UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:

Leroy J. Pletten

v.

Office of Personnel Management

JUN 5 1985

MOTION THAT LOCAL AND MSPB ISSUANCES ARE INADMISSIBLE

NOW COMES an interested party, LEROY PLETTEN, and moves that local and MSPB issuances are inadmissible for reasons including but not limited to the following:

1. There is no "command of . . . law" for OPM to treat local and MSPB input as admissible; cf. U.S. v. City of Chicago, 549 F.2d 415 at 435 (1977), for a proper analysis of a situation where there really was a "command of . . . law" on a matter. Here, since there is no "command of . . . law" that local and/or MSPB input is admissible, there is no initial basis for behavior to "await" any such input.

2. In addition, EEOC on 8 April 1983 has already found lack of responsiveness to rules and to the evidence. These lackings have been amply described for OPM; and disability retirements of local and/or MSPB for psychiatric reasons are foreseeable. The local and MSPB unresponsiveness to rules, legal principles, and facts is consistent with guidance in cases such as People v. Matulonis, 115 Mich. App. 263, 320 N.W.2d 238 (1982). OPM has already been provided ample data on the psychiatric problems displayed by local and MSPB offenders; more evidence is submitted at this time.

3. The OPM record shows multiple symptoms of mental disorder as displayed by local and MSPB offenders. Confabulations are evident in the record. When local and MSPB offenders confabulate, their input is inadmissible as shown by a long line of cases. Indeed, the inadmissiblity case here is stronger than the law requires. Inadmissibility is based on the potential (in the future) for confabulation. Here, the confabulations have <u>already</u> occurred. It is not necessary to speculate that confabulations may occur in the future, hence, the input is inadmissible. Here, the confabulations by local and MSPB offenders are already in the record. (They are described in detail in the record, and with this motion).

4. The confabulations from local, and especially from MSPB offenders (which is what OPM does claim to "await"), are inadmissible. See cases rejecting the admissibility of confabulations; see cases such as State v. Mack, 292 N.W.2d 764 (1980); People v. Gonzales, 415 Mich. 615, 329 N.W.2d 743 (1982); etc. MSPB personnel have clearly demonstrated that they "cannot differentiate between . . . fantasy" and reality, People v. Gonzales, 310 N.W.2d 306 at 310 (1982). EEOC has confirmed the lack of MSPB reliability. The record shows the severe symptoms displayed by MSPB offenders. They ignore both rules and facts. Admissibility must be "denied . . . for want of proof of reliability," People v. Harper, 250 N.E.2d 5 at 6-7 (1969).

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MOTION THAT MSPB BEHAVIOR DOES NOT WARRANT RESPECT; AND IS APPALLING

NOW comes LEROY PLETTEN, and moves that MSPB behavior does not "warrant . . . respect" and is appalling.

1. MSPB behavior does not "warrant respect" and is appalling; cf. In Matter of Complaint Against Seraphim, 97 Wis.2d 485, 294 N.W.2d 485 (1980). The MSPB symptoms of mental derangement, long-term alcoholism to the point of suggestibility, and/or other deviance, as displayed, give rise to this conservative analysis.

2. There is no "command of . . . law" for OPM to "await" MSPB output; cf. U.S. v. City of Chicago, 549 F.2d 415 at 435 (1977). EEOC has confirmed that the MSPB behavior at issue is not reliable on either the rules or the facts; admissibility must be "denied . . . for want of proof of reliability," People v. Harper, 250 N.E.2d 5 at 6-7 (1969).

3. MSPB symptoms are such that insight for comprehending them must be found in literature on mental illness, for example, in the book, Understanding and Helping the Schizophrenic, 1979, by Dr. Silvano Arieti, especially pages 65-66. Those pages (cited on p. 31 of the 453 page request sent to OPM) are insightful considering MSPB fixation on only one aspect of the case, and treating it as the whole. MSPB symptoms include fixation on "accommodation," while ignoring the fact that the case has not even "commenced," cf. Siemering v. Siemering, 288 N.W.2d 881 at 883 (1980). No opportunity for me to present my "reply" has yet been granted, as no specificity has been provided. Also, MSPB offenders fixate on a part, to the exclusion of the whole, to the extent that guidance from AR 1-8, safety, negligence and nuisance principles, etc., and on the requisite "conditions precedent" has not been addressed.

4. Considering the severity of MSPB symptoms, and foreseeable retirements of MSPB offenders on psychiatric grounds, for example, they can "not be permitted . . . to make any adjudication at all," Morrissey v. Brewer, 408 U.S. 471 (1972); Tumey v. Ohio, 273 U.S. 510 (1927), etc., as cited on p. 318 of the 453 request to OPM. OPM has no "command of . . . law" to "await" anything from MSPB, whose unreliability on both facts and rules is already documented.

5. MSPB offenders are unresponsive to normal stimuli. This includes unresponsiveness to what was "articulated." It includes unresponsiveness to rules and facts. It includes trying to make rules "jump through the procedural hoops for" accommodation; cf. Sethy v. Alameda Cty. Water Dist., 545 F.2d 1157 at 1162 (1976), in violation of their design. Etc., etc., etc., as shown herein, and in the previously submitted material. Thus, Seraphim, supra (cited at #12 of the 453 page request), provides insight. MSPB behavior does not "warrant respect" and is appalling, and is not to be awaited.

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MOTION TO ASSESS DAMAGES AGAINST CULPABLE OPM PERSONNEL/OPM

NOW COMES LEROY PLETTEN and moves that damages be assessed against culpable OPM personnel, based on their behavior which includes but has not been limited to the following:

1. OPM is refusing to render a specific decision in this case; indeed, it claims to "await" something from some other agency (MSPB).

2. There is no "command of . . . law" cited by OPM, for the reason that that there is no such "command of . . . law"; cf. U.S. v. City of Chicago, 549 F.2d 415 at 435 (1977), for a proper analysis of a situation where there really was a "command of . . . law."

3. There is no "command of . . . law" for OPM to "await" anything, in this case. Moreover, see Gacayan v. OPM, 5 MSPB 358 (1981), on the duty to conform to "applicable law and regulation, for a retirement annuity, not whether other" agencies "may properly or improperly" be "considering cases related . . . ." Moreover, OPM has cited no "command of . . . law" suspending OPM decision-making when other agencies "may properly or improperly" be "considering cases related . . . ." The issue is "applicable law and regulation, for a retirement annuity."

4. OPM "has no access to their . . . records," and thus OPM has "no basis for a comparison of" this case "with that of the appellant" in other cases. Cf. Gacayan v. OPM, supra. The matter boils down to "appellant's eligibility, under applicable law and regulation, for a retirement annuity."

5. Other motions, of course, show OPM failure to issue consistent analyses, to be thorough, etc. Damages sought under this motion are, thus, in addition to, any and all relief as may be appropriate under other aspects of the case. This motion simply relates to the OPM behavior to "await" something.

6. Cases such as Kyriazi v. Western Elec. Co., 461 F.Supp. 894 at 950 (1978), and 476 F.Supp. 335 at 340-1 (1979), provide insight on the personal liability of employees who engage in inappropriate behavior. Here, there is no "command of . . . law" warranting "await"-type behavior. Appropriate damages are thus requested from OPM for the "await" behavior and/or from individual employee(s) responsible for same. The "employer can be held vicariously liable," Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d 11 (1979). Considering the liability of both employer and employee(s), this two-pronged request is made.

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MOTION TO DISMISS APPLICATION ON THE GROUNDS THAT IT ARISES FROM "VICIOUS HABITS," OR INTEMPERANCE, OR INSANITY, OR OTHER MISCONDUCT OR FRAUD BY SMOKERS

NOW COMES an/ the interested party, LEROY PLETTEN, and moves that the application be dismissed on the grounds that it arises from smoker addiction, alcoholism, mental illness, and/or brain damage and/or other smoker deviance, whereby disability retirement is not authorized:

1. Numerous court precedents reflect well-established awareness of smoker addiction and their harmful and untoward propensities unless restrained.

2. Medical literature for many years shows smoker addiction, lack of insight on their conditions, insanity, link with alcoholism, delusions of grandeur and uniqueness, intolerance of restraint, diseases which they spread, apathy and indifference for themselves and others, etc.

3. The smokers who have engaged in overt acts in the case at bar are displaying symptoms of the nature as are described in the medical literature. They are parading their addiction, denouncing the duty of compliance, ignoring procedures on USACARA Reports, time limits for processing EEO and other cases, etc. They have not, in all the time that has transpired, ever shown or displayed insight on their condition, or the ability to comprehend that the type of analysis that reviewers (EEOC, OPM, MESC, USACARA, etc.) have made, would be made. Clearly, they are displaying severe lack of orientation to reality.

4. The insistence on "cannot" comply with even AR 1-8 guidance reflects delusions of grandeur, since (a) they have not considered the matter, and (b) others "can" comply. Clearly, local smokers "cannot" conform their conduct to the requirements of law, and lack substantial capacity to appreciate the wrongfulness of their conduct, guidance on insanity from People v. Matulonis, 320 N.W.2d 238 (1982).

WHEREFORE, the application should be dismissed.

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MOTION TO DISAPPROVE DISABILITY RETIREMENT BASED ON THE DISREGARD OF PRINCIPLES AGAINST "RETREAT" AND GOING "ELSEWHERE"

NOW COMES an interested party, LEROY PLETTEN, and moves that this motion be approved based on legal principles from civil and criminal law, including but not limited to the following examples:

1. State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S.Ct. 232 (1938), rejects going "elsewhere" for one's rights. A disability retirement clearly involves "elsewhere" than on the job. Shelley v. Kraemer, 334 U.S. 1 (1948), makes a like point. Even being relocated just a few feet (from one section of a bus to another) is unacceptable, Browder v. Gayle, 142 F.Supp. 707, cert. den., 352 U.S. 903 (1956). Being subjected to requests/actions for "elsewhere" behavior is a personal indignity arising from recklessly employing/retaining individuals who make such remarks, Fisher v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627 (1967). Here, smokers displaying/parading overt acts of their mental disorder symptoms have been recklessly employed/retained. It is such persons who are to be "put out," Keyser Canning Co. v. Klots Throwing Co., 118 S.E. 521 (1923). Cf. Rum River Lumber Co. v. State, 282 N.W.2d 882 (1979), and Commonwealth v. Hughes, 364 A.2d 306 (1976).

2. Moreover, safety is unitary as well. The safety "adjective is unqualified and absolute," Nat'l Rlty. & C. Co., Inc. v. OSHRC, 489 F.2d 1257 at 1265 (1973). The entire workplace is to be safe; enclaves of unsafe areas are not allowed. Safety is consistent with guidance against discrimination. For example, "massive resistance" against desegregation was rejected since non-compliance was "readily apparent," Goss v. Brd of Educ. of Knoxville, 373 U.S. 683 (1963). Here, endangerment, discomfort, and a "personal determination" concerning such are "readily apparent." Moreover, the case involves the right to work, Yick Wo v. Hopkins, 118 U.S. 356 (1886), and to "remain at work under safe conditions" under OSHA, Cal. Law Rev., Vol. 64, pp. 702 at 714, May 1976. Considering that such principles are well-known, and government officials are expected to be adept and skillful concerning them, the 25 Jan 80 USACARA Report analysis that compliance "cannot be accomplished by relocating one nonsmoker," p. 11, is clearly being deliberately defied by the installation.

3. Criminal law is consistent with civil law in this regard. The right to "stand his ground" is well-known. See State v. Sharpe, 196 S.E.2d 371 (1973); State v. Smith, 378 So.2d 261 (1979); Gainer v. State, 391 A.2d 856 (1978); People v. Tomlins, 107 N.E. 496 (1914); Jones v. State, 76 Ala. 8 (1884); Brown v. United States, 256 U.S. 335 (1921); Inge v. United States, 356 F.2d 345 (1966). Clearly, disability retirement is not a lawful option to compliance with law.

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MOTION TO DISMISS APPLICATION ON THE GROUNDS EXCUSED ABSENCE IS APPROPRIATE

NOW COMES the applicant, LEROY PLETTEN, and moves that the application be dismissed on the grounds that excused absence is the appropriate course of action in situations of hazards.

1. In the civil service, excused absence is granted when hazards exist. This includes environmental situations. Sometimes hazards are foreseeable, as for example, storms that are predicted, so employees are sent home prior to the full force of the hazard.

2. Disability retirement is not appropriate in hazards, since there are no "job related" "physical criteria" relative to hazards, storms, and other unsafe situations or environments. A status other than excused absence in a hazard represents "disparate treatment," contrary to well-established principles of law on reprisal and discrimination.

3. The particular circumstances of this case as demonstrated in the record show failure to implement guidance to obey and implement AR 1-8; EEOC analyses showing installation violations; the receipt of unemployment compensation due to my clear-cut ability to work combined with "the agency's decision to terminate" me evident not later than the time of the 9 April 1980 letter from EEOC Examiner Henry Perez, Jr., etc.

4. Various court precedents show that, as a matter of law, and of fact, "Workmen are not employed to smoke," as with any hazard where excused absence is the appropriate course of action pending resolution.

5. Until the deficiencies noted by USACARA and by EEOC are resolved, and the hazard corrected, "reasonable accommodation" processes clearly have not begun, considering that compliance with prerequisite guidance, such as AR 1-8, safety, etc., has not yet been effected.

6. As a matter of law, no "job related" "physical criteria" can ever be provided. As this is the case with any hazard, man-made or natural, excused absence is appropriate. The law does not have a "fall-back" position contemplating disability retirement in lieu of excused absence, just as there is no "fall-back" position for less than full compliance with any law, regulation, or enactment.

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Motion to Disapprove Disability Retirement Based on the "Government" Behavior of Extortion and Embezzlement Designed to Extort Retraction of My "Personal Determination Made under AR 1-8, Etc.

NOW COMES interested party, LEROY PLETTEN, and moves that this motion be granted based upon information including but not limited to the following:

1. In accordance with my background and training, including from the Army, my practice is to quote rules and medical (including psychiatric)data. Following such conservative approach, naturally my June 1979 grievance to secure compliance with AR 1-8 was upheld, 25 Jan 80. The USACARA Report alludes to "the rights of all nonsmokers," p. 11. Since AR 1-8 specifies "affirmative action," personal determinations of other nonsmokers are foreseeable, considering the evidence from studies showing this.

2. Smokers parade their mental disorder and oppose being controlled, as part of their symptoms of mental disorder, including "irritability," delusions of grandeur that they can refuse to obey rules, etc. Their symptoms include denial of the hazard from tobacco smoke, and that nonsmokers harmed by the "universal malice" of tobacco smoking are "unique," "peculiar," etc. When smokers make such claims, the severity of their derangement is obvious. As part of the fragmentary, malassociated, and disconnected delusions/hallucinations of smokers, they simultaneously betray a recognition that obeying rules in my case can foreseeably produce other nonsmokers likewise making "personal determinations" under AR 1-8.

3. Extortion includes misuse of funds for purposes such as to "keep the business going," words from State v. Gates, 394 N.E.2d 247 (1979), herein, to "keep" endangerment, discomfort, smoking, "going." The misconduct pattern is thus inclusive of behaviors ("derogatory references," pretenses of uniqueness, disregard of the USACARA Report, etc.) to "keep" smoking "going." The embezzlement occurred concerning my pay "after questioning" me "whether" I "was going to" seek implementation of the USACARA Report, AR 1-8, etc.; cf. People v. Atcher, 238 N.W.2d 389 (1975). The installation physician was clearly enlisted in the embezzlement/extortion, as evidenced from his overruling my ability to work, as a pressure tactic and threat to extort retraction of my "personal determination." Disability retirement is less pay and smoking would "keep . . . going" in violation of rules. OPM should steer clear of the installation offenses.

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Motion to Approve Disability Retirement on the Basis of "disability" as an Economic Concept Based Upon a Real or Apparent Medical Foundation

NOW COMES LEROY PLETTEN and moves that disability retirement be approved for the cited reason; supporting data for such includes but is not limited to the following:

1. As a matter of law, "Workmen are not employed to smoke." As an experienced Position Classification Specialist, I also know that no job descriptions contain tobacco-smoking duties. Hence, zero percent (0%) disability is what is real. However, because smoking behavior "causes insanity," what is perceived by smokers is one hundred percent (100%) disability. Smoker brain damage includes but is not limited to manifestations such as acalculia.

2. When smokers in the case at bar have become insane, and have been insane for many years, they are unable to respond to normal stimuli such as facts and laws, even though they are responsible to be adept and skillful at relating facts and laws. In this case, they display inability to comprehend the 22 Feb 1983 OPM analysis; and they have been unable mentally to respond to such data as presented by me, of the same nature. Insane people simply do not perceive reality in the same way as sane people perceive it. To the insane, their insane delusions and hallucinations are real.

3. In this case, the medical foundation includes the symptoms displayed by smokers. For example, see the bizarre 28 March 1980 issuance complaining that I kept working after winning the 25 Jan 80 USACARA Report. Among other things, it stated, "Mr. Pletten has established that, insofar as he personnally is concerned, smoking does constitute a safety hazard to him," p. 7. Carma Averhart complained that I nonetheless "continued to report for duty" and refused and "refuses to request leave." To her, I should be eliminated; whereas, to a rational person, when a hazard is "established," such person would foreseeably follow the laws and rules on eliminating the hazard. A rational person would implement a USACARA Report, not complain that the winner "continued to report for duty."

4. Measuring real disability will show 0% applies, as a matter of law. However, measuring perceived disability based on the mentally disordered smoker perception shows 100% applies. Congress recognizes perceived disability is as much a problem as real disability, and has the same economic consequences for the individual; see Valparaiso Law Rev., Vol. 13, pp. 453 and 460, citing Senate Report 1297, 93d Cong., 2d Sess. 34 (1974), reprinted in U.S. Code Cong. & Ad. News 6373.

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MOTION TO APPROVE DISABILITY RETIREMENT BASED UPON THE PERCEIVED 100% (TOTAL) DISABILITY, COMBINED WITH THE CLEAR INABILITY OF LOCAL OFFENDERS TO PROVIDE DATA

NOW COMES an interested party, LEROY PLETTEN, and moves that the application be approved, based on the perceived total disability, combined with the inability of local persons to be responsive to normal stimuli, such as the 22 Feb 1983 letters, and the rules extant prior thereto, upon which the OPM guidance was based. Data in support of this motion includes but is not limited to:

1. The installation perceives that I "cannot perform any of his assigned duties," as indicated 1 April 1981 by Carma Averhart. It is admitted that her view shows deterioration from her doubt expressed 28 March 1980. It is also admitted that installation physician, Dr. Francis J. Holt, shows deterioration from Jan 80, Feb 80, and thereafter. Clearly, OPM could find no basis for what they had done; see its 22 Feb 1983 letters. "Workmen are not employed to smoke." Smoking is a disease, and causes insanity; what nexus there might be between smokers being mentally ill and physically deteriorating, and the application for my retirement, is clearly a mystery to OPM.

2. On my part, I find no evidence contrary to the guidance that "Workmen are not employed to smoke." However, much data, in medical literature, as well as in law reviews, exists concerning physical and mental disorders of smokers. The application of April 1981 is foreseeable from a smoker, as it contains fragmentary, disconnected, impoverished, and odd assertions, of such severity that neither OPM nor I could make any sense of it. The record shows that I am able to perform all my duties without exception. The fact that others are mentally ill, and becoming physically ill, and spread diseases even in their own families and bring death and disability to family members, including spouses, has no bearing on the fact that I, personally, am able to perform all my duties. Doctors and nurses routinely go among sick people. As a personnel specialist, especially in employee relations, I too have dealt with sick people, for counseling them, advising their supervisors on dealing with them, etc.

3. However, since clearly unbeknownst to me, the installation perceives total disability, it is unfair to let their inability to provide data jeopardize the application. Clearly no help from the installation is foreseeable or forthcoming, nor indeed can be, concerning the aspects OPM identifies as needed.

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MOTION THAT OPM ASSIST IN RESOLVING THE SITUATION HEREIN

NOW COMES Leroy Pletten and moves for OPM assistance via its expertise in qualifications requirements (X-118) and familiarity with personnel rules and guidance in the civil service.

1. OPM is part of the management of the federal service. When I cite qualifications guidance, I am being pro-management as a trained personnel specialist must be, even when the persons to whom he is providing counseling may not like what must be provided in terms of rules.

2. Please notify the installation that there are no X-118 provisions on smoking. Since smoking is not a qualifications factor, there can be no disqualification.

3. Please notify the installation that when there is a hazard, the appropriate status is excused absence.

4. Please notify the installation to make an "offer" like that in Parodi v. MSPB, 690 F.2d 731 (1982), for a safe environment. Note that I have already accepted the only "offer" that has been made--the one indicated by MSPB on 18 June 1981, accepted by me 7 July 1981.

5. Please suggest that the installation return me to duty if there is no hazard.

6. Please suggest that Dr. Holt should stop overruling the multiple medical statements from examining doctors, who indicate that I am ready, willing, and able to work.

7. Please note that the installation had already terminated me in early 1980, as noted by Mr. Henry Perez, the local EEOC representative, and thus, that the local behavior thereafter was disingenuous.

8. Please note that the issue is discrimination (the lack of job requirements/qualifications for smoking), not accommodation. Accommodation is a phrase meaningless in a vacuum, apart from requirements. Moreover, even if this were to change (if OPM altered X-118 to add data on smoking), that would not (for this case) warrant my disqualification--re a future requirement not yet extant.

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Motion to Approve Disability Retirement Based On the Principles of Parodi v. MSPB, 690 F.2d 731, or in the alternative, for OPM to notify the Appeals Court of the MSPB behavior Pattern

NOW Comes LEROY PLETTEN, and moves that disability retirement be approved, or in the alternative, that OPM notify the Ninth Circuit Court of Appeals, of the MSPB pattern of misconduct, including but not limited to the repeated use of false information in this case, and of the disregard of the fact that smoking is not a job requirement, and is definitely not part of "employment," and hence, the use of the word "environment" is inappropriate, fragmentary, impoverished, and disconnected from reality, and that excused absence is the appropriate status in hazards.

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Motion to Disapprove Disability Retirement since the "law makes no provision for any refusal, reasonable or otherwise," to eliminate work hazards

NOW comes LEROY PLETTEN and moves that disability retirement be disapproved since there is no basis for refusing to eliminate hazards.

1. The 20 June 1983 MSPB issuance has confirmed the "serious health hazard," p. 2, n.2; and the "high probability of hazard," p. 9. Such confirmation was foreseeable based on the "universal malice" of tobacco smoke as inherently dangerous.

2. Numerous safety cases show that safety is mandatory and that the duty is "unqualified and absolute." Cf. the legal principle cited in Matter of Knust, 288 N.W.2d 776 at 778 (1980), "our law makes no provision for any refusal, reasonable or otherwise." Note that in safety cases, the like principle is followed. No court has ever held that, in safety, refusal is allowed. OSHA is preventive and remedial, and clearly intends to halt ongoing refusals. AR 1-8 has a like basis. Excused absence is appropriate pending compliance.

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MOTION FOR REVIEW OF THE MEDICAL RECORDS OF THE SMOKERS WHOSE OVERT ACTS HAVE GIVEN RISE TO THE SITUATION

NOW COMES an interested party, LEROY PLETTEN, and moves that the medical records of the involved smokers be provided to him, and to OPM, for review for vicious habits, intemperance, or willful misconduct, for the purpose of aiding in the presentation of the case. Without such data, the case cannot be fully documented, since the application arises from such aspects, including disease, on the part of smokers. Moreover, disability retirement of smokers for conditions they inflict on themselves is inappropriate.

1. Neither OPM nor I have been able to make sense of the odd installation input. Workmen are not employed to smoke. AR 1-8 forbids letting smokers engage in behavior that might cause even minimal absence by nonsmokers. It is clear that guidance against, for example, letting smokers "discomfort" nonsmokers, precludes a situation from ever reaching even pre-endangerment aspects. It clearly precludes letting a situation reach pre-disability retirement issues, much less, disability retirement issues.

2. Smokers in the case at bar display that they have difficulty even with simple counting; compare the 23 Feb 1982 EEOC finding of math errors by the installation with data on acalculia, one of the manifestations of brain damage. When smokers are so severely impaired, such casts grave doubt on their ability concerning matters of greater difficulty than simple mathematics, which children should be able to do.

3. MESC and USACARA are other organizations that have found deficiencies in the odd local smoker behavior.

4. Local smokers are insubordinate against the rules, whereas I am seeking enforcement of such rules. Such effort on my part is identical to efforts made as an Employee Relations Specialist, GS-230-12, in counseling supervisors and employees. Punishing me for recommending rule enforcement is malicious. Personnel specialists are routinely involved in rule enforcement measures. Declaring me disabled because local offenders are mad at the rules, is bizarre, and reflects the severity of their condition. Under the circumstances, review of the medical records is needed for documenting the smokers, and for noting and bringing to OPM attention, whatever documentation may already have taken place. Under the circumstances, this motion should be considered as an agency motion, in fulfillment of agency guidance.

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MOTION TO APPROVE DISABILITY RETIREMENT FOR SMOKERS WHO HAVE ENGAGED IN OVERT ACTS IN THIS MATTER AT BAR

NOW COMES an interested party, LEROY PLETTEN, and moves that OPM approve disability retirement for the smokers who have engaged in the overt acts giving rise to the situation, for reasons including but not limited to the following:

1. The record shows smoker admissions concerning what they personnally "cannot" do. They clearly "cannot" conform to the requirements of the multiple laws involved, and lack substantial capacity to appreciate the wrongfulness of their conduct, principles of law discussed in cases such as People v. Matulonis, 320 N.W.2d 238 (1982).

2. Smoker mental disorders are well documented in the medical literature. Numerous court cases refer to aspects of smoker behavior as dangerous to themselves and others, and to property. AR 1-8 provides for protection of both nonsmoker "life" and of property, based on the well-documented data that smokers are foreseeably dangerous in such regard.

3. Smokers at issue clearly "cannot" perform essential aspects of their job duties, which include communicating with people, following safety rules, being able to make simple distinctions such as what a person is/is not "employed to" do, implementing USACARA Reports, following EEOC guidance, processing EEO cases right, being able to count and make simple connections, etc. Some aspects which they display inability to perform are so simple that any adult human can be expected to perform such simple mental functions, e.g., counting right, remembering earlier statements made by them, responding to normal stimuli, capability of being corrected when an error is brought to their attention, etc. Unfortunately, smoking "causes insanity" as Dr. Matthew Woods noted, and "is recognized as one of the most common causes of insanity," as Dr. John H. Kellogg noted. Cf. DSM-III, "Tobacco Dependence is obviously widespread."

4. Considering that I am seeking enforcement of agency rules, and the smokers herein are insubordinate against such, this motion should be considered tantamount to agency application on their behalf. Moreover, OPM is encouraged, in addition, to approve such for them, even sua sponte, based on obvious local fixation on me in a "universal malice" situation, contrary to Court practice in "universal malice" cases. In such cases, the cause is dealt with. There is no fixation on the victim as somehow "peculiar" or "unique" such that the cause should not be dealt with, in such cases.

Leroy J. Pletten
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UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:

Leroy J. Pletten

v.

Office of Personnel Management

JUN 5 1985

MOTION FOR REMAND TO AGENCY

NOW COMES Leroy Pletten, and moves that the filed-by-agency application be dismissed, and remanded to the agency, for reasons including but not limited to the following:

1. The 5 October 1981 OPM issuance failed to dismiss/remand the case for compliance with appropriate rules, showing of a nexus with employment, showing of "accommodation," etc., etc. Instead, and improperly, OPM decided the case, instead of dismissing/remanding it.

2. OPM now, inconsistently with its prior behavior, claims to be "aware that . . . (MSPB) is presently considering cases" of mine, and that it "will await the outcome of the" alleged "MSPB cases."

3. OPM is clearly violating pertinent legal principles, including on estoppel, "Equitable estoppel prevents a party from assuming inconsistent positions to the detriment of another party," U.S. v. Georgia-Pacific Co., 421 F.2d 92 at 96 (1970). OPM did not claim in 1981 what it is now supposedly claiming in 1983. The word "supposedly" is used since James J. Ludwig is relying upon ex parte data, so far as the record shows. Nothing in the case file shows MSPB "considering cases." What Mr. Ludwig is thus doing, is clearly personal, not official on behalf of OPM.

4. MSPB is not "considering" any "cases" of mine, based on the evidence of the multiple symptoms of mental disorder/alcoholism, and/or other deviance displayed by MSPB personnel. MSPB personnel have not demonstrated the mental capacity to consider whatever it is that Mr. Ludwig (based on ex parte data, clearly) is somehow alluding to. MSPB personnel display "real derangement of their mental lives, so severe that they do not respond to and are not motivated by normal stimuli," data from Dr. Lyle Tussing, in Psychology for Better Living, 1959, p. 345. Cf. People v. Matulonis, 115 Mich.App.263, 320 N.W.2d 238 (1982), And see the multiple symptoms of MSPB personnel as cited in the OPM case file, and herein. It is clear that, considering their debilitated conditions, MSPB personnel lack the mental capacity to be "considering cases . . ." as implied by Mr. Ludwig.

5. MSPB violations and symptoms are undisputed. OPM did not "await" MSPB behavior initially. The inconsistent position asserted by Mr. Ludwig violates the principles of law cited in Georgia-Pacific Co., supra. To be consistent, OPM should retract its erroneous/inconsistent 5 Oct 81 issuance, and conform to the "await" guidance/concept asserted by Mr. Ludwig.

Leroy J. Pletten

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:

Leroy J. Pletten

v.

Office of Personnel Management

JUN 5 1985

MOTION ON RELIEF IN LIEU OF THE MOTIONS OTHERWISE SUBMITTED, EXCEPT FOR THOSE ON THE SUBJECT OF "DEALING WITH CAUSES"

NOW COMES an interested party, LEROY PLETTEN, and moves that, in lieu of the other motions, except those on dealing with causes, that OPM do the following:

1. Notify the installation of the impropriety of unethical behavior on its part in its installation physician having overruled the evidence on my fitness for work, and in fixating on me.

2. Notify the installation of the unethical aspects of refusing to implement the 25 Jan 1980 USACARA Report. See Spann v. McKenna, 615 F.2d 137 (1980).

3. Notify the installation of the unethical aspects of the use of the word "environment" when such use clearly displays and parades symptoms of smoker mental disorder, i.e., fragmentary, mentally impoverished, disconnected, etc., and serving as an unethical diversion from smoker mental disorder, disease, and behavior.

4. Notify the installation of the unethical aspects of the disregard of law, such as that "Workmen are not employed to smoke."

5. Notify the installation of the unethical aspects of fixation on claims of "uniqueness," "peculiar" sensibility, etc., when such claims are long cited in the medical and psychiatric literature, as a part of the pathology of smoker mental disorder.

6. Notify the installation of the criminal aspects of submitting false data to OPM, and of using OPM and the threat of disability retirement against me, in the unlawful purpose to extort a retraction of my "personal determination" made under AR 1-8, and to embezzle my pay to "keep" smoking "going."

7. Notify the installation that its already rejected delusions/hallucinations concerning fantasized "OSHA standard"(s) "which would appear to cover tobacco smoke" (words from Smith v. Western Elec. Co., 643 S.W.2d 10 at 14, 1982) are unacceptable, and that psychiatric evaluation of the local smokers/pathological liars who make such claims is imperative, for their rehabilitation and/or control to the extent that they cannot cease making such claims, conform their conduct to the actual requirements of the law, and appreciate the wrongfulness of reliance on non-existent/fantasized/irrelevant "OSHA standards."

8. Notify the installation to conform to rules, reinstate me, cease and desist from its misconduct, etc. Leroy J Pletten

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CERTIFICATE OF SERVICE

Docket No. [redacted]

I hereby certify that the foregoing material was served by regular mail on this date to the following parties:

Franklin L. Lattanzai, Chief
Disability Claims Division
Retirement and Insurance Programs
(Disability Appeals Branch)
U.S. Office of Personnel Management
P. O. Box 664
Washington, D.C. 20044

Howard J. Ansorge, Presiding Official
Merit Systems Protection Board
Chicago Regional Office
230 South Dearborn Street, 31st Floor
Chicago, Illinois 60604

Date: 5 June 1985

Leroy J. Plotten
[redacted]
Appellant