

March, 20,2010

Court of Appeals No. # A10-351

Blayne Brisson vs City of Hewitt

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Statement of Legal Issues

There has been a finding of employee misconduct on the part of the Relator resulting in unemployment benefits ineligibility.

Definitions of misconduct are inconsistent with the finding of misconduct.

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Statement of Case

I was terminated from service from The City of Hewitt for displaying hostility, insubordination, and misconduct.

The case is that I, Blayne Brisson, did in fact open some 'adult content' e-mails and perhaps viewed some 'sites'. These were not excessive nor were they done on city time.

The past City Administration was aware of what occurred in the office and chose to not even discuss the matter. The current Administration was aware of these activities long before they became mayor (as the current mayor is the mother of the past mayor).

The next statement is not before this Court but I feel it is germane to this case and may eventually be presented in an entirely different court room and that is: my supposedly misconduct was not an issue until I filed for and received a Restraining Order against another City Councilman, one Donald Fitzgerald, for threatening me with bodily harm through emails on the city computer.

The City had two other allegations, displaying hostility and insubordination were discharged on appeal to the ULJ because explanation of them just did not support them.

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Argument

I am appealing the decision of misconduct, document no. # 108959886, as a justifiable reason for termination from the City of Hewitt.

Mn. Statute 2003, chapter 609.43, sub 2, states in reference to 'misconduct of a public officer or employee', 2) 'in the capacity of such employee does an act knowing it is in excess of legal authority or knowing it is forbidden by law...' I was in no way acting in any capacity of my legal authority as to my employee duties or responsibilities and therefore not acting in excess of my legal authority.

Viewing adult websites of opening emails with adult content is not forbidden by law. In fact it is protected by law and Constitutional Amendment.

The ULJ cites Mn. Statute 268.095, sub 6 (a) 'intentional, negligent or indifferent conduct on or off the job that displays clearly a serious violation of the standards of behavior the employer has a right to reasonably expect from the employee or substantial lack of concern for the employment.'

As this activity was never discussed with me or any of my co-workers, I was under the impression that this was a 'serious violation of standards of behavior'. The City of Hewitt had not addressed computer use in the employee manual, which types of websites are allowable is not addressed in any City Policy.

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Conclusion

In conclusion the finding of misconduct should be overturned as I never acted in excess of my authority of my position or acted knowing it was forbidden by law.

My tenure at the City of Hewitt is dotted with excellent appraisals from any number of State agencies including the MN Dept. of Pollution Control, The MN Dept. of Health, The Dept. of Employment and Economic Development just to name a few. I have an excellent record with the City.

I have not broken any Code of Ethics (though the City appears to enforce this code at their discretion). I have not broken any Employee policy or City ordinance. I have not even been talked to, much less reprimanded for the behavior the City calls misconduct.

There is no evidence that I acted negligent or indifferent on or off the job that clearly displays a serious violation of the standards of behavior an employer has a right to expect.

Therefore I ask that the finding of misconduct be set aside.

I ask that my unemployment benefits be reinstated.

I ask that right decision be made and I am exonerated of such allegations.