



DEPARTMENT OF VETERANS AFFAIRS  
Veterans Health Administration  
Washington DC 20420

JAN 14 2010

In Reply Refer To:

**Decision in the Discharge of Yvonne Glover, R.N.**

On January 21, 2009, a Disciplinary Appeals Board convened to hear the appeal in connection with the discharge of Yvonne Glover, R.N., from the VA Medical Center, Durham, North Carolina. The appellant was a full-time permanent employee who had completed her probationary period at the time of the suspension. The charges, patient abuse and violation medical center policy on patient abuse, upon which the action is based, in whole or in part, involved issues of professional conduct and competence and the appeal was timely filed. Therefore, I find the Board properly concluded they had jurisdiction over this appeal.

The appellant was charged with two charges arising out of an incident in which she was alleged to have forcibly removed a patients' clothing and left the patient in seclusion unclothed for 45 minutes. The incident constituted patient abuse and violation of the Durham VA Medical Center policy on patient abuse.

In reviewing this case, the Board determined that charge of patient abuse was sustained in part. Indicating that the appellant was responsible only for leaving the patient in seclusion unclothed for 45 minutes. The charge of violating VA Medical Center policy on patient abuse was not sustained. After sustaining one charge in part, and considering the egregious nature of the charge, the Board concluded that the discharge was inappropriate. The Board recommends that the appellant's discharge be rescinded the appellant is given a 30-day suspension.

After careful consideration of all the evidence, including the Board's analysis and findings, it is my determination that the Board's decision is not supportable. It is my decision to overturn the Board's decision and the employee is reinstated to her position as a registered nurse at the VA Medical Center, Durham, North Carolina.

The appellant's removal will be cancelled and removed from your Official Personnel Folder within two (2) weeks of this decision. In addition, you will be paid the appropriate amount of back pay owed not later than 60 calendar days after the date of receipt of this decision letter. You are directed to cooperate in providing necessary information to management to determine the appropriate back pay amount.

Page 2.

Decision in the Discharge of Yvonne Glover R.N.

The Director of the VA Medical Center, Durham, North Carolina will provide written notice to the Office of Human Resources Management, Employee Relations and Performance Management Service (051), of the date when specific actions are taken to implement this decision.

In the appellant's request for a hearing before the Disciplinary Appeals Board, there was a request for attorney fees to be paid. Please see the enclosed information outlining the correct procedures in requesting attorney fees.

This is the final administrative action in this matter.

A handwritten signature in black ink, appearing to read "Robert A. Petzel", with a stylized flourish at the end.

Robert A. Petzel, MD  
Acting Principal Deputy Under Secretary for Health

Enclosures

## Request for Award of Attorney's Fees

The Back Pay Act authorizes the payment of attorney fees in connection with the correction of a personnel action which is determined to be unjustified or unwarranted. 5 U.S.C. § 5596(b)(1)(A)(ii). This authority also applies to Disciplinary Appeals Board proceedings and allows for the payment of attorney's fees if the employee is a prevailing party, the award of fees is in the interest of justice, and the amount of the fees are reasonable. To be considered "in the interest of justice" the personnel action must have been clearly without merit or wholly unfounded or initiated in bad faith or the employee was substantially innocent. Because the decision executed by the Deputy Under Secretary for Health mitigated or overturned the agency's action, you may be entitled to payment of such fees.

Should you decide to request an award of attorney's fees, your request must be submitted to the Under Secretary for Health, at the address indicated below, within 30 days of your receipt of this decision and contain the following information and documentation:

- a. A verified statement of costs and attorney's fees accompanied by an affidavit from your attorney itemizing your charges for legal services. Specifically, the affidavit should chronologically detail the dates on which services were rendered, the person providing such services, the nature and extent of the services performed, and the number of hours expended. To be compensable, such services must be documented by contemporaneous billing records prepared the same day on which the services were actually provided. Consequently, copies of your attorney's billing records must accompany both the affidavit and verified statement;
- b. A statement as to your attorney's customary hourly charge, as well as the usual and customary hourly charge for each person who worked on this case. It should, to the extent applicable, explain any distinction between in court and out of court fees, whether the fee was fixed or contingent, the nature and length of the professional relationship, and any other factors which might affect the amount of attorney's fees in this case. The affidavit must describe the training and experience of each person who worked on this case, and the date of bar membership as applicable;
- c. Affidavits from other attorneys attesting to the prevailing market rate in your area for similar services, and any evidence regarding hourly rates that you have been awarded in prior cases. You must also submit a copy of the fee agreement with your attorney; and
- d. Any documentation (bills, receipts, invoices, *etc.*) to support any charges for costs billed to the client.

If you and your representative wish to negotiate a settlement of the attorney's fee award with the facility director or staff office head, rather than having the award decided by the Under Secretary for Health, such an agreement must be reached prior to the issuance of a final decision by Under Secretary for Health. This decision will not be delayed because of settlement negotiations unless the complainant's attorney files a written request for an extension of time with the Under Secretary for Health.

A request for an award of attorney's fees must be submitted to the following office and address:

Under Secretary for Health (10)  
Department of Veterans Affairs  
810 Vermont, NW  
Washington, DC 20420