

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF VETERAN AFFAIRS

[Redacted],

Petitioner,

vs.

Fond du Lac Tribal and Community College,

Respondent.

**ORDER GRANTING THE COLLEGE'S  
MOTION FOR SUMMARY  
DISPOSITION**

This matter is pending before Administrative Law Judge Amy J. Chantry pursuant to a Notice of Petition and Order for Hearing dated January 25, 2016.

[Redacted] appeared on his own behalf and without legal counsel. Jacob Kraus, Assistant Attorney General appeared on behalf of Fond du Lac Tribal and Community College (Respondent or College).

**Procedural History**

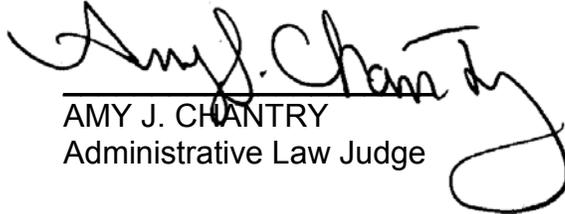
On March 15, 2016, the College filed a Motion for Summary Disposition. Mr. [Redacted] was given until April 5, 2016, to file his response. The College was given until April 19, 2016, to file a response to Mr. [Redacted]'s response. On April 13, 2016, counsel for the College notified the Administrative Law Judge that the College did not intend to file an additional response because Mr. [Redacted] did not file a response to its Motion. The hearing record closed on April 13, 2016. On April 14, 2016, the Administrative Law Judge re-opened the record to request a hearing be held on the College's Motion. In lieu of the Motion Hearing, the parties agree to supplement the record in this matter with additional information. On May 13, 2016, Mr. [Redacted] filed his response. On May 18, 2016, the College filed its response. The hearing record closed upon receipt of the response by the College.

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum, the Administrative Law Judge makes the following:

**IT IS ORDERED THAT:**

- (1) The Respondent's Motion for Summary Disposition is **GRANTED**.
- (2) The Petitioner's appeal is hereby **DISMISSED**.

Dated: June 22, 2016

  
AMY J. CHANTRY  
Administrative Law Judge

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Veterans Affairs (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Larry W. Shellito, Commissioner, Minnesota Department of Veterans Affairs, 206c Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155-2079, (651) 757-1555 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014).

Under Minn. Stat. § 14.62, subd. 1 (2014), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

## MEMORANDUM

### Undisputed Facts

Fond du Lac Tribal and Community College is located in Cloquet, Minnesota and was founded in 1987.<sup>1</sup> The College is a member of the Minnesota State Colleges and Universities System (MnSCU) and the American Indian Higher Education Consortium.<sup>2</sup> The College offers two-year associates degrees and certificates across a wide range of program areas, including law enforcement, child development, and environmental science.<sup>3</sup>

The College provides a wide range of student services to ensure student success including TRIO<sup>4</sup>: Student Support Services.<sup>5</sup> TRIO: Student Support Services is a college retention program funded by a TRIO grant through the United States Department of Education. TRIO: Student Support Services includes: (1) academic advising; (2) professional tutoring; (3) and financial advising.<sup>6</sup> TRIO: Student Support Services are available to a student who demonstrates an academic need and meets one or more of the following criteria: (1) a “first generation” student; (2) from a low-income household as set forth by the federal poverty guidelines; or (3) with a documented learning or physical disability.<sup>7</sup>

On May 18, 2015, the College posted a job opening for a TRIO Student Support Services Advisor.<sup>8</sup> The job posting indicated that the TRIO Student Support Services Advisor position was an “unclassified” position.<sup>9</sup> A “Bachelor’s degree in education, social/behavioral science, student service personnel, or related field” was listed as a required qualification.<sup>10</sup> Other qualifications were listed as “preferred” qualifications.<sup>11</sup> The application deadline was June 5, 2015.<sup>12</sup>

Mr. [Redacted], is an honorably discharged Veteran of the United States Army.<sup>13</sup> While in the Army, Mr. [Redacted] worked as a senior leader in the Army Recruiting and Retention Command.<sup>14</sup> Mr. [Redacted] was employed as a work study student at the

---

<sup>1</sup> Louise Lind Affidavit (Aff.).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Elizabeth Poitra Aff. (describing how the term “TRIO” was originally used to describe the first of three federally funded educational equity programs, but the program has expanded into other programs).

<sup>5</sup> Poitra Aff.

<sup>6</sup> *Id.*

<sup>7</sup> See Poitra Aff. (defining a first generation as a student whose parents did not receive a four-year college degree prior to the student reaching 18 years of age).

<sup>8</sup> Lind Aff.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See correspondence dated December 10, 2015, as attached to the Notice of Petition and Order for Hearing.

<sup>14</sup> *Id.*

College between the fall of 2013 and summer of 2015.<sup>15</sup> Mr. [Redacted] was one of 34 applicants for the TRIO Student Support Services Advisor position.<sup>16</sup> Mr. [Redacted] applied for the position on May 29, 2015.<sup>17</sup>

According to his application materials, Mr. [Redacted]'s bachelor's degree was not in education, social/behavioral science, student service personnel, or a related field. Instead, Mr. [Redacted] disclosed that his bachelor's degree was in business.<sup>18</sup> Mr. [Redacted] was a Business Management major. Respondent selected applicants to interview.<sup>19</sup> Mr. [Redacted] was not selected for an interview.<sup>20</sup>

The College hired one of the applicants in July of 2015, and she remains in the position today.<sup>21</sup> The position remains an unclassified position.<sup>22</sup> On January 4, 2016, Mr. [Redacted] filed a Petition for Relief (Petition) with the Department of Veteran's Affairs. In his Petition, Mr. [Redacted] alleges that the College violated his right to receive an interview for the TRIO Student Support Services Advisor position, under the Minnesota Minn. Stat. § 43A.11 (2014) of the Veteran's Preference Act.

### **Burden of Proof**

The request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. Summary disposition of a claim is appropriate when there is no genuine issue of material fact and one party is entitled to a favorable decision as a matter of law.<sup>23</sup> A material fact is one that is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact.<sup>24</sup> In considering a motion for summary disposition, an Administrative Law Judge must view the evidence in the light most favorable to the nonmoving party.<sup>25</sup>

To obtain summary disposition, the moving party must establish that there is no genuine issue of material fact. The initial burden is on the moving party to establish a *prima facie* case for the absence of material facts at issue.<sup>26</sup> Once the moving party has established a *prima facie* case, the burden shifts to the nonmoving party.<sup>27</sup> When the movant also bears the burden of persuasion on the merits at trial, as the movant does in this case, its burden on summary disposition is to present "credible evidence" that would

---

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Minn. R. Civ. P 56.03.

<sup>24</sup> *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804 (Minn. Ct. App. 1984).

<sup>25</sup> *Grandahl v. Bulluck*, 318 N.W.2d 240 (Minn. 1982); *Nord v. Herreid*, 305 N.W.2d 337 (Minn. 1981); *American Druggists Insurance v. Thompson Lumber Co.*, 349 N.W.2d 569 (Minn. 1989).

<sup>26</sup> *Thiele v. Stich*, 424 N.W.2d 580, 583 (Minn. 1988).

<sup>27</sup> *Minnesota Mutual Fire and Casualty Company v. Retrum*, 456 N.W.2d 719, 723 (Minn. Ct. App. 1990).

entitle it to a directed verdict if not controverted at trial.<sup>28</sup> To defeat a motion for summary disposition successfully, the nonmoving party must show that specific facts are in dispute that have a bearing on the outcome of the case.<sup>29</sup> The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence.<sup>30</sup> General averments are not enough to meet the nonmoving party's burden.<sup>31</sup> For claims made under the Veteran's Preference Act, Mr. [Redacted] has the burden of proving a violation.<sup>32</sup>

## Analysis

In his Petition under the Veteran's Preference Act, Mr. [Redacted] alleges that he is a qualified veteran who more than met the minimum qualifications for the TRIO Student Support Services Advisor position. Mr. [Redacted] asserts that the College violated Minn. Stat. § 43A.11 when it failed to interview him. The College argues that because the TRIO Student Support Services Advisor position is an unclassified position the Veterans Preference Act does not apply. The College further asserts that even if the advertised position was not unclassified, Mr. [Redacted] failed to meet the minimum qualifications for the position. The Administrative Law Judge agrees.

## Unclassified Position

Minnesota Statute Section 43A.08 (2014), defines which types of employees hold unclassified positions. Specifically Minn. Stat. § 43A.08, subd. 9, governs professionals in academic support programs. There is no dispute that the position of the TRIO Student Support Services Advisor comprises a professional in an academic support program. Moreover, in following the holding of the Minnesota Court of Appeals in *Ojala v. St. Louis Cty*,<sup>33</sup> veteran's preference rights in hiring do not apply to unclassified civil service positions. Thus, because Mr. [Redacted] applied for an unclassified position, veteran's preference rights do not apply. Accordingly, the College is entitled to judgment as a matter of law.

## Minimum Qualifications

Alternatively, even if Mr. [Redacted] was afforded veteran's preference rights when he applied for the unclassified position, veteran's preference still did not apply. Under Minn. Stat. § 43A.11, subd. 7, veteran's preference only applies to those veterans who meet the "minimum qualifications for a vacant position." Mr. [Redacted] did not meet the position's minimum qualifications. Whether or not an applicant has the minimum

---

<sup>28</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (dissenting opinion restating majority opinion); *Thiele*, 425 N.W. 2d at 583, n. 1.

<sup>29</sup> *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W. 2d 853, 855 (Minn. 1986).

<sup>30</sup> *Id.*; *Murphy v. Country House, Inc.*, 240 N.W. 2d 507, 512 (Minn. 1986).

<sup>31</sup> *Id.*

<sup>32</sup> See Minn. R. 1400.7300, subp. 5 (2015).

<sup>33</sup> *Ojala v. St. Louis Cty*<sup>33</sup>, 522 N.W.2d 342, 343 (Minn. Ct. App. 1994).

qualifications for a position is an “objective” test.<sup>34</sup> The undisputed facts show that Mr. [Redacted] did not meet the minimum qualifications for the TRIO position. The job posting’s first listed qualification was a “Bachelor’s degree in education, social/behavioral science, student service personnel, or related field.”<sup>35</sup> According to his application materials, Mr. [Redacted]’s bachelor’s degree was in business.<sup>36</sup> Because Mr. [Redacted] did not meet the minimum qualifications, veteran’s preference did not apply to him when he applied for the TRIO position under Minn. Stat. § 43A.11, subd. 7. Accordingly, the College is entitled to judgment as a matter of law.

## Conclusion

Therefore, the Administrative Law Judge concludes that the College demonstrated that was not subject to the protections of the Veteran’s Preference Act because he applied for an unclassified position and he failed to meet the minimum requirements of the position. Accordingly, the College’s Summary Disposition is **GRANTED** and Mr. [Redacted]’s appeal is **DISMISSED**.

A. J. C.

---

<sup>34</sup> See, e.g., *State by Cooper v. Hennepin Cty.*, 425 N.W.2d 278, 285 n.2 (Minn. Ct. App. 1988) (referring to “minimum objective qualifications” for a position), *aff’d*, 441 N.W.2d 106 (Minn. 1989); *Bormann v. Opus Nw., L.L.C.*, No. C4-98-1610, 1999 WL 118629, at \*2 (Minn. Ct. App. Mar. 9, 1999).

<sup>35</sup> Lind Aff.

<sup>36</sup> *Id.*