

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

Gregory D. Sorensen,
Petitioner,

ORDER ON MOTION FOR
SUMMARY DISPOSITION

v.
City of West St. Paul,
Respondent.

By motion dated September 20, 1995, Petitioner seeks summary disposition of his claim for relief under the Veterans Preference Act. The motion asserts that Petitioner was involuntarily terminated from his position of employment with the Respondent, without notice of his right to a veterans preference hearing. The motion seeks to preclude the Respondent from asserting at the hearing that Respondent left the employ of the City voluntarily, rendering such notice superfluous. The record closed on the motion on October 19, 1995, upon receipt of the last filing.

Jesse Gant, III, Attorney at Law, Grain Exchange Building, 400 South Fourth Street, Suite 915, Minneapolis, MN 55415, appeared on behalf of the Petitioner, Gregory Sorensen. Timothy J. Pawlenty of Rider, Bennett, Egan & Arundel, 2000 Metropolitan Centre, 333 South Seventh Street, Minneapolis, MN 55402, appeared on behalf of Respondent, the City of West St. Paul.

Based upon the Motion for Summary Disposition, the written submissions of the representatives of the parties and on all the files and records herein, the Administrative Law Judge makes the following:

ORDER

The motion is in all respects, DENIED.

Dated this 16th day of November, 1995

HOWARD L. KAIBEL, JR.
Administrative Law Judge

MEMORANDUM

The Petitioner has moved for summary disposition of Respondent's objection to his claims for relief under the Veterans Preference Act. The request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota rules of Civil Procedure. The same standards apply. Minn. Rule pt. 1400.5500 K . Summary disposition of a claim is appropriate when there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law. Minnesota Rules of Civil Procedure, Rule 56.03. A material fact is one which is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact. Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W.2d 804 (Minn. App. 1984). In considering the Motion for Summary Disposition, the evidence must be viewed in the light most favorable to the nonmoving party. 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).

In order to obtain summary disposition, the moving party carries the burden to establish 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. Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). Once the moving party has established a prima facie case, the burden shifts to the nonmoving party. Minnesota Mutual Fire & Casualty Company v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990). When the movant also bears the burden of persuasion on the merits at trial, its burden on summary disposition is to present "credible evidence" that would entitle it to a directed verdict if not controverted at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 2557, 91 L.Ed.2d 265 (1986) (dissenting opinion restating majority position); Thiele, 425 N.W.2d at 583, n. 1. When the nonmoving party bears the burden of persuasion at trial, however, the moving party's burden can be met by informing the trial court of the basis for its motion and merely identifying those portions of the pleadings, depositions, answers to interrogatories, admissions or affidavits which it believes demonstrate the absence of a genuine issue of material fact. The moving party in such a case is not required to support its motion with affidavits or other similar material negating the opponent's claim and can meet its burden by merely pointing out "that there is an absence of evidence to support the nonmoving party's case." Celotex Corp., 106 S. Ct. at 2553, 2554. In Celotex, the Court stated:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all the other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her

case with respect to which she has the burden of proof. “[T]h[e] standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a). . .” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 259, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986).

106 S. Ct. at 2511. Accord Carlisle v. City of Minneapolis, 437 N.W.2d 712 (Minn. App. 1989).

Summary disposition may be entered against a party who has the burden of proof at trial if it fails to make a “sufficient showing” of the existence of an essential element of its case after adequate time to complete discovery. Carlisle, 437 N.W.2d at 715. To meet this burden of producing “sufficient” evidence, the nonmoving party with the burden of proof at trial must offer “significant probative evidence” tending to support its claims. This burden is not met by a mere showing that there is some “metaphysical doubt” as to the material facts. Id. However, the nonmoving party is given the benefit of the most favorable view of the evidence. Concord Co-op v. Security State Bank of Claremont, 432 N.W.2d 195, 197 (Minn. App. 1988). Also, all doubts and inferences must be resolved against the moving party. Dollander v. Rochester State Hospital, 362 N.W.2d 386, 389 (Minn. App. 1985).

Appellate courts have repeatedly stressed that the authority of the trier of fact to dispose of issues summarily must be exercised cautiously. Lundgren v. Eustermann, 370 N.W.2d 877 (Minn. 1985)

If any doubt exists as to the existence of a material fact, the doubt must be resolved in favor of finding that the fact issue exists Rathbun v. W T Grant Company, 300 Minn. 223, 219 N.W.2d 641, 646 (1974). Woody v. Krueger, 374 N.W.2d 822 (Minn. App. 1985).

The trier of fact must assume the credibility of the evidence offered on summary judgment motions and deny them wherever that evidence indicates there is a material fact issue. In Howie v. Thomas for example, the Minnesota Court of Appeals held last year (514 N.W.2d 822) in a paternity case that summary disposition was improper despite a blood test showing a 99.96% probability of parentage, because the putative father’s denial of sexual intercourse created a fact question:

Where the evidence is circumstantial and sustains two or more inconsistent inferences with equal weight, a directed verdict may be appropriate (because the burden of proof had not been sustained and a contrary verdict would be based on speculation), but a summary judgment would not be.

See also, Doe v. Brainerd International Raceway, Inc., 514 N.W.2d 811 (Minn. App. 1994).

The function of the trier of fact in deciding a Motion for Summary Disposition is never to weigh the evidence in an attempt to determine what the facts are. Wagner v. Schwegmann’s South Town Liquor, Inc., 485 N.W.2d 730 (Minn. App. 1992). Once the

nonmoving party introduces evidence showing that there is a material fact issue, the inquiry is over and the motion must be denied, without engaging in fact finding.

Petitioner seeks summary disposition herein based on his allegation that the Respondent terminated his employment against his will. He asserts that there is no genuine dispute here over whether he was discharged involuntarily, as opposed to quitting of his own accord.

Petitioner has made a prima facie case in support of his motion by way of his affidavit and some corroborating language in documents he received from Respondent. The burden thus shifted to Respondent to introduce evidence showing the existence of a material fact issue.

Respondent subsequently filed affidavits and unanswered Requests for Admissions as evidence to meet that burden. Viewing that evidence in a light most favorable to the Respondent (as the nonmoving party) assuming its credibility, resolving all doubts and inferences against Petitioner (as the moving party) there appears to be a factual dispute as to whether Petitioner left Respondent's employ voluntarily.

Respondent's evidence, thus construed, establishes that there is at a minimum a material factual dispute regarding the following which is its version of the termination of Petitioner's employment. Although Petitioner led the City to believe that he would return to his job after back surgery, causing them to hold the position open for two and one-half years, while he collected workers' compensation, he never really intended to go back to that job when his benefits ran out. Respondent asked Petitioner in writing in August of 1992 to tell them whether he would be able to return or whether they could hire someone else to fill the position by the commencement of the winter work season on November 2, 1992. Petitioner did not tell Respondent when he met with city officials in October or at any other time, in writing or verbally, that he intended to return in November. On the contrary, Petitioner told both the City Manager and the Public Works Director in October that he had completed a retraining program and found another job with Montgomery Wards.

Petitioner's motion has consequently been denied because there is a genuine dispute here over the existence of a material fact: whether Petitioner left Respondent's employ voluntarily or involuntarily. A hearing will be necessary to resolve that dispute. Counsels' attention is directed to a 40 page annotation reviewing past cases involving such disputes under unemployment compensation statutes, Souder v. Ziegler, Inc., Buhl Location, 424 N.W.2d 834, 80 ALR4th 1 (Minn. App. 1988).

HLK