

In the Matter of the Veteran’s Preference Hearing)	OPINION AND AWARD
)	
Involving)	
)	
The Minnesota Sex Offenders Program, Employer)	BMS Case No 12-VP-0058
)	
And)	
)	
Justin Gamst, Veteran)	October 6, 2011

Background

The undersigned was chosen as sole Arbitrator in this matter through the procedures of the Minnesota Bureau of Mediation Services. Under Minnesota law, a public employer cannot terminate an honorably discharged veteran without a Veteran’s Preference Hearing. (Indeed, the veteran remains on full pay and benefits until the termination is upheld by a board or, as in this case, a sole arbitrator.) The Hearing in this case was held at the employer’s Training Facility in Moose Lake, MN on September 29, 2011. Oral summation sufficed; no briefs were filed. Given the economic consequences of delay for the employer, this will be a short opinion, even for this normally terse arbitrator.

Veteran’s employment history

Veteran Justin Gamst has been employed at the Minnesota Sex Offenders Program for six years. His recent performance appraisals have been: 2008----meets expectations, 2009---meets expectations, 2010---below expectations [Employer Exh. 21]. During 2010, he was disciplined on five occasions for unauthorized absences from the job: an oral reprimand, a written reprimand, and 1-, 3-, and 5-day suspensions [summarized in Employer Exh. 21; more details are in the record].. These absences were ascribed to “problems at home.”

The employer operates a pair of treatment facilities, including the one in Moose Lake, to work therapeutically with sex offenders who have done their prison time, but have then been civilly

committed for further treatment, since they are seen as potential dangers to others in the larger society.

The employer utilizes an "Incident Command System" evidently devised by FEMA to assume control of problem situations. A particular officer assumes command of the incident and summons the so-called A Team to respond. The B Team then moves to take over the duties vacated by members of the A Team. Mr. Gamst was a member of the A Team.

Incident of June 4, 2011

On the morning of June 4, a client took a pot of hot coffee into his room. Such an item is considered to be a potential weapon; hence the Incident Command system was initiated. Video footage shows a fellow A Team member running to the site of the incident and shows Mr. Gamst walking. He should have been able to respond in ten or twenty seconds, but it took him one minute and 43 seconds to arrive on scene. Mr. Gamst says his feet hurt sometimes in the morning. He also said that he knew what was going on and who had done it and knew he didn't need to hurry to get to the incident site. How could he be certain who it was? Clients' names are not part of the Incident announcement [testimony of MSOP director Moser]; there were 55 men in residential unit 1D [testimony of unit superintendent Rose]---was only one of them a potential problem client?

Incident of June 23, 2011

Mr. Gamst responded to an Incident Command System call involving a client giving considerable verbal abuse to a female security officer. This included a threat to "fuck her with a 12-gauge." About the time Mr. Gamst arrived, the client had stripped to his underwear and laid on the floor on his stomach with his hands behind his back, but was still talking. Reports by other officers refer to Gamst "bantering" with the client and telling him to "shut up." Gamst's own report on this incident indicates that he told the client to "be quiet." Other reports indicate that Gamst referred to the client or to the client's behavior as "pathetic." [Employer Exh. 18 and 19] In general, the picture is of language used that

might inflame the situation, not de-escalate it.

Concluding observations

While the five disciplinary evens of 2010 were attributed to strains from problems at home, the incidents of June 4 and June 23 are of a radically different stripe. They strike at the core of two key elements in the employer's mission: to provide a therapeutic environment for treatment in a security setting that is safe for staff, clients and the general public. While a string of no-call no-shows may challenge the employer's efficiency and pose issues for staff having to work unexpected overtime, they do not strike at the very essence of MSOP's driving principles.

The depth of Mr. Gamst's departure from a commitment to these principles can be seen in the fact that each of the June incidents came on the day after a supervisory coaching session relating to his job performance.

The veteran has had his day in court; the employer is free to terminate Mr. Gamst.

James G. Scoville, Arbitrator.