




U.S. Department of Justice  
Federal Bureau of Prisons  
Federal Detention Center

P.O. Box 019118  
Miami, FL 33101-9118

December 10, 2010

MEMORANDUM FOR ARTURO REYNALDO, PRESIDENT, LOCAL 501

FROM:

  
Linda T. McGrew  
Warden

SUBJECT: Informal Grievance

This is in response to your informal resolution request dated, November 19, 2010, indicating your belief that I have imposed a unilateral change of failing to provide reasonable accommodation for employees who are suffering from non-work related injuries. In your correspondence you allege violations of the Master Agreement for failure to notify the Union of an alleged change in working conditions, and failure to accommodate qualified employees with disabilities.

As a remedy, you request that Management adhere to the Master Agreement, reasonable accommodation of qualified employees with disabilities, that management cease and desist from making unilateral changes, return to status quo ante, until notice and negotiations on the matter have been conducted.

As you are aware all positions located within the correctional institution are considered hazardous duty law enforcement officer positions. As such, every position at the institution requires employees to be physically able to perform correctional work safely and successfully, including the ability to respond effectively to emergencies. The ability to respond effectively to emergencies is an essential function of every position located within a correctional institution because the inability to do so may jeopardize the security of the institution and the safety of staff and inmates. Consequently, there are no light duty posts within the confines of Bureau of Prisons' correctional facilities. The exemption to this general philosophy only occurs where an employee is recuperating from a work related injury. Program Statement 1601.04, Worker's Compensation Program, states

in pertinent part that the Agency may provide temporary alternative duty assignments (TAD) to bureau employees who have incurred job related injuries or illnesses which temporarily prevent them from performing their assigned duties. Nonetheless, "the security of the institution and the safety of staff and inmates therein remains of primary importance. Because of these factors, there is no guarantee that any staff member will be considered for or receive a TAD assignment."

Every employee in a correctional institution must be able to respond to institution emergencies immediately and must be able to assist in the resolution of the emergency. These activities may involve the exercise of physical dexterity, stamina, and strength, and staff must be able to exercise these duties without presenting a danger to themselves and/or others. Employees who suffer from a disability may be eligible for consideration of a reasonable accommodation as defined under the Rehabilitation Act. Accommodations under this Act requires the individual be a qualified and disabled individual, and the requested accommodation must be reasonable. An employee must establish that he/she is an "individual with a disability." An individual with a disability is one who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment. Interpretive Guidance on Title I of the Americans With Disabilities Act, Appendix to 29 C.F.R. § 1630.2(I).

If it is determined that an employee has a disability as defined under the Act, a reasonable accommodation may consist of modifications or adjustments to the work environment, or to the manner or circumstances under which the position held is customarily performed that enables a qualified individual with a disability to perform the essential functions of that position. 29 C.F.R. § 1630.2(o)(ii).

To this end, it has always and continues to be the practice of the Bureau of Prisons to address the medical restrictions of each employee on case by case basis. As I was not privy to the medical documentation regarding medical impairments of employees who sought accommodation prior to my tenure as Warden at FDC Miami, I am not in a position to comment on whether employees were accommodated as a result of their medical impairments rising to the level of a disability and thereby requiring the Agency to attempt to reasonably accommodate the employees. I do however, examine the medical documentation provided by employees and receive input from the Human Resources and Legal departments regarding whether reported impairments rise to level of a

disability and the need to accommodate. Consequently, there has been no change in working conditions of bargaining unit employees based on an established past practice, as I continue to review request for accommodation on an individualized basis and within the parameters required by Federal law .