

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

Richard J. McKinney,

Petitioner,

ORDER ON MOTIONS
FOR SUMMARY DISPOSITION

v.

St. Paul Public Schools,

Respondent.

The above-entitled matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of Petition and Order for Hearing dated July 24, 1997. Nancy L. Cameron, Assistant General Counsel, St. Paul Public Schools, 360 Colborne Street, St. Paul, MN 55102-3299 has appeared on behalf of the Respondent. Jesse Gant, III, Gant Law Office, Flour Exchange Building, 310 South Fourth Avenue, Suite 500, Minneapolis, MN 55415, has appeared on behalf of the Petitioner.

In August 1997 the parties agreed to file cross-motions for summary disposition on the question of whether Petitioner was "removed" from his employment for purposes of the Veterans' Preference Act (VPA), Minn. Stat. § 197.46 (1996). For purposes of this motion the record closed on November 3, 1997 when the respondent filed its response to petitioner's late-filed affidavits.

The issue raised by the parties is whether the petitioner voluntarily terminated his employment for purposes of the VPA under a civil service rule which authorizes the respondent to treat an employee's absence from work without leave as a voluntary quit.

Based upon all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS ORDERED:

1. That the parties cross motions should be and they are DENIED.

2. That a hearing on the petition will be held at the Office of Administrative Hearings commencing at 9:30 a.m. on January 20, 1998.

Dated this 20th day of November, 1997

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

I

Most of the facts surrounding petitioner's separation from his employment with the respondent are undisputed. Petitioner, an honorably discharged veteran, filed a petition with the commissioner of veterans affairs on or about June 18, 1997 alleging that the respondent removed him from his employment as a baker without notifying him of his right to a hearing under Minn. Stat. § 197.46 (1996).

Petitioner was hired by the respondent as a Baker I on or about October 1, 1990. Affidavit of Jean M. Ronnei (Ronnei Aff.), ¶2. He worked for respondent until January 12, 1996, when the respondent's director of food services, Jean Ronnei, mailed notice to petitioner that he was deemed to have resigned his job due to his incarceration and concomitant unavailability for work. Ronnei Aff. ¶10, and Ex. 6. Ronnei was petitioner's "appointing" officer.¹

On June 21, 1995, petitioner pled guilty to fifth degree misdemeanor assault. Ex. 9. The district judge stayed imposition of sentence and placed petitioner on probation to Community Corrections for one year. *Id.* Among other things, the conditions of probation established by the judge were that petitioner would have both a chemical dependency evaluation and a domestic abuse evaluation, follow the evaluators' recommendations, remain law abiding, and commit no further assaults. *Id.* and Ex. 1c.

On June 28, 1995, petitioner received a chemical dependency evaluation at Family Services. The evaluator recommended that petitioner seek outpatient treatment at the Twin Town Treatment Center in St. Paul. On August 12, 1995 petitioner still had not contacted Twin Town. Consequently, his probation officer directed him to do so immediately. Petitioner then contacted Twin Town for intake, but told the intake staff he did not intend to quit drinking. As a result, he was refused acceptance into Twin Town's treatment program. Ex. 1d.

On October 23, 1995, the district judge vacated the stay of imposition of petitioner's misdemeanor sentence due to petitioner's refusal to agree to stop drinking. Ex. 1d. A review hearing was scheduled for November 29, 1995. At

¹ Under the civil service rules, the term "appointing officer" means the department or office director or any person they may designate. The term also includes the appointment body if the appointment is not made by an individual officer.

the review hearing, petitioner denied his parole violations and a contested probation violation hearing was set for January 11, 1996. Ex. 1e and 1f. At the conclusion of the contested probation violation hearing on January 11, 1996, the district judge found that petitioner had violated the terms of the prior stay of imposition of sentence, and it was revoked. The judge then ordered petitioner to pay a \$700 fine and serve 90 days in the Dakota County jail. However the judge stayed execution of the sentence and placed petitioner on probation for two years on the condition that petitioner serve 15 days in jail, follow the recommendations in the chemical dependency evaluation, including any recommended aftercare, and abstain from the use of alcohol or mood-altering chemicals. Petitioner objected to the aftercare requirement and asked that he be ordered to serve 90 days in jail instead. The judge granted his request and sentenced petitioner to 90 days in jail. The judge refused petitioner's request for work release privileges and he was taken to the county jail at that time. Ex. 2 at 11-14.

On January 12, 1996, Ronnei learned that Petitioner had been incarcerated for 90 days and would not be granted work release. Ronnei Aff., ¶3. At that time, petitioner was the only baker employed by the respondent. *Id.*, ¶4. When Ronnei learned that petitioner had been incarcerated without work release privileges, she notified petitioner, by letter, that he was deemed to have resigned due to his incarceration and absence from work. Ronnei Aff. at ¶17. In her letter Ronnei did not mention the VPA or the civil service rule under which petitioner was deemed to have resigned. *Id.* at ¶¶16 and 18. On February 6, 1996 the respondent's school board approved petitioner's resignation. *Id.* at ¶22.

After Petitioner was incarcerated, he wrote to the district judge asking that he be permitted to have Huber work-release privileges. Ex. 1i. On January 26, 1996, the judge granted his request. Ex. 1j. Ronnei did not know that petitioner was granted work release privileges at that time. She did not learn that information until after the petitioner's petition was filed. *Id.* at ¶5.

Ronnei's letter treating petitioner's absence from work without leave was based on St. Paul's Civil Service Rule 19C. It states:

Absence from duty without leave, or failure to report after leave has been disapproved or revoked and canceled by the appointing authority, shall be deemed a resignation of the employee on such leave, or cause for discharge; however, if the employee so charged shall show to the satisfaction of the appointing officer and the Civil Service Commission that such absence or failure to report was excusable, the Civil Service Commission may permit the employee's reinstatement in accordance with the reinstatement provisions of these Rules.

Petitioner's Notice of Motion and Motion for Summary Disposition on Issue of Liability, Ex. C.

Ronnei's January 12, 1997 letter was received by petitioner's wife, Laurie McKinney. Laurie McKinney Affidavit (McKinney Aff.) ¶1. Sometime prior to January 26, 1996 Mrs. McKinney allegedly called the St. Paul Public Schools asking that Petitioner be reinstated. Id. at ¶2.

As a baker, Petitioner was represented by the Teamsters Union, Local 320, under a bargaining agreement with the respondent. Exs. 3 and 4. The bargaining agreement contains procedures for requesting short-term leaves without pay for up to two weeks and long-term leaves without pay exceeding two weeks' duration. Ex. 4 at 27. The civil service rules authorize leaves without pay primarily for the respondent's benefit and not for the employees' convenience. The reasons for granting long-term leaves without pay are governed by St. Paul civil service rules. Long-term leave requests must be submitted in writing to the food service office. Ex. 4 at 27. The food service director must respond to requests for long-term leaves within 15 calendar days after they are received. Id. Short-term leaves must be submitted to the food service director at least 45 days before the leave commences. Id. Petitioner never requested a short-term or long-term leave without pay from the food service director to cover his absences from work while he was incarcerated. Ronnei Aff. ¶33.

The District Kitchen had written policies implementing civil service rules and bargaining agreement provisions relating to long- or short-term leaves. Ex. 21. Petitioner was aware of these policies. He had followed the policies in the past and his immediate supervisor, Terry Decker, had covered them in training sessions with him.

Petitioner alleged, however, that he spoke to Decker several times about the possibility that he would have to go to jail after his January 11 court date. According to the petitioner, Decker told him that he need not worry because petitioner had enough earned sick time to cover his absence from work. Petitioner also stated that Decker told him he would not need to fill out any forms to cover his absence while incarcerated because of the availability of accrued sick leave.

Section 20A of the St. Paul civil service rules governs sick leave for employees other than those in the Special Employment Group unless specifically provided for in the bargaining agreement. Under Article 8 of the bargaining agreement, sick leave was provided to petitioner in accordance with civil service rules. Under Section 20. B of the civil service rules, an employee, like petitioner, is authorized to use sick leave for the sickness or injury of the employee, the death of specified family members, and for office visits to doctors, dentists, and other health care professionals. Also, up to four hours of sick pay can be taken for the sudden sickness or disability of a household member. Leave with pay for chemical dependency treatment is not available more than twice.

To be eligible for sick leave an employee must report the employee's sickness no later than one-half hour after the commencement of the employee's regularly scheduled work time. The District Kitchen also had sick leave policies (A-112 and A-113). Those policies authorize the use of sick leave as set forth in civil service rules.

Terry Decker disavowed petitioner's statements regarding petitioner's conversations with her. In her response to petitioner's averments, Decker said that some time before January 11, 1996, petitioner told her he might have to go to court and might need time off. Decker stated that she told petitioner at that time to put his needs for time off in writing. Petitioner never did.

When petitioner worked for respondent, Decker swore that any employee wanting time off work was required to submit a prior written request. Decker also swore that she never told petitioner that he could use sick time to go to court or to jail and never told petitioner that he was not required to fill out any forms to request a leave of absence. On the contrary, Decker averred that she told petitioner to submit a written request for time off work for the day of his court date. Decker also swore that petitioner was aware that employees desiring time off work were required to put their request in writing ahead of time. According to Decker, petitioner had followed these procedures in the past and received training in those procedures from Decker. Decker also swore that she had no authority to grant petitioner a leave of absence and had never granted any employee time off work for more than one week. Decker denied that she granted petitioner time off work to serve his jail sentence and swore that she had never granted an employee time off work so the employee could serve a jail sentence.

II

Summary judgment is appropriate when there is no genuine issue of material fact and one party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. Motions for Summary Disposition in contested case proceedings are authorized by Minn. Rs. 1400.6600 and 1400.5500 K (1995). In ruling on motions for summary disposition in contested case proceedings, civil rule 56.03 applies. A genuine issue of material fact is one which is not frivolous or a sham; a material fact is one which will affect the outcome of a dispute. Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied February 6, 1985. A dispute about a fact is genuine if the evidence is such that a reasonable fact finder could find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). The standard for summary judgment mirrors the standard for a directed verdict. Anderson v. Liberty Lobby, Inc., supra, 477 U.S. at 250. The moving party has the burden of proof for summary judgment, Nord v. Herreid, 305 N.W.2d 337, 339 (Minn. 1981), and the evidence is viewed in the light most favorable to the nonmoving party. Greaton v. Enich, 185 N.W.2d 876, 878 (Minn. 1971). However, the nonmoving party must show

that there are specific facts in dispute which have a bearing on the outcome of the case. Highland Chateau, *supra*, 356 N.W.2d at 808; Matter of Leisure Hills Health Care Center, 518 N.W.2d 71, 75-76 (Minn. Ct. App. 1994). Under Minn. R. Civ. P. 56.05, the nonmoving party may not rest on mere averments or denials, but must present specific facts showing there is a genuine issue for trial. If the nonmoving party fails to rebut specific facts presented in the motion, no question of material fact exists and summary judgment is appropriate. Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).

III

Minn. Stat. § 197.46 pertains to the hearing rights of qualifying veterans removed from their employment by a public body. It states, in part, as follows:

. . . No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

Petitioner is a “veteran” for purposes of the cited statute having served on active duty for more than 181 consecutive days as defined in Minn. Stat. § 197.447.

The issue in this case is whether, for purposes of the VPA, petitioner constructively quit his employment or was discharged (removed). This is a question of law. Gorecki v. Ramsey County, 437 N.W.2d 646, 649 (Minn. 1989). An employee who voluntarily resigns or quits is not entitled to a veteran’s preference hearing. Byrne v. City of St. Paul, 137 Minn. 235, 163 N.W. 162 (1917); Frain v. City of St. Paul, 112 N.W.2d 795, 797-98 (1962); Southern Minnesota Municipal Power Agency v. Schrader, 380 N.W.2d 169, 172 (Minn. Ct. App. 1986), reversed on other grounds, Matter of Schrader, 394 N.W.2d 796 (Minn. 1986) granted March 21, 1986. In this proceeding it must be determined if the petitioner constructively quit his employment by operation of a civil service rule making an employee’s absence from work without leave (AWOL) a voluntary resignation.

One court has identified four forms of job termination: outright discharge, coerced resignation, constructive discharge, and constructive resignation. Patterson v. Portch, 853 F.2d 1399, 1406 (7th Cir. 1988). A constructive resignation frequently involves an employee’s abandonment of his job without formally resigning which the employer treats as a resignation. *Id.* However, there are other forms of constructive resignation. Some of them involve wholly voluntary acts. In Anson v. Fisher Amusement Corp., 93 N.W.2d 815 (Minn. 1958) an employee was bumped from his position at a union’s request under a bargaining agreement’s seniority provisions which the employee had ratified and

accepted upon becoming employed. The court held that the employee had thereby constituted the union his agent and when he resigned at the union's request so that a union member could claim his job, his resignation was held to be voluntary. The Court stated:

Whether the separation from employment is voluntary or involuntary act of the employee is determined not by the immediate cause or motive for the act but whether the employee directly or indirectly exercised a free-will choice and control as to the performance or nonperformance of the act. If the act of employment separation was performed by him directly of his own free will, or indirectly by his act of vesting in another discretionary authority to act in his behalf, the ultimate resulting act is a voluntary one which disqualifies him for [reemployment] compensation.

Anson v. Fisher Amusement Corp., 93 N.W.2d at 819. Accord: Jansen v. People's Electric Co., Inc., 317 N.W.2d 879 (Minn. 1982). In reemployment proceedings, the Minnesota courts have treated an employee's absence from work due to incarceration as a discharge for misconduct rather than a constructive resignation. Hence, in Winkler v. Park Refuse Service, Inc., 361 N.W.2d 120 (Minn. Ct. App. 1985), the court held that an employee arrested on an outstanding criminal warrant was discharged for misconduct when he failed to report to work due to his incarceration. Accord: Smith v. American Indian Chemical Dependency Diversion Project, 343 N.W.2d 43 (Minn. Ct. App. 1984). (Three-day unexcused absence from work due to failure to pay speeding ticket with resulting incarceration constituted misconduct).

Other constructive resignations involve voluntary acts which are automatically treated as a voluntary abandonment of employment. In Garavalia v. City of Stillwater, 168 N.W.2d 336 (Minn. 1969), the court held that three firefighters whose employment had been terminated after they walked off their jobs during a dispute with the city were not entitled to a veterans preference hearing because a statute relating to municipal labor relations prohibited strikes by public employees and provided that any public employee who struck "shall thereby abandon and terminate his appointment or employment." In the court's view, the firefighters who walked off the job had "abandoned and terminated their own employment by their own acts."

In Behnke v. Independent School District No. 233, 1996 WL 557403, unpublished decision, CO-96-420 (Minn. Ct. App. Oct. 1, 1996) the court reached a different conclusion on somewhat similar facts. In that case, school bus drivers who refused to work unless the school district paid them for snow days when they didn't work were held entitled to a VPA hearing even though they had been warned that they would be terminated if they did not drive the day of their absence. The governing statute -- the public employee's labor relations act (PELRA) -- provided that striking public employees "may" have their appointment

or employment terminated by the employer effective the date the violation first occurs. It did not state that protesting employees would thereby abandon and terminate their employment or be deemed to have resigned. In reaching its decision the court noted that PELRA was in direct conflict with the VPA and that the VPA had not been superseded by PELRA. Because PELRA had been amended to require a municipality to take some action to terminate an employee who participates in an illegal strike and because PELRA did not expressly supersede the VPA, the court concluded that the Garavalia decision was not controlling and that the striking respondents were entitled to a veterans preference hearing. The Behnke decision suggests that employees whose employment is not automatically terminated (Garavalia) and whose termination is discretionary with the employer, are entitled to a veterans preference hearing when the employer exercises its discretion to terminate the employee, at least when the record shows that the employees were absent to protest the employer's policies and not because they intended to quit.

In some cases the issue is whether a rule or bargaining agreement provision which authorizes an employer to deem an employee who is absent without leave (AWOL) for a fixed number of days to have voluntarily discontinued employment. In Mack v. Hennepin County, 1996 WL 523818, unpublished decision, C2-96-483 (Minn. Ct. App. September 17, 1996), rev. den. October 29, 1996, the court held that a veteran who failed to report to work for three consecutive days on more than one occasion without obtaining permission to be absent was deemed to have voluntarily resigned from his employment and was not entitled to a veterans preference hearing. In that case the employee's supervisor was having difficulty with the employee leaving work on personal matters and the supervisor warned him that he must directly contact the supervisor or the supervisor of the day when he would not be at work. Subsequently, the employee missed 14 days work between July 5 and July 21, 1994 and failed to call in most of those days. The bargaining agreement governing the employee's employment with the county stated that he would be deemed to have resigned if he failed to report to work for three consecutive days without obtaining permission to be absent. The court concluded that the employee had not been removed from his employment and was not entitled to a veterans preference hearing.

For purposes of determining whether an employee separated from his employment under an AWOL statute is entitled to a pretermination hearing under Loudermill,² the courts have treated the employee's separation as a discharge. In Emanuel v. City of Columbus, 115 Ohio App. 3d 592, ___ N.E.2d ___ (Ohio App. 1996), a court held that an employee whose employment was terminated after being absent from work without leave under a civil service rule treating such absence as a voluntary resignation had, in fact, been discharged for cause and was, therefore, constitutionally entitled to a pretermination hearing. In Emanuel,

² Cleveland Board of Education v. Loudermill 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

the employee was absent from work due to his incarceration following a conviction for drunk driving. The employee, who was ineligible for work release, did not, in the court's view, intend to resign. The court noted that his relatives notified the employer of his incarceration and his inability to work and that the employee followed what he believed to be appropriate procedures. Accord: Coleman v. Department of Personnel Administration, 52 Cal. 3d 1102, 278 Cal. Rptr. 346, 805 P.2d 300 (1991).

In Hodapp v. St. Louis County (OAH Docket No. 69-3100-6516-2) the commissioner of veterans affairs addressed a veteran's right to a hearing under the VPA after he was deemed to have resigned under a civil service rule that enabled the employer to deem three days' absence without leave as a resignation. In that case, the veteran missed more than three days' work as a result of his incarceration for a probation violation. The veteran was incarcerated for one year and his requests for leave were denied. The administrative law judge concluded that the veteran had voluntarily resigned and not removed from his position, and was not, therefore, entitled to a hearing under the VPA. The ALJ stated that "[w]hile there may be some hesitancy to say that petitioner 'voluntarily' absented himself from the job, the fact is that his voluntary actions led to his incarceration." In an order dated August 14, 1992, the commissioner of veterans affairs adopted the ALJ's reasoning. The commissioner also stated that "It was not a voluntary decision on his [Petitioner's] part to be confined rather than work." The commissioner apparently intended to make it clear that the voluntariness of the immediate cause for the employee's absence is not pertinent and that the veteran is not entitled to a veterans preference hearing if the employee's voluntary acts directly or indirectly result in the veteran's separation from employment.

Although the commissioner's decision in Hodapp should be followed, this case involves issues that preclude summary disposition. In this proceeding, the petitioner has alleged that his immediate supervisor informed him that he could use sick leave while incarcerated and did not have to request leave. Decker denied petitioner's averments. Therefore evidence and argument on that issue must be heard and respondent's motion must be denied.

Respondent argues that petitioner's statements regarding his conversations with Decker are not material to the question whether petitioner was removed from his position, and that petitioner cannot show that he was removed. Respondent correctly notes that the substantive law determines the facts which are material in a motion for summary disposition. Anderson v. Liberty Lobby, Inc., *supra*, 106 S.Ct. at 2510. Respondent errs, however, in asserting that petitioner's affidavit regarding his conversation with Decker fails to raise a genuine issue of material fact. Respondent's position apparently is that petitioner's allegation that he was authorized to use sick leave during his incarceration is implausible, unreasonable and immaterial as a matter of law.

Apparently that same argument applies to petitioner's statement that Decker told him he didn't have to apply for leave while he was incarcerated.

Respondent's argument that petitioner's allegations are implausible, unreasonable and immaterial as a matter of law is based on the United States Supreme Court's decision in Matsushita Electrical Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1353, 89 L.Ed 2d 538 (1986) where the court stated that "[w]here the record taken as a whole [can] not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. . . ." It is also based on the holding that an implausible claim can be rejected. Matsushita, 106 S. Ct. at 1356. These arguments must be rejected. The "implausible" language in Matsushita has been held to apply to circumstantial evidence only. See, e.g., McLaughlin v. Liu, 849 F.2d 1205, 1207 (9th Cir. 1988). It does not authorize an inquiry into the credibility of direct evidence. McLaughlin, 849 F.2d at 1207. See, Street v. J.C. Bradford & Company, 886 F.2d 1472, 1480 n. 21 (6th Cir. 1989).

"Where there is conflicting direct evidence concerning a material fact, a question of credibility arises, which is a question for the trier of fact, and is therefore not appropriately disposed of by summary judgment." Barron v. Safeway Stores, Inc., 704 F. Supp. 1555, E. D. Wash. 1988) quoting T.W. Elect. Serv., Inc. v. Pacific Electric Contractors Ass'n, 809 F.2d 626, 630-632 (9th Cir. 1987). "In such cases the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact." T.W. Electric Serv., Inc. v. Pacific Electric Contractors Ass'n, 809 Fed. 2d at 631.

In Strauss v. Thorne, 490 N.W.2d 908, 911 (Minn. Ct. App. 1992), the Appellate Court addressed the basic rules governing summary judgment stating, in part:

If reasonable persons might draw different conclusions from the evidence presented, summary judgment should be denied.

Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630, 633 (Minn. 1978). Even if it appears unlikely that the nonmoving party will prevail at trial, summary judgment must be denied on issues which are not shown to be "sham, frivolous, or so insubstantial that it would obviously be futile to try them." Hamilton v. Independent School Dist. No. 114, 355 N.W.2d 182, 184 (Minn. Ct. App. 1984) (quoting Whisler v. Findeisen, 280 Minn. 454, 456, 160 N.W.2d 153, 155 (1968).

The statements petitioner says Decker made to him are material to the question whether he was absent from work without leave. If he was not required to request leave and could use sick leave while incarcerated, it is difficult to conclude that he resigned. A resignation is considered involuntary if it is obtained by agency misinformation. Dumas v. Merit Systems Protection Board, 789 F.2d 892, 894 (5th Cir. 1986). In Dumas, the court held that conflicting

statements given an employee regarding his right to resign or retire required a hearing.

Summary judgment is not designed as a substitute for trial. It is appropriate only when it is "perfectly clear" that no issue of fact is involved. Woody v. Kruger, 374 N.W.2d 822, 824 (Minn. Ct. App. 1985). Facts, inferences and the conclusions to be drawn from them should not be resolved on summary judgment. Hamilton v. Independent School Dist. No. 114, 355 N.W.2d 182, 184 (Minn. Ct. App. 1984).

Even if petitioner's chances of prevailing are highly doubtful, as respondent argued, the record does not show that petitioner's affidavit is a sham. A sham affidavit is one that is false in fact. Fidelity State Bank v. Bradley, 35 N.W.2d 748, 49, 227 Minn. 541 (Minn. 1949); Jasperson v. Jacobson, 27 N.W.2d 788, 224 Minn. 76 (Minn. 1947). Also, the record does not show that petitioner's affidavit is frivolous. A frivolous answer is one that is obviously insufficient and presents no defense. Minnesota Casket Co. v. Swanson, 9 N.W.2d 324, 215 Minn. 150 (1943).

In sum, the administrative law judge is persuaded that neither party is entitled to judgment as a matter of law and that a genuine issue of fact exists on the question whether the petitioner was removed or voluntarily discontinued his employment.

J.L.L.