

In the United States Court of Federal Claims
NOT FOR PUBLICATION

No. 05-527C
(Filed: May 3, 2006)

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WILLIAM CRISTO, JR., MD,	*
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Plaintiff,	*
	*
v.	*
	*
THE UNITED STATES,	*
	*
Defendant.	*
	*

* * * * *

William Cristo, Jr., MD, Newton, MA, pro se plaintiff.

Michael J. Dierberg, U.S. Department of Justice, Washington, DC, with whom were Peter D. Keisler, Assistant Attorney General and Director David M. Cohen, for defendant. Karen J. Grogan, Department of Veterans Affairs, Leeds, MA, of counsel.

OPINION

Pending before the court are the parties’ cross-motions for judgment on the administrative record pursuant to Rule 56.1 of the Rules of the United States Court of Federal Claims (“RCFC”). In this action, the plaintiff, William Cristo, Jr., M.D. (“plaintiff” or “Dr. Cristo”), appearing pro-se, seeks reversal of the Department of Veteran Affairs’ (“VA”) refusal to waive the government’s claim to a refund of \$8,115.93

following his resignation from the Northhampton VA Medical Center on June 11, 2003. Under the Special Pay Agreement Dr. Cristo signed when he joined the VA on January 1, 2003, Dr. Cristo agreed that in the event he voluntarily or for cause failed to complete a full year of service, he would refund 100% of the special pay he had received for that year, unless the failure to complete the year was “due to circumstances beyond his control.” Dr. Cristo claims that his resignation was due to circumstances beyond his control. The VA denied his request for a waiver of his special pay refund liability on the grounds that Dr. Cristo had failed to establish that his resignation was due to circumstances beyond his control. For the reasons discussed below, the government’s motion is **GRANTED** and Dr. Cristo’s motion is **DENIED**.

STATEMENT OF FACTS

The facts, as set forth in the administrative record, may be summarized as follows: Dr. Cristo was appointed as a radiologist at the Veterans Affairs Medical Center (“VAMC”) in Northampton, Massachusetts, on January 2, 2003. On that same date, Dr. Cristo signed a Special Pay Agreement in which he acknowledged that he would be obligated to refund 100% of the special pay he was given pursuant to 38 U.S.C. § 7432 (2000),¹ if he resigned prior to completing one year of employment with the VA. A.R. 51.

¹ The statute was subsequently revised to eliminate the special pay provision. Pub. L. No. 108-445, § 3(b) (Dec. 3, 2004).

By letters dated April 18, 19, 20, and 21, 2003, Dr. Cristo informed his supervisor, Dr. William Boutelle, the VAMC Chief of Staff, that he could not work with Arlene Skorupski, the Supervisory Diagnostic Radiologic Technologist assigned to work with Dr. Cristo. A.R. 43-47. Although he threatened to resign, Dr. Cristo did not resign at that time. However, on June 6, 2003, Dr. Cristo notified Dr. Boutelle of his intent to resign by June 20, 2003. In Dr. Cristo's letter to Dr. Boutelle, he stated, "I am taking this step because of familial circumstances." A.R. 39-40. On June 11, 2003, Dr. Cristo met with Dr. Mukesh Jain. Dr. Jain was the Acting Chief of Staff while Dr. Boutelle was on leave. Therefore, Dr. Cristo officially resigned, effective that date, "for familial circumstances." A.R. 29-33. On that same date, Dr. Cristo filed an Equal Employment Opportunity ("EEO") complaint against Ms. Skorupski for "creating a hostile working environment for me." A.R. 35-38.

On June 16, 2003, Dr. Cristo received a letter from Bruce Gordon, the Director of the VAMC, notifying Dr. Cristo that he was obligated to refund 100% of the special pay he had received, as provided for in his Special Pay Agreement. A.R. 26-27. Dr. Cristo requested a waiver of the special pay refund obligation on June 30, 2003. A.R. 18-20. In the waiver letter, Dr. Cristo claimed that he had resigned due to circumstances beyond his control. Specifically, Dr. Cristo identified his admission to the hospital for "acute pancreatitis," inability to drive, his wife's need to attend to her ailing father in Boston, and harassment by Ms. Skorupski. Attached to the June 30, 2003 letter were several documents, including a letter from a Dr. Carl C. Spector, dated June 24, 2003 which

asked that Dr. Cristo be excused from work from June 11, 2003, to June 24, 2003, due to “an ailment which required hospitalization.” Dr. Spector’s note indicated that Dr. Cristo was being treated for “status post fracture ankle and peroneal nerve neural praxis right side.” Dr. Spector further indicated that Dr. Cristo should remain out of work until he could be evaluated by another doctor. A.R. 25.

On July 10, 2003, Dr. Cristo asked to rescind his June 11, 2003 resignation and requested a transfer to the Jamaica Plain VA Medical Center, pending a resolution of his EEO complaint against Ms. Skorupski. A.R. 17. On July 11, 2003, the VA denied his request. Compl., Ex. F.

Thereafter, by letter dated August 26, 2003, Dr. Cristo was notified that the VAMC Northampton had denied his request for a waiver of his special pay liability. A.R. 13. After receiving formal notice by the VAMC Northampton, Dr. Cristo appealed to the VA. A.R. 6-7. In his appeal Dr. Cristo claimed that he had resigned for medical reasons. In an affidavit accompanying the appeal, Dr. Cristo stated, “I was forced to resign from my employment due to medical reasons. I was hospitalized for pancreatitis, and discharged on June 22, 2003. . . I was also experiencing leg problems due to an earlier accident.” A.R. 8. Dr. Cristo attached the June 20, 2003 letter from Dr. Spector, A.R. 25, described above. Dr. Cristo also attached a June 22, 2003 note from Dr. Dagastino of the Berkshire Medical Center stating, “Please excuse Dr. William Cristo from work from June 11, 2003 thru June 24, 2003, he was suffering from an ailment which required

hospitalization.” A.R. 24. Dr. Spector’s note was attached to the Berkshire Medical Center’s Patient Discharge Instructions, which indicated that Dr. Cristo would be able to return to work eight weeks after June 22, 2003. A.R. 24.

On April 23, 2004, the Acting Under Secretary for Health issued the VA’s final decision denying Dr. Cristo’s appeal and request for a waiver. A.R. 2-3. The denial stated that “Dr. Cristo submitted no medical documentation of an inability to work prior to his resignation [on June 11, 2003]. [Although] [t]he physician notes submitted with his initial request for a waiver and with this appeal . . . contain recommendations as to when Dr. Cristo could return to work, his resignation was already effective at the time they were written.” A.R. 2. The denial concluded, “Based on the information provided, the information does not support a determination that Dr. Cristo separated due to circumstances beyond his control.” A.R. 3.

Dr. Cristo filed the present action on May 6, 2005, appealing the VA’s final determination and seeking relief from his refund liability. In his complaint, Dr. Cristo charges that he left his employment for “medical reasons” beyond his control.

On August 18, 2005, the government filed a counter-claim seeking judgment in the amount of \$6,625.43 (the amount of special pay the government states is now due after Dr. Cristo made payments of principal, interest, administrative costs, and penalties totaling \$2,350), plus interest, administrative costs, and penalties.

On December 15, 2005, the government filed a motion for judgment upon the

administrative record pursuant to RCFC 56.1. On January 6, 2006, Dr. Cristo filed a cross-motion for judgment upon the administrative record.

STANDARD OF REVIEW

In this action challenging an administrative decision of the VA, the court's jurisdiction is limited to a review of the administrative record created before the VA. See Morrow v. United States, 647 F.2d 1099, 1102 (Ct. Cl. 1981). Generally, the court's review is limited to determining, "(1) whether there has been substantial compliance with statutory and implementing regulations; (2) whether there has been any arbitrary or capricious action on the part of the Government officials involved; and (3) whether there has been substantial evidence supporting the decision." Id. at 1102. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolo v. Fed. Mar. Comm'n, 383 U.S. 607 (1966); Harris v. United States, 14 Cl. Ct. 84, 90 (1987). Where reasonable minds might reach differing conclusions, the fact that this court would have reached a different conclusion than the one the agency reached is not sufficient for this court to overturn the administrative action. Bayside Enter., Inc. v. Nat'l. Labor Relations Bd., 429 U.S. 298, 304 (1977). Under this highly deferential standard, as long as there is relevant evidence that "is the type of evidence that a reasonable mind might accept as adequate to support" the agency's conclusion, the government's decision will be upheld. Myers v. United States, 50 Fed. Cl. 674, 698 (2001).

DISCUSSION

The VA determined that Dr. Cristo had failed to prove that his resignation was due to medical circumstances beyond his control. In support of this conclusion, the VA cited the medical evidence that Dr. Cristo had submitted in support of his appeal. All of that evidence post-dated Dr. Cristo's resignation. Based on that evidence, the VA concluded that "the information does not support a determination that Dr. Cristo separated due to circumstances beyond his control." A.R. 3.

The VA's conclusion is supported by the record. The record shows that Dr. Cristo did not receive a note asking that he be excused from work until June 24, 2003, nearly two weeks after he had resigned. A.R. 24. In addition, the note Dr. Cristo received from Dr. Spector concerning his ankle was dated June 20, 2003, more than a week after he had resigned. A.R. 25. In such circumstances, the VA's determination that Dr. Cristo had failed to establish that his June 11, 2003 resignation was due to medical conditions beyond his control is supported.

In addition, contrary to Dr. Cristo's contention in his cross-motion, the evidence does not establish that he was forced to resign because of harassment by Ms. Skorupski. While the record does show that Dr. Cristo had threatened to resign over harassment concerns in April 2003, A.R. 43-47, the record does not support Dr. Cristo's contention that his June 2003 resignation was due to conflicts with Ms. Skorupski. Dr. Cristo did not reference his problems with Ms. Skorupski in his resignation letter. A.R. 39. Nor did Dr.

Cristo mention the problems he had encountered with Ms. Skorupski in his appeal to the VA. A.R. 8.

In view of the foregoing, the court finds that the VA's decision not to waive Dr. Cristo's special pay liability is supported by substantial evidence. While it is no doubt true that Dr. Cristo suffered from some medical problems after his resignation, there is nothing in the record to establish that his health problems forced him to resign. To the contrary, Dr. Cristo was told that he needed only to take off eight weeks from work, not that he could not work. A.R. 24. Indeed, Dr. Cristo asked to rescind his resignation on July 10, 2003, A.R. 17, which further indicates that Dr. Cristo did not believe that his health was a bar to his employment. In view of these facts, the VA's decisions must be affirmed.

CONCLUSION

For the above-stated reasons, the government's motion for judgment on the administrative record is **GRANTED** and Dr. Cristo's cross-motion for judgment on the administrative record is **DENIED**. Judgment shall await 20 days until the government provides a final calculation on its counter-claim. Each party to bear its own costs.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge _____
