



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for December 29, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Cathedral M. Henderson

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2017-1071](#)

Docket Number: AT-0752-15-0860-I-1

Issuance Date: December 26, 2017

Indefinite Suspension

The appellant is a GS-13 Program Analyst at the Department of Veterans Affairs (VA) Health Eligibility Center. On July 8, 2015, he was indicted by a Federal grand jury on 50 counts of making false statements related to health care matters in violation of 18 U.S.C. § 1035, an offense punishable by fines, imprisonment, or both. The indictment alleged that the appellant had ordered VA employees under his direction to close over 2700 unresolved authorized consults for veterans to obtain medical care by an outside provider by falsely declaring the consults had been completed or refused by the patients, when he knew the consults were still pending and unresolved.

Following the indictment, on July 22, 2015, the VA proposed to indefinitely suspend the appellant. The proposal notice informed the appellant that the VA had reasonable cause to believe that he had committed a crime for which a

sentence of imprisonment could be imposed because he had been indicted on 50 counts of making false statements related to health care matters. The proposal notice further informed him that it was not in the agency's best interest to allow him to remain in a duty status during the law enforcement investigation and related judicial proceedings. After receiving the appellant's response, on August 7, 2015, the VA issued a decision sustaining the indefinite suspension until the completion of the judicial proceedings against the appellant.

On appeal to the Board, the administrative judge affirmed the indefinite suspension, finding that the grand jury indictment provided the VA with reasonable cause to believe that the appellant had committed a crime for which a punishment of imprisonment could be imposed. On review, the Board affirmed the initial decision.

Holding: The Court affirmed the Board's decision, stating that it has repeatedly made clear that an indictment for a crime for which a sentence of imprisonment may be imposed will, as a general rule, provide reasonable cause for an agency to believe that the employee has committed such a crime. The Court rejected the appellant's argument that the grand jury did not act as an independent arbiter of facts because employees of the VA allegedly supplied the testimony and evidence that it considered. The Court found that the record was devoid of any evidence suggesting that the Federal grand jury failed to independently and impartially weigh the evidence presented to it. The Court also rejected what it characterized as the appellant's unsupported assertion that the agency violated his due process rights by not providing him with adequate notice of the specific charges against him.

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