

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

In the Matter of Rodolfo Rios,

Complainant,

**ORDER GRANTING MOTION
FOR RECONSIDERATION**

v.

Minnesota Department of Corrections,
MCF-Moose Lake,

Respondent.

The Complainant filed a Motion for Reconsideration in the above matter on November 18, 1996. The Respondent filed a Reply to the motion on December 2, 1996.

Reino J. Paaso, Attorney at Law, 410 Fourth Avenue South, Suite 500, Minneapolis, Minnesota 55415, represented the Complainant. Melissa L. Wright, Assistant Attorney General, Suite 1100, 445 Minnesota Street, St. Paul, Minnesota 55101-2128, represented the Respondent.

Based upon the Memoranda filed by the parties, all the filings in this case, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED: (1) That the Complainant's Motion for Reconsideration is GRANTED; (2) that the Summary Judgment dated November 5, 1996, is vacated; (3) that the allegation of age discrimination is dismissed with

prejudice; and (4) that the hearing in this matter is hereby set for January 22 through 24, 1997.

Dated this 10th day of December 1996.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

An Order Granting Summary Judgment in favor of the Respondent was issued on November 5, 1996, in this matter. The Complainant then filed his Motion for Reconsideration asking that the Motion for Summary Judgment be vacated. Under Minn. Rule pt. 1400.8300, a Motion for Reconsideration is to be granted if it appears that to deny it would be inconsistent with substantial justice and if one of several factors have occurred, such as irregularities in the proceeding whereby the moving party was deprived of a fair hearing, or that the decision was not justified by the evidence, or is contrary to law.

The Complainant argues in his Memorandum that there are factual disagreements on material facts which prevent a summary judgment from being entered. He once again argues the significance of certain incidents without denying that they occurred. However, for the first time, the Complainant submits his own affidavit in which he specifically denies that certain incidents occurred, such as the Complainant giving keys to an inmate, or the Complainant eating pizza with inmates. As the summary judgment Memorandum pointed out, the Complainant failed to submit his affidavit in response to that motion; nor did he point to any portion of his deposition which would constitute a specific, material factual conflict requiring a hearing. The submission of the Complainant's affidavit at this late date does create a factual conflict precluding summary judgment. Accordingly, it would be inconsistent with substantial justice to grant summary judgment. Based upon the record at this point, the summary judgment decision is not justified by the evidence. However, the failure of counsel for the Complainant to submit this affidavit in a timely manner is a factor which should appropriately be considered under Minn. Rule pt. 1400.7050, subp. 2E.

Two further matters merit discussion. First, it should be clear that even though the Complainant has raised a factual conflict precluding summary judgment, this does not mean that he has satisfied his burden of showing intentional discrimination. Under Krenik v. County of Le Sueur, 47 F.3d 953 (8th Cir. 1995), discussed in the summary judgment Memorandum, the Complainant cannot simply assert a belief in his own abilities that differs from the Respondent's, if he is to prevail. In other words, if the Complainant proves at the hearing that he did not give the keys to the inmate, this fact

would not necessarily prove discrimination unless, for example, the incident was fabricated by the Respondent in order to support dismissal of the Complainant based upon his national origin. The Complainant retains his overall burden of showing that intentional discrimination was the true reason for his dismissal. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

Secondly, the Complainant must also assume his burden under State by Beaulieu v. Mounds View, 518 N.W.2d 567 (Minn. 1994), to show that willfulness or malice was involved in the Complainant's dismissal. The Complainant will be obligated to show that the Respondent had reason to believe that the Complainant's dismissal was intentional discrimination prohibited by the MHRA.

The materials submitted with the Motion for Reconsideration did not compel any different determination from that set out in the Order for Summary Judgment as to the issue of age discrimination. There is insufficient evidence in the record to show that the employer's reason for its dismissal of the Complainant was pretextual in regard to the allegation of age discrimination. That issue is therefore dismissed.

The parties should call the ALJ by conference call if the hearing dates create unresolvable problems. Written exhibits and witness lists must be exchanged one week before the hearing as contemplated in the ALJ's letter of August 13, 1996. Should the parties wish to attempt settlement, the services of a mediator can be promptly arranged.

G.A.B.