

NOTE: This disposition is nonprecedential.

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

JEAN KURIAKOSE,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2019-1274

Petition for review of the Merit Systems Protection Board in No. CH-1221-17-0287-W-2.

Decided: January 17, 2020

ARIEL E. SOLOMON, Solomon Law Firm, PLLC, Albany, NY, for petitioner.

NATHANAEL YALE, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC for respondent. Also represented by JOSEPH H. HUNT, ALLISON KIDD-MILLER, ROBERT EDWARD KIRSCHMAN, JR.

Before DYK, TARANTO, and CHEN, *Circuit Judges*.

TARANTO, *Circuit Judge*.

This appeal comes to us from the Merit Systems Protection Board. Appellant Jean Kuriakose worked as a part-time radiologist at the Department of Veterans Affairs' Health Care System in Ann Arbor, Michigan. According to her allegations at the Board, on December 6, 2013, she was sexually assaulted by a co-worker—who, the Board subsequently found, was placed on leave by the VA as soon as the incident was reported and whose employment was terminated shortly thereafter. In December 2014, Dr. Kuriakose resigned from her position at the VA. In 2017, after exhausting administrative remedies, she sought corrective action from the Board under the Whistleblower Protection Enhancement Act, 5 U.S.C. § 2303 *et seq.* (WPA), based on allegations that she had made certain protected disclosures to her supervisors and been subjected to several adverse personnel actions by the VA as a result. The Board rejected Dr. Kuriakose's request for corrective action, finding that Dr. Kuriakose had made one protected disclosure that resulted in an adverse personnel action, but that the VA proved that it would have taken that personnel action regardless of Dr. Kuriakose's protected disclosure. Because we find no reversible error, we affirm.

I

A

Dr. Kuriakose began working at the VA as a radiologist in 2010. The Ann Arbor VA Health Care System has an academic affiliation with the University of Michigan Medical School, and the VA's radiologists, including Dr. Kuriakose, are also on staff at the University. Dr. Kuriakose's immediate VA supervisor was Dr. Venkataramu Krishnamurthy, and her immediate University supervisor was Dr. Ella Kazerooni.

Before the Board, Dr. Kuriakose alleged that, on December 6, 2013, at the VA facility, she was the victim of a

sexual attack—groping and exposure—by a male radiologist at the facility. J.A. 3. About a week later, Dr. Kuriakose told a radiology technician that the co-worker radiologist had exposed himself to her. *Id.* Independently, but contemporaneously, the VA questioned him about his treatment of women. *Id.* at 4. Around January 10, 2014, Dr. Kuriakose told her University supervisor, Dr. Kazerooni, about the December 6th incident. *Id.* at 4. Dr. Kazerooni immediately contacted both the police and Dr. Kuriakose’s VA supervisor, Dr. Krishnamurthy; and the same day, the police began an investigation, Dr. Kuriakose filed a criminal complaint, and the VA placed the co-worker radiologist on administrative leave. *Id.* at 4–5. The VA conducted an investigation, in which it received denials from the co-worker radiologist as well as other information about his behavior toward women. *Id.* On January 21, 2014, the VA terminated his appointment, effective February 4, 2014. *Id.* at 6.

In the period just discussed, VA supervisor Dr. Krishnamurthy had been attempting to resolve Dr. Kuriakose’s ongoing timekeeping issues, including her refusal to request leave for time she took off for vacation. *See* J.A. 1493–94. Around that time, Dr. Kuriakose has also alleged, she applied to be a member of the VA’s Peer Review Committee and what Dr. Kuriakose refers to as the “Lung Cancer Committee.” On January 13, 2014, Dr. Krishnamurthy offered to move Dr. Kuriakose’s workstation away from the workstation of the co-worker she had just alleged had assaulted her the month before. Dr. Kuriakose expressed concern that moving her work station might hamper the assault investigation. Dr. Krishnamurthy assured Dr. Kuriakose that moving workstations would not affect the investigation and recommended that she move “if that would make the environment better.” J.A. 1656. Dr. Kuriakose decided to remain at her then-current workstation. J.A. 143; *see* J.A. 475.

On February 26, 2014, Dr. Kuriakose met with her second-level supervisor at the VA, Dr. Eric Young. During the meeting, she discussed the assault as well as her concerns regarding how her direct supervisor, Dr. Krishnamurthy, was assigning codes to medical procedures he performed. Dr. Young informed Dr. Kuriakose that he would send a memorandum of their conversation to Dr. Krishnamurthy, and he did so on March 5, 2014. J.A. 1639.

In May 2014, the University sought to increase the professional development time allotted to its physicians for research and other scholarly activities. The University asked the VA to permit some physicians, including Dr. Kuriakose, to use up to twenty percent of their VA tour for professional development. The VA generally permitted use of only about ten percent of a physician's VA tour for professional development. Given the apparent discrepancy, the VA, through Drs. Krishnamurthy and Young, decided that the best practice was to implement a formal "Rules of Engagement" to set standards for professional development time and to clarify the relationship between the University and the VA's radiology department. J.A. 122–23. Dr. Krishnamurthy placed Dr. Kuriakose's professional development time on hold until the Rules of Engagement were officially implemented. On August 11, 2014, Dr. Krishnamurthy approved Dr. Kuriakose's request to use professional development time to participate in a COPDGene study.

On September 12, 2014, Dr. Kuriakose told Dr. Young that another VA co-worker, Dr. David Jamadar, had made inappropriate comments to her during an argument. She alleges that she later overheard Dr. Jamadar making derogatory comments about her on October 2, 2014.

On October 10, 2014, Dr. Kuriakose asked Dr. Krishnamurthy if she could attend a training session related to the COPDGene study. Dr. Kazerooni also needed to approve Dr. Kuriakose's participation in the session. According to an email exchange between Drs. Krishnamurthy and

Kazerooni, Dr. Kuriakose had to find other doctors to cover the shifts that she would miss while attending the session; and Dr. Kazerooni stated that she would withhold her official approval until after Dr. Kuriakose had obtained proper coverage for her shifts. J.A. 30–31; J.A. 1610. Dr. Kuriakose asked Dr. Krishnamurthy for permission to move one patient to another time and close off the patient’s previous time slot so that she could care for the patient before leaving for her training and so that no patients would be scheduled while she was at the training session, but Dr. Krishnamurthy did not do so. J.A. 508.

On October 14, 2014, four staff radiologists reported to Dr. Young that Dr. Kuriakose was causing an uncomfortable environment, noting that they tried to limit communication and interactions with her. Dr. Young began investigating the working environment of the radiology department. When radiology staff members were asked if they had seen or experienced any hostility in the workplace, Dr. Kuriakose’s name was the only one mentioned several times.

On November 28, 2014, Dr. Kuriakose sent Dr. Young an email that included a notice of resignation. Dr. Kuriakose sent a formal letter of resignation to both the VA and the University on December 10, 2014. Her resignations became effective on December 28, 2014. Dr. Kuriakose’s husband began a new out-of-state job on January 5, 2015, and Dr. Kuriakose joined him out of state after her resignations became effective.

B

On January 23, 2015, Dr. Kuriakose filed a complaint with the Office of Special Counsel (OSC) pursuant to 5 U.S.C. § 1214(a), seeking corrective action for alleged prohibited personnel practices. J.A. 1760–70. Specifically, Dr. Kuriakose alleged that from October 2012 to February 2014, she had made numerous protected disclosures indicating that VA doctors were abusing their authority,

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