

4-1900-8531-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION REVIEW PANEL

In the Matter of the Application
for Registration as a QRC Intern
by Linda C. Schmit

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:30 a.m. on Monday, April 4, 1994, at the Office of Administrative Hearings, 100 Washington Square Building, Minneapolis, Minnesota. The record closed on April 21, 1994, the date of receipt of the last post-hearing submission.

Rory H. Foley, Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155-4199, appeared on behalf of the Minnesota Department of Labor and Industry, Rehabilitation Review Panel. Linda Schmit, Mansfield Association, 151B Silver Lake Road, New Brighton, Minnesota 55112-3102, appeared pro se.

Notice is hereby given that, pursuant to Minn. Stat. P 14.61 the final decision of the Rehabilitation Review Panel shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Panel. Exceptions to this Report, if any, shall be filed with Joseph Sweere, Chair, Rehabilitation Review Panel, 443 Lafayette Road, St. Paul, Minnesota 55155.

STATEMENT OF THE ISSUE

The issue to be determined in this proceeding is whether the denial of the Appellant's registration as a qualified rehabilitation consultant ("QRC") intern by the Department of Labor and Industry should be affirmed due to the Appellant's failure to meet the requirements for registration contained in Minnesota Rule 5220.1400.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Linda Schmit, the Appellant herein, was initially approved for registration with the Department of Labor and Industry as a QRC intern in September of 1990. The Appellant was required to meet all conditions necessary to complete eligibility for QRC status within two years of initial registration as a QRC intern. The Appellant was notified of this requirement at the time of her initial registration.

2. Minn. Rules pt. 5220.1400, subp. 2, describes the credentials required for QRC registration, which include certification by a national organization. Subpart 2A sets forth the requirements under which the Appellant was seeking QRC registration as:

A. a baccalaureate degree, together with certification by the Board of Rehabilitation Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist.

3. At the time Ms. Schmit was initially registered as a QRC intern, Minn. Rules, pt. 5220.1400, subp. 3 provided:

Subp. 3. Rehabilitation consultant intern. An individual who meets the requirements of subpart 2, item A or B may be registered as a consultant intern. An individual who meets the requirements of subpart 2, item A or B, except that two years or less of internship or experience remains as a requirement for certification, may be registered as a consultant intern. The intern must work for at least one year as a qualified rehabilitation consultant intern in the rehabilitation of injured workers. . . . (emphasis added.)

4. The Appellant earned a Bachelor of Science Degree in Secondary Education on May 30, 1980, from the University of Wisconsin - River Falls, with a major in Physical Education.

5. Certificatio

a. Category One requires a current Registered Nurse or valid Certified Rehabilitation Counselor license, or a Master's or Doctorate Degree in Rehabilitation Counseling or other closely related fields specifically defined in the criteria, along with a minimum of 24 months of full-time

employment providing direct rehabilitation services to a disabled population receiving benefits from a disability compensation system.

b. Category Two requires a Bachelor's degree with a major in Rehabilitation with a minimum of 36 months full-time employment providing

direct rehabilitation services to a disabled population receiving benefits from a disability compensation system.

c. Category Three requires a Bachelor's, Master's, or Doctorate in any other discipline along with a minimum of 48 months of full-time employment providing direct services to a disabled population receiving benefits from a disability compensation system.

6. Minn. Rules pt. 5220.1400, subp. 3 (1992 Supp.), defines the purpose of QRC internship as "to provide a supportive, structured period of professional supervision and case review following registration." The Rule also provides specific grounds for the denial of QRC registration for Interns as follows. (This rule did not address the issue of denial of intern registration):

The failure to comply with the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or the violation of any of the provisions of Minnesota Statutes, chapter 176, Minnesota Rules, parts 5220.0100 to 5220.1910, or orders issued under the statutes or rules constitute grounds for denial_of_registration_as_a_qualified_rehabilitation_consultant under Minnesota Statutes, section 176.102, subdivision 3, discipline under Minnesota Statutes, section 176.102, subdivision 3a, or_delay_of_completion_of_internship. The intern may appeal the decision of the commissioner denying registration as provided in part 5220.1500, subp. 2. (emphasis added.)

* * *

7. A QRC intern performs some functions of a QRC but works under the direct supervision of a QRC. In the Appellant's case, her internship was supervised by Larry Mansfield, of the Mansfield Association, 151B Silver Lake Road, New Brighton, Minnesota. The Appellant began working for the Mansfield Association in May of 1990. Her duties included consultations with industrially injured workers to provide rehabilitation services; conferring with medical and professional personnel to determine the type and degree of injury as well as the eligibility and feasibility of vocational rehabilitation; developing rehabilitation plans; and other related duties. Aside from her work at Mansfield Association, the Appellant had no work experience deemed acceptable by CIRSC to meet the full-time employment experience required to sit for the certification examination.

8. Beginning in the fall of 1990, the Appellant enrolled in a Master's

Degree Program in Vocational Rehabilitation Counseling at the University of Wisconsin - Stout. Attendance at the University of Wisconsin - Stout required the Appellant to drive 89 miles each way to and from the university.

9. On March 22, 1991, the Appellant was injured in an automobile accident. The Appellant's accident involved cervical spine and shoulder injuries producing low back pain, particularly when driving.

10. On August 29, 1991, Jeanne Gehrman, Rehabilitation Provider Registration Specialist for the Department of Labor and Industry, notified the Appellant by letter that her application for renewal of her QRC internship was approved with an "expiration" date of September 1, 1992. The letter from Ms. Gehrman reminded the Appellant that she "must obtain the certification required un

11. On July 3, 1992, the Appellant contacted the Department of Labor and Industry by telephone and stated that due to the effects of her March 22, 1991 auto accident she was discontinuing her Master's Degree program at the University of Wisconsin and would therefore be ineligible for the certification examination. The Appellant was advised to provide the Department of Labor and Industry with a copy of a doctor's statement relative to discontinuing her education and a copy of her application to take the CIRS examination.

12. Alan S. Bensman, M.D., of the Minnesota Center for Health and Rehabilitation, 5400 Glenwood Avenue, Minneapolis, Minnesota, wrote a letter on July 7, 1992, concerning the Appellant. Dr. Bensman's statement was that the Appellant:

. . . was unable to continue with her Master's Program because of the effects of the 3-22-91 injury. The drive was too long and aggravated [sic] her symptoms.

13. On August 4, 1992, the Appellant's application for renewal of her QRC Intern registration was accepted subject to the provisions of an Agreement between the Appellant; Larry Mansfield, her QRC supervisor; and Jeanne Gehrman, as representative of the Department of Labor and Industry. The terms of the provisional agreement to renew the Appellant's internship acknowledge that the Appellant had made a timely application to take the required certification examination in October of 1992. The provisional agreement further required the Appellant to provide documentation within one week after receipt of the examination results that certification had been obtained. The agreement also provided that if the Appellant failed to pass the examination on the first attempt, the time for certification would be extended to include the

certification examination scheduled for April of 1993. The provisional agreement included a term stating that if the Appellant did not obtain the required certification, a Decision and Order would be issued rescinding her registration. Ms. Schmit's right to appeal the rescission was contained in the agreement. Linda Schmit signed this agreement along with her supervisor, Larry Mansfield.

14. In December of 1992, Minn. Rules, pt. 5220.1400, subp. 3 was amended to provide as follows:

Subp. 3. Qualified rehabilitation consultant intern. The purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of subpart 2, item A, B, or C, may be registered as a qualified rehabilitation consultant intern. If an individual meets the requirements of subpart 2, item A or B, except for obtaining certification, that individual may be registered as a qualified rehabilitation consultant intern by documenting how the certification will be obtained within three years from the date of registration. A qualified rehabilitation consultant intern

must complete an introductory training session sponsored by the department within six months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner.

The failure to comply with the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or the violation of any of the provisions of Minnesota Statutes, chapter 176, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules constitute grounds for denial of registration as a qualified rehabilitation consultant or qualified rehabilitation consultant intern under Minnesota Statutes, section 176.102, subdivision 3, discipline under Minnesota Statutes, section 176.102, subdivision 3a, or delay of c

15. Jeanne Gehrman, on behalf of the Department of Labor and Industry, issued a notice to the Appellant on April 28, 1993, regarding compliance with the provisional agreement and requesting the Appellant's examination results as provided in the provisional agreement which extended Ms. Schmit's QRC intern registration. The notice also advised the Appellant that if she failed to obtain certification, her QRC registration would be rescinded and she would therefore be prohibited from providing QRC services.

16. The Appellant's QRC supervisor, Larry Mansfield, wrote to Jeanne Gehrman on May 18, 1993, advising that as of May 27, 1993, the Appellant resigned her QRC internship and would no longer provide QRC services. In a letter to the Appellant on May 24, 1993, Jeanne Gehrman acknowledged Larry Mansfield's letter and confirmed the Appellant's status as inactive effective May 27, 1993.

17. On June 1, 1993, Ms. Schmit again applied for QRC intern registration. The Appellant's application to the Department of Labor and Industry stated that she was then fully healed from her injuries caused by the 1991 automobile accident and was again enrolled in the Master's Degree Program at the University of Wisconsin - Stout. On June 2, 1993, the Department of Labor and Industry acknowledged the Appellant's application for QRC intern status and requested that the Appellant and Larry Mansfield provide a plan of supervision and the required \$100 registration fee to complete her application for intern registration.

18. On June 11, 1993, Jeanne Gehrman wrote to Larry Mansfield concerning the Appellant's application. The letter informed Mr. Mansfield that the criteria for certification changed in May of 1992 to require five years of acceptable employment experience before being eligible to take the certification examination. Ms. Gehrman also requested information to establish whether the Master's Degree Program at the University of Wisconsin - Stout - would meet the CIRS educational criteria. Mr. Mansfield responded to Ms. Gehrman's letter on July 15, 1993, and included a plan of supervision. The letter stated that based on available information, the Appellant appeared to be eligible to sit for the CRC examination in April of 1995 and would receive her examination results following graduation in June of 1995. Mr. Mansfield also stated that although he had no information about the accreditation process, the University of Wisconsin - Stout - program met the vocational criteria for CRC training.

19. On August 20, 1993, Jeanne Gehrman, on behalf of the Department of Labor and Industry, contacted Larry Mansfield by telephone and advised him that the Department would not approve the Appellant's application for QRC intern status which it had received on June 2, 1993. On September 21, 1993, Jeanne Gehrman issued a Decision and Order denying the Appellant's Application and Registration as a Rehabilitation Intern. A timely appeal was subsequently filed.

20. The Rehabilitation Panel does currently allow some registered interns to extend the internship for a longer period than the rules provide. These extensions are decided on a case-by-case basis, however. There is no rule which establishes standards for the determination of when or for how long an extension is appropriate.

21. Due to the fact that Ms. Schmit has recovered from her injuries, she fully expects to be able to take the CRC exam in October 1994 or April of 1995 and graduate from her Master's program in December 1994 or June of 1995. The CIRS exam is also a possibility during this time period.

Based upon the foregoing Findings of Fact, the Administrative Law Judge

MEMORANDUM

Linda C. Schmit was initially registered as QRC intern in September of 1990. At the time of her registration, she understood that as a condition of completing her internship and obtaining registration as a QRC, she was required to obtain certification from a national accreditation body within a period of two years. At the time of the first renewal of her QRC internship in September of 1991, she was reminded of the requirement that she obtain certification no later than September 1, 1992. Certification is determined by a private certifying organization, and the Appellant was not able to meet the private organization's criteria because she did not complete her Master's Degree in time to meet the eligibility requirements to sit for the required examination.

The Department extended the two-year period that was formerly contained in Minn. Rule 5220.1400 under the terms of a provisional agreement between the Appellant, her QRC supervisor, and the Department. The Appellant did not comply with the terms of the provisional agreement and did not obtain certification under terms of the Agreement. The Appellant's failure to meet the terms of the provisional agreement is the reason her 1993 application for registration as a QRC intern was denied by the Department.

The Appellant has raised a claim that the Department's action to deny her application constitutes discrimination under the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., because she is a qualified individual with a disability and is therefore entitled to reasonable accommodation from the Department. In this case, the Appellant's claim for status as a qualified individual with a disability is based on limitations resulting from the injuries she sustained in the March 22, 1991 automobile accident. The Appellant claims that the Department's action to deny her application for a second internship is illegal discrimination because she was unable to complete her first internship due to her disabilities.

The Americans with Disabilities Act ("ADA") became effective on January 26, 1992, and prohibits discrimination against qualified individuals with disabilities in the receipt of, or participation in, services, programs or activities provided by a public entity. The registration of QRCs and QRC interns is governed by Title II of the ADA which provides that:

[N]o qualified individual with a disability shall, by reason of

The term "qualified individual with a disability" is defined in Title II of the ADA as:

[A]n individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation

barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. 12131(2).

The term "disability is defined by the ADA at 42 U.S.C. 12102(2) as:

The term "disability" means, with respect to an individual -

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

In this case, there is no question that the Appellant failed to meet the criteria of Minn. Rule 5220.1400 required for certification. Additionally, there is no question that the Appellant failed to satisfy the terms of the provisional agreement which extended the period during which she was to obtain certification. The reason for the Appellant's failure to obtain certification is that she was not eligible to sit for the CIRS examination because she was unable to complete her Master's Degree. Without a Master's Degree, the Appellant's work experience fell short of that required to sit for the examination. The reason the Appellant did not complete her Master's Degree is that as a result of her March 22, 1991 automobile accident, she could not comfortably tolerate the long drive to the University of Wisconsin - Stout - where she was enrolled.

The period of time during which the Appellant experienced some limitation began on the date of the accident which was approximately six months after her initial registration as a QRC intern. The Appellant's QRC internship was renewed approximately five months after the accident but the Appellant did not at that time notify the Department that her limitations would interfere with her ability to obtain certification. The Appellant had been notified that she was required to obtain certification no later than September of 1992. In July of 1992, the Appellant advised the Department that she was discontinuing her Master's Degree studies due to the difficulty she was experiencing in driving to the University of Wisconsin - Stout. After her notice to the Department, however, the Appellant entered into a provisional agreement which required that she obtain certification, at the latest, following the April 1993 test date. After the Department began seeking information about compliance with the provisional agreement, the Appellant resigned her QRC internship because she could not obtain the Master's degree and subsequently applied for new QRC internship status stating that she had recovered from the effects of her accident.

The initial question is whether the Appellant's driving intolerance resulting from injuries sustained in her automobile accident meets the

definition of "disability" under the ADA. In order to have a protected disability under the ADA, the Appellant's limitations must be a "physical impairment that substantially limits a major life function." Major life functions are such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. 29 C.F.R. § 1630.2(i).

In this case, the Administrative Law Judge concludes that the Appellant's driving intolerance does not rise to the level of disability required to meet the definition of "disability" under the ADA. The Appellant's driving intolerance was not a substantial limitation on a major life activity. The fact that the Appellant found driving to be difficult and even painful does not establish a substan

The second issue is whether the Department's action to deny the Appellant's application for registration as a QRC intern in the summer of 1993 was improper. In December of 1992, the applicable rule was amended to provide that one ground for the denial of registration as a QRC intern was the "delay of completion of internship". The record is clear in this matter that the Appellant did not complete her internship either pursuant to the terms of the first registration or pursuant to the terms of the agreement entered into with the Department of Labor and Industry. Ms. Schmit testified, however, that the only reason she was unable to complete her internship was the fact that the injuries she sustained in the automobile accident made it impossible for her to complete the Master's degree at the University of Wisconsin - Stout. The Department has not suggested that there is any other reason for Ms. Schmit's failure to complete her internship. However, Ms. Gehrman testified that the "failure to complete" was a sufficient ground to deny the 1993 application for QRC intern registration.

Ms. Gehrman also testified that intern registration for individuals who did not complete their initial internship during the prescribed period was sometimes permitted but was dealt with on a case-by-case basis. Ms. Gehrman did not explain for the record what factors the Department used when determining whether to allow an individual to renew an internship. Because arbitrary action by the Department is impermissible, the Judge must evaluate the factual basis for the denial to determine whether the action taken represented "the agency's will and not its judgment". Beaty v. Minnesota Board of Teaching, 354 N.W.2d 466, 471 (Minn. App. 1984). In this case, Ms. Schmit was unable to complete her internship by obtaining certification due to the fact that she was injured in an automobile accident and could not drive to the University for Master's degree course work. The Department did not contest those facts or allege lack of diligence on the part of Appellant. At the present time, Ms. Schmit is fully able to document how she will obtain certification within the next year. The Board has advanced no facts or

rationale for denying Ms. Schmit registration other than the fact that she did not complete her internship pursuant to the previous registration and agreement. However, the Department has allowed others to renew registration after unsuccessfully completing an internship. For the Department to assert that Ms. Schmidt should be denied the same opportunity as others requires a factual basis in the record to support the distinction drawn by the Department.

No such evidence was offered. The Judge has been left with the feeling that something is missing which leads to the conclusion that the Department exercised its will and not its judgment when Ms. Schmit's application for a QRC intern was denied in 1993.

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