

National Gallery of Art**COPY FOR YOUR
INFORMATION***Washington, D.C. 20565*

March 20, 2002

Mr. Fred Dodge
Facilities Management/Electrical Shop
National Gallery of Art
Washington, DC 20565

Dear Mr. Dodge:

This is in response to your March 8, 2002 letter to the Director, in which you raised concerns about the Personnel Office's handling of your Family and Medical Leave Act (FMLA) application. The Director has asked me to look into the issues you raised and to respond on his behalf.

In your letter, you claimed that the Personnel Office (AP) told you that the medical information relating to your son, for which you requested FMLA, could be shared with any National Gallery manager upon request, regardless of whether they were in your supervisory chain. You also stated that you asked AP to act as an intermediary concerning the information to be shared with your supervisor. You argued that your supervisor did not need to know about your son's medical condition, and should only receive information about the type of accommodation approved under FMLA. You stated that you told AP twice that you considered your son's medical information confidential, and did not want it disclosed to anyone. You further claimed that AP disclosed your FMLA application to your supervisor, contrary to your wishes. Moreover, you were upset when your supervisor met with you about your FMLA status in a common hallway near the lunchroom, where others may have overheard your private conversation.

I have reviewed and considered your claims, as well as the information that I received from AP and from Brian Thomas, your supervisor. I share your concern and expectation that medical information should be carefully guarded and that confidentiality be observed at all times. However, based on my review, I found no evidence to support that AP staff or your supervisor improperly shared your confidential medical information.

Specifically, on November 26, 2001, you applied for and were authorized FMLA status by Linda Pettiford, Personnel Staffing Specialist, due to a medical condition affecting your son. Your FMLA application consists of only two documents, a completed U.S. Department of Labor form, entitled "Certificate of Health Care Provider," and a memorandum, dated December 4, 2001, from Ms. Pettiford to you, approving your FMLA request, effective November 26, 2001. The Gallery received no other medical records or notes about your son.



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According to Ms. Pettiford, you never asked her to keep your FMLA application form confidential, especially from Mr. Thomas, your supervisor. She pointed out that Gallery Circular No. 61 on FMLA, Section XI, states that "[t]he employee's immediate supervisor will be responsible for serving as the primary and initial contact with his or her staff member who is requesting FMLA leave." Thus, when Mr. Thomas asked Ms. Pettiford for your FMLA application, she shared it with him as your supervisor.

In terms of your conversations with AP and your claimed instructions that AP not share your FMLA records with your supervisor, it appears that you are referring to a conversation you had with Meredith Weiser, Deputy Personnel Officer. According to Ms. Weiser, she spoke with you during the week of February 4, 2002 concerning your wish to use your FMLA status to exempt you from working a mandatory overtime assignment. Ms. Weiser informed you that your FMLA status did not automatically relieve you from having to work the mandatory overtime assignment. She also told you that you needed to discuss your FMLA status with your supervisor, explain why you could not work, and request an exception from the mandatory overtime work. Ms. Weiser noted that you considered the reason supporting your FMLA status confidential, and that you did not want to share the information with your supervisor. She reiterated to you that your supervisor needed the information in order to make an informed decision on your request. She also explained that it is your supervisor's responsibility to keep this type of sensitive information confidential. According to Ms. Weiser, she volunteered to participate in such a discussion between you and Mr. Thomas in order to emphasize the confidentiality requirements, if needed. Your conversation ended with you repeating your concerns about discussing your FMLA status with Mr. Thomas.

According to Mr. Thomas, he notified you on February 1, 2002, about a mandatory overtime work assignment, scheduled as a full-scale test of the Gallery's emergency back-up power system. Contrary to Mr. Thomas' instructions and despite advance notice, you refused to work the mandatory overtime assignment. On February 22, 2002, the day of the mandatory overtime, you mentioned to Mr. Thomas that the Gallery could not make you work since you were approved for leave under FMLA, among other reasons for your refusal. For this reason, on or about February 27, 2002, Mr. Thomas asked Ms. Pettiford for information relating to your FMLA application as part of his review of your refusal to work the mandatory overtime assignment. After reviewing it, he determined that your FMLA approved leave is generally for pre-scheduled medical appointments and in some instances, may involve leave on an emergency basis. Mr. Thomas subsequently disapproved your excuse for refusing to work the mandatory overtime work assignment, since you did not mention any pre-scheduled doctor's appointment or emergency requiring your use of FMLA. As a result of your refusal to work this critical mandatory overtime work assignment, Mr. Thomas has proposed disciplinary action against you.

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After Mr. Thomas reviewed your FMLA application, he met with you on February 28, 2002, to discuss leave-related problems which do not involve your FMLA leave, and to discuss your FMLA status. Contrary to your claims, Mr. Thomas stated that he asked you to enter his office from the lunch room/break room, located adjacent to his office. Instead of walking into his office as he had gestured, you stood by the doorway which separates the lunch room/break room from his office. The two of you engaged in a normal conversation and there was nobody present in the adjacent room. Mr. Thomas explained to you that he would respect your entitlement to leave under FMLA, but would no longer grant leave without pay (LWOP) for non-FMLA purposes, as he believed you had abused LWOP in the past. Mr. Thomas recalls that you were upset that he had been given your FMLA application and threatened to sue the Gallery. Mr. Thomas said that he told you, "You have my word, man to man, that this information will not leave this file cabinet." He then showed you the locked cabinet where he keeps his files.

In reviewing this matter, I found no evidence that you were told that an employee's medical information can be shared with any manager or supervisor regardless of the employee's supervisory chain. An employee's manager and/or supervisor has a right to review information upon which an employee relies in seeking leave from work. While a supervisor does not always need to know all the details of a person's medical condition, at a minimum, the supervisor needs to know the diagnosis and treatment regimen in order to make informed personnel decisions. In your case, the information released consisted solely of the FMLA application form and did not include any other medical records. Since Mr. Thomas, your supervisor, was trying to decide whether your refusal to work a mandatory overtime assignment was proper, he had every right to review this information. Indeed, under Gallery policy, you should have first routed your FMLA application through him, rather than applying directly to AP.

I understand your concern about releasing confidential medical information to anyone who is not entitled to see it. However, managers and supervisors have a responsibility to balance the privacy interests of employees with their responsibility to protect the Gallery's benefits programs from abuse. I hope that this letter responds to your concerns and explains why AP released your FMLA application to your supervisor, and why your supervisor exercised his right to review this material.

Sincerely,



Darrell R. Willson
Administrator

Copy to:
Earl A. Powell III, D