at 276 (citing Award at 9).

The Union makes three arguments to support its motion for reconsideration. First, it asserts that the Authority made a factual error by determining “that the FAA[,] not the Agency[,] sets the standards and implements the physical and medical exams for [air-traffic-control specialists (ATCs)].”¹² Rather, the Union argues that because the Agency “chose to require the ATCs to maintain an FAA [certificate],” the Agency must pay for the additional tests.¹³ Second, the Union argues that the Authority made a legal error by determining that: (1) the FAA is the lone “agency” under § 339.304 – rather than the Agency – that “order[ed] or offer[ed]” the medical tests and must pay for them;¹⁴ and (2) the medical tests enable an employee to “secure a benefit” through “retention of the employee’s job” because, in the Union’s view, the Agency requires the additional tests as a condition of employment.¹⁵ Lastly, the Union contends that the Authority erred by determining that the revised version of § 339.304 does not require the Agency to pay for the additional tests.¹⁶ More specifically, the Union argues that the revised version of § 339.304 clarifies that “OPM never intended that retention of an employee’s job would relieve the [A]gency from paying for” the additional tests, and that “[a]gencies [must] pay for diagnostic procedures and special evaluations.”¹⁷

These are the same arguments that the Union raised,¹⁸ and the Authority rejected,¹⁹ in *SATCO*. In particular, the Authority thoroughly explained why the FAA is the “[a]gency” that ordered the additional tests, not the Agency.²⁰ The Authority also discussed that although the additional tests benefit the Agency, retention of the employee’s job “secure[s] a benefit sought by the . . . employee.”²¹ Moreover, the Authority described in detail why the revised version of § 339.304 “d[id] not alter [its] opinion.”²² And neither does it change the Authority’s opinion here.

Consistent with the standards described earlier, attempts to relitigate the conclusions in *SATCO* do not establish extraordinary circumstances warranting reconsideration of that decision.²³ Therefore, we find that the Union does not demonstrate that extraordinary

circumstances exist to support granting reconsideration of *SATCO*, and we deny the Union’s motion.

Finally, because our denial of the Union’s motion renders the Union’s stay request moot, we deny that request as well.²⁴

III. Order

We deny the Union’s motion for reconsideration and its request for a stay.

¹² Mot. for Recons. at 3 (quoting *SATCO*, 70 FLRA at 276).

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5 (quoting *SATCO*, 70 FLRA at 276).

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ See Exceptions at 6-8; Union’s Supp. Submission at 2.

¹⁹ See *SATCO*, 70 FLRA at 276.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See *Bremerton*, 64 FLRA at 545.

²⁴ See, e.g., *U.S. DHS, U.S. CBP*, 68 FLRA 807, 809 & n.29 (2015) (citing *U.S. Dep’t of the Treasury, IRS*, 67 FLRA 58, 60 (2014)) (“Because we have denied the Agency’s motion for reconsideration, the stay request is moot, and we deny it.”).