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Employer's Obligation When Faced with an Inadequate FMLA Certification

When faced with submission of an inadequate certification for FMLA leave, what options does an employer have? In *Lewis v. United States of America*, the Ninth Circuit Court of Appeals provides guidance for employers faced with just such a situation.

In *Lewis*, plaintiff Janet Lewis was a director of a child development center on the Elmendorf Air Force Base. When Lewis requested FMLA leave, her employer, United States Air Force, gave her a medical certification form to be completed. Lewis returned with a prescription from her psychiatrist, a letter from her psychiatrist and the certification form. However, Lewis' supervisor informed her that the documents she submitted were insufficient to support her request for FMLA leave. When Lewis refused to submit more information, she was eventually moved to absent without leave status and removed from employment. Lewis appealed her removal to the Merit Systems Protection Board and the removal was upheld. Lewis subsequently filed a civil lawsuit claiming in part that she was unlawfully removed. The district court granted summary judgment to the employer and upheld the Board's decision. Lewis appealed the decision.

In her appeal, Lewis challenged the finding that "none of the documents submitted by [Lewis] to the agency in support of her FMLA leave provide[s] sufficient medical facts to support the conclusion that appellant is suffering from a serious health condition." The Ninth Court affirmed the lower court's decision that the documents provided by Lewis "contained no explanation as to why Lewis was unable to perform her work duties and no discussion about whether additional treatments would be required for her condition," contrary to the requirements of 5 U.S.C. § 6383. Specifically, the Ninth Circuit found insufficient Lewis' form which diagnosed her with Post-Traumatic Stress Disorder and indicated that she needed therapy, medical treatment, bed rest, two prescription medications, and 120 days off work, because it failed to provide a summary of the medical facts that support the diagnosis. Further, in response to Lewis' argument that the employer should have resolved the dispute by requiring her to submit second and third opinions under 5 U.S.C. § 6383(c)(1), the Ninth Circuit found that this requirement is triggered only when the employer "has reason to doubt the validity" of the certification not the *sufficiency* of the certification as in this case.

What should employers do?

In order to effectively administer its FMLA programs, employers should require medical certification from its employees seeking FMLA leave. Upon receiving the medical certifications, employers should scrutinize the medical certifications for completeness and sufficiency within the requirements of the law. If

insufficient, additional information should be sought from the employee to ensure that the medical certifications meet legal requirements.