

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**EDWARD J. LOCKWOOD,**  
*Petitioner*

v.

**DEPARTMENT OF VETERANS AFFAIRS,**  
*Respondent*

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2017-1489

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Petition for review of an arbitrator's decision in FMCS  
No. 16-54073-7 by Charles G. Griffin.

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Decided: February 21, 2018

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STEPHEN E. JONES, Law Offices of Stephen E. Jones,  
P.C., Dallas, TX, argued for petitioner.

SEAN SIEKKINEN, Commercial Litigation Branch, Civil  
Division, United States Department of Justice, Washing-  
ton, DC, argued for respondent. Also represented by  
CHAD A. READLER, ROBERT E. KIRSCHMAN, JR., REGINALD  
T. BLADES, JR.

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Before TARANTO, BRYSON, and STOLL, *Circuit Judges*.

BRYSON, *Circuit Judge*.

Edward J. Lockwood petitions for review of an arbitration decision sustaining his indefinite suspension from employment with the Department of Veterans Affairs (“VA”). Because the arbitrator’s decision is supported by substantial evidence and is in accordance with law, we affirm.

## I

Mr. Lockwood is employed as a firefighter at the VA Medical Center near Alexandria, Louisiana. In July 2014, the VA police began an investigation into allegations that Mr. Lockwood was stalking female employees at the hospital facility.

As part of the investigation, a VA police officer filed a series of police investigative reports in October 2014. In the initial report, dated October 2, 2014, the officer recounted statements made by five individuals who reported that Mr. Lockwood had followed female employees around the medical campus; had entered an employee’s vehicle uninvited; had engaged in unwanted physical contact with one employee; and had “followed other employees off campus to their residences” and “followed other female employees around town.” Some of the women stated that Mr. Lockwood had made them feel uneasy and unsafe.

A follow-up report dated October 7, 2014, described additional allegations of stalking, including a statement from one employee that Mr. Lockwood’s constant presence had caused her anxiety and fear. She added that she could not work late when needed “due to the fact that he is constantly around and watching her.” In another report, the officer described an incident that he personally observed in which Mr. Lockwood sprinted toward an employee and then followed a few paces behind her before

abruptly leaving the area when he noticed the police officer's presence.

On October 15, 2014, two officers from the VA police department notified Mr. Lockwood that there was a warrant for his arrest and transported him to the local sheriff's office where he was booked on three counts of stalking. The VA police then turned their file over to the district attorney's office. The district attorney later charged Mr. Lockwood with four counts of stalking in violation of Louisiana Revised Statute 14:40.2.<sup>1</sup> The VA did not take any adverse employment action against Mr. Lockwood at that time.

In December 2015, a new allegation of stalking by Mr. Lockwood prompted a review of Mr. Lockwood's actions, which ultimately led to his suspension. On December 18, 2015, he was placed on paid administrative leave. Then, on January 12, 2016, the VA sent Mr. Lockwood a notice proposing to suspend him indefinitely "until the completion of the pending . . . judicial proceedings associated with the conduct referenced in paragraph 2."

Paragraph 2 of the notice stated the basis for the proposed indefinite suspension:

In July of 2014, the VA Police received several complaints from female employees of the Alexandria VA Healthcare System (AVAHCS) alleging that you were stalking them on VA property. The VA Police investigated the allegations and on October 15, 2014, you were arrested by the AVAHCS

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<sup>1</sup> The Louisiana statute defines stalking, in pertinent part, as the "intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress." A first conviction is punishable by a fine and term of imprisonment of 30 days to one year.

Police Department and were transported to the Rapides Parish Sheriff's Office where you were booked on three (3) counts of stalking. Following that arrest, you were charged with another count of stalking in connection with a fourth female employee at the Alexandria VA Health Care System. On October 21, 2014, you were formally charged with four counts of stalking under Louisiana Revised Statute 14:40.2, which is punishable by a mandatory prison sentence. Based on the information contained in the VA Police Investigative File, your subsequent arrest, and the nature of the charges pending against you, the Agency has reasonable cause to believe that you may have committed a crime for which a sentence of imprisonment may be imposed.

The notice continued: "Based on the seriousness of the offense and the incompatibility of the charges with your official duties . . . the alleged charges interfere with or adversely affect the Agency's mission as a whole. . . . Your continued presence at this facility poses a threat to its orderly operation." The proposed suspension was also supported by a memorandum from the Interim Health Care System Director, which addressed the 12 "*Douglas* factors" bearing on the choice of penalty.<sup>2</sup> The memorandum concluded that Mr. Lockwood posed a "continued threat to female employees," that he "has had numerous counselings," that his conduct has "apparently spanned several years," that the potential for his rehabilitation

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<sup>2</sup> In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the Merit Systems Protection Board listed 12 factors to "be considered in determining the appropriate penalty for the subject employee." *Tartaglia v. Dep't of Veterans Affairs*, 858 F.3d 1405, 1408 (Fed. Cir. 2017).

was “seemingly poor,” and that he could not operate effectively as a firefighter under these circumstances.

The notice of proposed indefinite suspension was issued pursuant to 5 U.S.C. § 7513. Under that statute, an agency may impose a serious penalty, such as indefinite suspension, “only for such cause as will promote the efficiency of the service.” *Id.* § 7513(a). When a disciplinary action is proposed, an employee is normally entitled to 30 days’ advance written notice “stating the specific reasons for the proposed action.” *Id.* § 7513(b)(1). However, a proviso commonly referred to as the “crime provision” permits the agency to shorten that notice period when “there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.” *Id.*; see 5 C.F.R. § 752.404(d)(1). In this case, the VA invoked the crime provision and reduced the length of the written notice period from the normal 30-day period and provided him with the statutory minimum of seven days to respond to the charges. See 5 U.S.C. § 7513(b)(2).

Mr. Lockwood orally responded to the notice on January 20, 2016. Two days later, the VA sustained the proposed indefinite suspension, effective January 27, 2016. The suspension was set to last “until the completion of the law enforcement investigation and any related judicial proceedings pertaining to this conduct.”

After an unsuccessful grievance proceeding, Mr. Lockwood invoked his right to arbitration. Following a hearing on August 18, 2016, the arbitrator upheld the suspension. In his opinion, the arbitrator rejected each of Mr. Lockwood’s challenges to the agency’s decision.

First, the arbitrator rejected Mr. Lockwood’s contention that it was improper for the agency to invoke the crime provision, which reduced his written notice period to less than 30 days. The arbitrator found that the agency had satisfied the statutory requirement for invoking

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