

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by
William L. Wilson, Commissioner,
Department of Human Rights,

Complainant,

vs.

REPORT OF HEARING EXAMINER

The City of Minneapolis;
Frank J. Ankner, M.D.;
Minneapolis Civil Service
Commission; and its Per-
sonnel Director, Thomas
Utsunomiya,

Respondents.

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Tuesday, January 24, 1978 in the Hennepin County Government Center, Minneapolis, Minnesota.

Norman B. Coleman, Special Assistant Attorney General, appeared on behalf of the Department of Human Rights. Robert J. Alfton, Assistant City Attorney, City of Minneapolis, appeared on behalf of all Respondents. Briefs were submitted through April 21, 1978.

Notice is hereby given that pursuant to Minn. Stat. 363.071, subd. 2, this is the final decision of the Department of Human Rights, and under Minn. Stat. sec. 363.072, any person aggrieved hereby may seek judicial review pursuant to Minn. Stat. sec. 14.0424 and 15.0425.

Based upon all of the files, records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Charging Party in this matter, John C. Fraley, began employment with the City of Minneapolis as an Administrative Analyst I under the CETA Program on April 22, 1975. Mr. Fraley was employed on a temporary basis pending the results of a medical examination which was mandatory for all city employees. Job responsibilities and duties for the position of Administrative Analyst I were as follows:

GENERAL RESPONSIBILITIES

Under general supervision to do technical work of ordinary difficulty and complexity conducting surveys and feasibility studies, devising procedures for problem solution, and doing related work as required.

TYPICAL DUTIES

1. Confer with department officials and staff to determine system requirements; conduct surveys and feasibility studies; develop procedures to solve problems by electronic data processing according to feasibility results and review with the Central Systems staff; analyze existing systems and procedures and revise where applicable; assist in instructing personnel in conversion and implementation activities and write up procedures; design detailed form and record format and content; prepare program specifications; write computer programs; test and debug procedures and programs; and act as department representative and technical liaison on data processing matters.

2. On May 6, 1976, Dr. Frank Ankner, City Physician, examined Mr. Fraley and referred him to Dr. Dawes Miller for a second evaluation. Dr. Miller made the following report:

Recommendations: Because of the presence of arteriosclerotic heart disease as manifest by the myocardial infarction, and the presence of diabetes mellitus, the patient represents an increased risk for long term employment with the City of Minneapolis.

Dr. Ankner subsequently recommended that Fraley's application for permanent employment be rejected because of "arteriosclerotic heart disease with a history of myocardial infarction."

3. Mr. Fraley's application was rejected on May 29, 1975, with the written comment, "Bad Heart", noted on the last page of the application. Fraley was terminated effective June 6, 1975.

4. From 1965 to the present, the following were the medical standards applied by the City of Minneapolis in evaluating applicants insofar as these standards related to individuals with heart and heart-related conditions:

Heart and-Blood Vessels:

1. The examination of the heart and blood vessels will include a past history, particularly for rheumatic fever, chorea, coronary disease, and reaction to effort or exertion. The examination will not ordinarily include special X-ray or EKG procedures. Blood pressure will always be recorded. Exercise tolerance test will be given as prescribed.

2. Acceptable:

- a. Heart murmurs considered functional (pulmonary systolic murmurs; also faint systolic murmur at apex varying in intensity with respiration and with change of position).
- b. Rapid pulse rate (over 100) not persistent and not true paroxysmal tachycardia.
- c. Slow pulse rate, not slower than 50 per minute.

3. Not Acceptable:

- a. Heart murmur from disease or anomalies of valves or vessels. (Acceptable for Medical Group III only, at discretion of City Physician.)
- b. Angina pectoris
- c. Heart block.
- d. Presence or history of coronary thrombosis, infarction or any cardiac failure (decompensation).
- e. Any serious disturbance of force or rhythm, as auricular flutter or fibrillation.
- f. Blood pressure, without medication, systolic over 140 -- diastolic over 90, on repeated examinations.
- g. Thrombophlebitis, if severe with evidence of circulatory obstruction in the involved vein.
- h. Abnormalities of peripheral vessels such as varicose veins, advanced arteriosclerosis, aneurysm, thromboangitis obliterans, or Raynaud's disease. (Mild varicose veins may be acceptable for Medical Groups II and III, at the discretion of City Physician.)

5. On December 5, 1963, Mr. Fraley suffered a myocardial infarction which required approximately three months of convalescence. He then returned to full-time employment as a systems analyst with Minneapolis Moline. In 1968, Mr. Fraley was diagnosed as a stable, adult diabetic.

6. Dr. Robert Doan treated Fraley after the heart attack

and onset of diabetes. On July 16, 1975, at Mr. Fraley's request, Dr. Doan wrote a letter to the Minneapolis Civil Service Commission which stated, inter alia:

I think from a cardiac point of view he can do almost any job. Certainly in his field of accounting and data processing he should have no limitations I do not feel that he is in good diabetic control at the present time However, he is a stable adult diabetic . . . and should be capable of performing his usual type of work.

Dr. Doan testified that Mr. Fraley would have no limitations in performing a sedentary job, such as Administrative Analyst.

7. Dr. Dawes Miller testified that a person with Mr. Fraley's medical history would have an "increased risk" of having a "coronary event". Dr. Ankner testified that there was a "good probability that he [Mr. Fraley] would have another one [coronary event] sometime in the future."

8. Dr. Ankner also testified that the reason he recommended that Fraley's application be rejected was that the City's medical standards classified anyone who had a history of myocardial infarction as "not acceptable".

9. Dr. Frederick Gebel, who is Board certified in internal medicine with a sub-specialty in cardiovascular disease, testified that between eighty and ninety percent of the people who have heart attacks and survive the period of hospitalization, do return to work. He also stated that, in regard to each of the "not acceptable" standards, further evaluation would have to occur to make a valid determination as to acceptability for a particular job.

10. Mr. Fraley was unemployed until August 8, 1975. If Fraley had continued in his employment with the City, he would have earned \$12,349.70 more than he actually earned between June 7, 1975 and January 23, 1978.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction of the matter pursuant to Minn. Stat. A 363.071 (1976), and Minn. Stat. sec. 15.052 (1976).

2. This action was commenced under the provisions of Minn. Stat. sec. 363.03, sub&. I (Supp. 1973), which provides, in part, as follows:

[e]xcept when based on a bona fide occupational qualification, it is an unfair employment practice . . . [f]or an employer because of . . . disability, (2) to refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment . . . ; (b) to discharge an employee; or (c) to discriminate against a person with respect to his hire, tenure

The term "disability" is defined in Minn. Stat. 5 363.01, subd. 25 (Supp. 1973) as "a mental or physical condition which

constitutes a handicap."

3. The City of Minneapolis denied employment to John Fraley because he had a disability related to his heart, to wit: arterio-sclerotic heart disease with a history of myocardial infarction. This condition made Mr. Fraley not acceptable pursuant to the City's medical standards.

4. Discrimination based upon the presence or alleged presence of any heart condition is discrimination because of a disability under Minn. Stat. sec 363.03, subd. I (Supp. 1973).

5. There is no bona fide occupational qualification which has been proven by Respondents. John Fraley could have safely and efficiently performed the functions of the job of Administrative Analyst I without posing a threat to his own health or to the health and safety of others. The fact that Mr. Fraley had an "increased risk" of a coronary event or that there was a "good probability" that he would have another one "sometime in the future" is of no consequence or import as it does not constitute a valid defense to the discriminatory action.

6. Minn. Stat. 5 363.071, subd. 2, states that:

. . . if the hearing examiner finds that the respondent has engaged in an unfair discriminatory (sic) practice, the hearing examiner shall issue an order directing the respondent to cease and desist from the unfair discriminatory practice found to exist and to take such affirmative action as in the judgment of the examiner will effectuate the purpose of this chapter."

Although the instant matter only dealt with the "history of . . . infarction" language in the medical standards, the Complaint prays that the Examiner direct the Respondent to cease and desist from engaging in or aiding discrimination on the basis of disability. Complainant offered evidence, which was received over the objection

of Respondent, to show that rejection based merely on the "not acceptable" medical standards set out in Finding 4 above, is discriminatory.

The Examiner concludes that the aforementioned medical standards are discriminatory because there is no factual basis for believing that all or substantially all persons with the disabilities described therein would be unable to safely and efficiently

perform the essential duties of any job or that some individuals with the disability would be unable to safely and efficiently perform the job because of their disability, and it is not impossible or impractical for the City to ascertain on an individualized basis which individuals would be precluded by their disability from safely and efficiently performing the essential duties of the job without being a health or safety threat to themselves or others. See also, *State by William Wilson v. the City of Minneapolis, et al*, HR-78-038-EL, issued October 5, 1977, affirmed May 5, 1978.

7. The Examiner concludes that the Civil Service Commission should be dismissed as a party to this action based upon the authority found in *State ex rel. Ryan v. Civil Service Commission*, 278 Minn. 296, 154 N.W. 2d 192 (1967). In *Ryan*, the Court stated:

it [the Minneapolis Civil Service Commission] has not been recognized as a legal entity, an artificial person created by law (statute or charter) and existing separate from its members, which is capable of suing or being sued. (cites omitted) The Minneapolis City Charter has given certain agencies of the City the right to sue and be sued, to plead and be impleaded in any court, etc. Chapter 19, in which the Civil Service Commission was created does not give it those rights. Thus, process to be effective against them must be addressed to each of the commissioners, individually and as members of that commission." *Id.*, 278 Minn. at 298.

Complainant did not offer argument on this issue.

8. Respondent seeks to have this matter dismissed on the ground that the initial charge was filed only against Thomas Utsumiya, Personnel Director of the Minneapolis Civil Service Commission. Respondent argues that by failing to name the City, the Commission and Dr. Ankner in the charges, each has been deprived

of an opportunity to confer and attempt to conciliate with complete notice of its status in violation of Chapter 363. Respondent cites *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (1969), and *LeBean v. Libbey-Owens-Ford Co.*, F.2d 6 FEP Cases 1, 2 (7th Cir. 1973).

The Respondent is correct in stating that the foregoing cases illustrate that the naming of a person as a respondent in a

charge is not a mere technicality nor a procedural nicety, but rather an essential purpose of the act and must be complied with in order to serve legislative intent. The act referred to herein is 42 U.S.C. 2000 e et seq, Title VII Civil Rights Act of 1964. The intent of Title VII, and the Minnesota Human Rights Act, is not to have their procedures serve as a stumbling block to the accomplishments of the statutory objective. To expect a complainant at the administrative stage, usually without the aid of counsel, to foresee and handle intricate procedural problems which could arise in subsequent litigation, all at the risk of being cast out of court for procedural error, would place a burden on the complainant which is neither anticipated nor intended by the acts. *Evans v. Sheridan Park Hotel*, 503 F. 2d 177 (1974). In *Sheridan*, the Court noted that federal courts had allowed additional defendants to be brought into the case despite the fact that the defendant was not named as a respondent in the administrative proceeding before the Equal Employment Opportunity Commission and the Court went on to state:

"Title VII is a broad humanitarian act which seeks to encourage parties to attempt conciliation before they resort to court action but it does not seek to foreclose claimants from their legal remedies because of technical pleading requirements at the administrative stage."

Several other Federal District Courts have permitted joinder of parties who have not been previously charged before the EEOC. See *Gibson v. Local 40, Super Cargoes and Checkers, etc.*, 543 F.2d 1259 (1976), and *Kaplin v. International Alliance of Theatrical, etc.* 525 F.2d 1354 (1975).

The Department of Human Rights' investigation of this matter centered upon those agents of the City who participated in the alleged discriminatory acts. investigation and conciliation efforts involved the City Attorney's office. The City was named as a Respondent immediately upon the initiation of the Complaint. The City was adequately appraised of the nature and scope of this action from its onset and has not been prejudiced by any actions of the Charging Party. The Examiner concludes that the City should not be dismissed. Complainant has agreed to the dismissal of Dr. Anhner. See Also *State by William Wilson v. City of*

Minneapolis Police Department, et al, HR-78-011-EL, issued April, 1978.

9. John Fraley is entitled to compensatory damages in the amount of \$12,349.70.

10. Punitive damages are denied.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

O R D E R

Pursuant to the authority granted by Minn. Stat. 363.071, IT IS HEREBY ORDERED THAT:

1. The City of Minneapolis pay John Fraley the sum of \$12,349.70 as compensatory damages.

2. The Civil Service Commission and Dr. Frank Ankner are dismissed as Respondents.

3. The City of Minneapolis shall cease and desist from enforcing the medical "not acceptable" standards set forth in Finding No. 4 herein.

Dated this 19th day of May, 1978.

PETER C. ERICKSON
Hearing Examiner