

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE**

NOELLE A. JOHNSON,))	DOCKET NUMBER
))	CH-1221-10-0336-W-1
Appellant,))	
))	
v.))	
))	
DEPARTMENT OF VETERANS AFFAIRS,))	DATE: September 16, 2010
))	
Agency.))	
))	
))	

SETTLEMENT AND COMPROMISE AGREEMENT

It is hereby agreed by and between the U.S. Department of Veterans Affairs ("Agency") and Noelle Johnson ("Appellant") as follows:

1. After negotiation, the parties do hereby agree to settle and compromise MSPB Appeal No. CH-1221-10-0336-W-1, under the terms and conditions set forth herein.

2. In exchange for Appellant's agreement to have the above-referenced MSPB Appeal dismissed, and waive any and all actions, claims, complaints, grievances, appeals and proceedings of whatever nature against the Agency, its officers and employees, in their personal as well as official capacities, which are now or hereafter may be asserted by her or on her behalf regarding her termination in June of 2009, and as well as regarding any other facts in existence as of the date of Appellant's execution of this settlement agreement ("Effective Date"), with the exception of any claims that may arise by reason of breach of any term of this settlement agreement, the Agency agrees to:

- a. Accept Appellant's resignation, effective December 31, 2009. This resignation will be evidenced by a Government Standard Form 50 in Appellant's Official Personnel File. Appellant will be coded as in Leave Without Pay (LWOP) status from July 1, 2009 to December 31, 2009 and will not be paid for the period July 1, 2009 to December 31, 2009;
- b. Remove and destroy any and all documentation from Appellant's Official Personnel File concerning her removal;
- c. Pay Appellant \$61,000 ("Payment") via electronic deposit to the client trust fund of Stix Law Offices, 700 Rayovac Drive, Suite 117, Madison, WI 53711, Tax I.D. No. 36-3489826;
- d. The \$61,000 is allocated as follows: \$15,000 for attorney fees and \$46,000 for promised educational expenses; and
- e. To allow Appellant thirty days from the Effective Date of this Settlement Agreement to appeal the Agency debt collection action concerning her Tomah VAMC sign-on bonus and relocation bonus and freeze/ hold in abeyance collection activity involving these bonuses until her appeals are complete.
- f. That David Houlihan, M.D., will not make any written or oral communication that would disparage Appellant concerning her performance as a clinician at the Tomah VA Medical Center. The parties agree that this clause does not apply to responses by Dr. Houlihan to inquiries from State or federal regulatory agencies.

3. In consideration for the performance of the Agency as required by paragraph 2 of this Settlement Agreement, Appellant agrees as follows:

a. Appellant hereby forever waives and releases all claims that she has alleged or could have alleged against Secretary Eric K. Shinseki and his successors, and any of his employees, including but not limited to past and present officials or employees of the U.S. Department of Veterans Affairs, in their official or individual capacities, as set forth in MSPB Appeal No. CH-1221-10-0336-W-1, and agrees to the dismissal of that MSPB Appeal with prejudice. Appellant further waives her right to file or pursue any complaint, claim, lawsuit, grievance, or appeal at any time in the future against the Agency, or any officials, employees, or former officials or employees of the U.S. Department

of Veterans Affairs, or its successors or assigns, its officials, employees, or former officials or employees, in their official or individual capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission, based upon any issues or claims arising out of her employment with the Tomah VA Medical Center occurring prior to and including the Effective Date of this Settlement Agreement. This waiver includes but is not limited to any matter described in, referred to, or arising out of the matters that were the subject of the Appellant's MSPB Appeal, or the negotiation or execution of this Settlement Agreement;

b. Appellant hereby waives any and all claims for attorneys' fees or costs, whenever incurred, as well as any and all attorneys' fees or costs incurred in relation to this Settlement Agreement, other than those specifically enumerated in paragraph 2. Appellant explicitly understands that the Payment is inclusive of all attorneys' fees and costs for legal representation in the actions;

c. Appellant agrees, subsequent to the Effective Date of this Agreement, not to seek, apply for, or accept a position (to include independent contractor positions) with the Tomah VA Medical Center or any of the Tomah VA Medical Center's affiliated clinics in Wisconsin for a period of five years. If Appellant applies for a position in violation of this provision of the Settlement Agreement, the Agency may reject her application regardless of whether she is qualified for the position. If Appellant applies for and is hired for a position in violation of this Settlement Agreement, the Agency may remove her, immediately upon discovery of the breach, to achieve compliance with the terms of this Agreement. Appellant shall have no administrative recourse or

cause of action in any forum if the Agency takes any action described in this clause to cure Appellant's breach of this clause.

4. Appellant agrees that she will not make any written or oral communication that would disparage David Houlihan, M.D., concerning his performance as a clinician or manager at the Tomah VA Medical Center. The parties agree that this clause does not apply to responses by Appellant to inquiries from State or federal regulatory agencies.

5. The terms and conditions set forth in Paragraphs 2 and 3 are in full settlement of any and all claims, demands, rights, and causes of action of any kind and nature, resulting from the same nucleus of operative facts giving rise to the claims in the above-captioned appeal.

6. This settlement agreement shall not constitute an admission of liability or fault on the part of the Agency, its agents, servants, or employees, and is entered into by both parties for the purpose of compromising a disputed claim and avoiding the expenses and risks of litigation.

7. It is also agreed, by and among the parties, that the settlement amount and terms and conditions described in Paragraphs 2 and 3 represent the entire agreement and that the respective parties will each bear their own attorney fees, tax obligations, costs, and expenses, aside from those fees, costs and expenses specifically provided for in this Agreement.

8. This Settlement Agreement shall not serve as a precedent for resolving any other complaints, grievances, appeals or actions, which have been or may be filed.

9. In consideration of the terms set forth in Paragraphs 2 and 3, Appellant agrees to execute and file with the Merit Systems Protection Board such documents as shall be necessary to cause the above-captioned appeal to

be dismissed. This Agreement will be made part of the overall record and the Merit Systems Protection Board will retain jurisdiction to ensure compliance with the agreement.

THE PARTIES TO THIS AGREEMENT HEREBY SIGNIFY THEIR UNCONDITIONAL ACCEPTANCE OF EACH AND EVERY TERM OF THIS AGREEMENT BY SIGNING ON THE FOLLOWING SIGNATURE LINES:

Dated: 9/20/10


Noelle Johnson
Appellant

As to form only:


Sally Stix
Appellant's Representative

Dated: 9/27/10


Jerald Molnar
Director
Tomah VA Medical Center
Department of Veterans Affairs

As to form only:


Michael Newman
Assistant Regional Counsel
Milwaukee Office of Regional Counsel
Department of Veterans Affairs