

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

Robert M. Reinardy,

Petitioner,

v.

Dakota County,

Respondent.

RECOMMENDED

ORDER ON MOTION

TO DISMISS AND

CERTIFY

The above-entitled matter is pending before the undersigned administrative law judge (ALJ) pursuant to a Notice of Petition and Order for Hearing filed on October 14, 1997. In his petition, the petitioner is seeking relief from the commissioner of veterans affairs for actions taken by the county and its personnel board of appeals during the course of his employment.

George L. May, Attorney at Law, 204 Sibley Street, Suite 202, Hastings, MN 55033, has appeared on behalf of the respondent, Robert M. Reinardy. Pamela R. Galanter, Frank Madden & Associates, Suite 295, 505 North Highway 169, Plymouth, MN 55441-6448, has appeared on behalf of the county.

On January 16, 1998 the respondent filed a motion to dismiss the petition and to certify the ALJ's order on the motion to the commissioner of veterans affairs under Minn. R. 1400.7600 (1996). Petitioner filed his objections to the motion on February 6, 1998. Oral arguments were heard on February 12, 1998, when the record on the motion closed. Based on all the files, records and proceedings herein, and for the reasons set forth in the accompanying memorandum, it is concluded:

1. Assuming that the commissioner of veterans affairs otherwise has authority to review the decisions of veterans preference hearing panels under Minn. Stat. § 197.481, the commissioner is not authorized to review the Dakota County Personnel Board of Appeals' decision, pursuant to county personnel rules, extending petitioner's probationary period rather than discharging him because the personnel board's decision did not involve the petitioner's removal from employment.

2. Assuming that the commissioner of veterans affairs otherwise has authority to review county personnel decisions affecting veterans under Minn. Stat. § 197.481, the commissioner does not have authority to review the county's

decision, pursuant to county personnel rules, not to grant petitioner salary increases on February 14 and August 20, 1996 because the county's actions did not involve the petitioner's removal from employment.

3. Under Minn. Stat. § 197.46 and 197.481, the commissioner of veterans affairs has authority to determine whether petitioner's reassignment constituted a removal entitling petitioner to a veterans preference hearing.

4. The commissioner was not divested of his authority to determine whether petitioner was removed from his employment simply because the county offered petitioner a hearing on that issue before the Dakota County Personnel Board of Appeals after petitioner's petition was filed.

5. The respondent has not moved for summary disposition on the question whether the petitioner's reassignment constituted a removal; therefore, that issue is not before the administrative law judge.

6. As a consequence of the foregoing, respondent's motion for summary disposition with respect to the commissioner's authority to review the extension of petitioner's probationary period and the county's failure to provide him with two salary raises should be granted.

7. Respondent's motion to dismiss the petition on the grounds that the petitioner has been offered a hearing on his demotion, if any, should be denied.

8. Pursuant to Minn. R. 1400.7600 B (1996) this order should be certified to the commissioner of veterans affairs.

NOW, THEREFORE, it is hereby recommended that the commissioner of veterans affairs GRANT respondent's motion to dismiss petitioner's requested review of the Dakota County Personnel Board of Appeals' decision extending his probation and the county's decision not to grant him salary increases, but DENY respondent's motion to dismiss petitioner's request for a contested case hearing on his alleged removal.

Dated this 5th day of March, 1998

JON L. LUNDE

Administrative Law Judge

MEMORANDUM

The petitioner, Robert M. Reinardy, is an honorably discharged veteran of the United States Navy who has over three years of active military service -- from October 15, 1965 through December 11, 1968.

On August 14, 1995, petitioner was employed by Dakota County. He worked for the county's financial services department as an Account Clerk II (accounting specialist) in the receivables unit at an annual salary of \$20,300.00.¹ His employment as a permanent employee was subject to a six-month probationary period which was to end on February 14, 1996.

Rick Neumann was the director of the financial service department; however, Reinardy was directly supervised by others. Between August 1995 and November 1995 petitioner's direct supervisor was Shirley Gale. From November 1995 until the end of his probationary period, petitioner's direct supervisor was Maureen Boyden. Prior to February 13, 1996, petitioner's job performance had been discussed with him only once and he had no notice that his performance was unsatisfactory.

On February 13, 1996, Gale met with the petitioner and notified him that he was being dismissed the next day due to his inability to perform the duties of his position. Reinardy, being a veteran, requested a hearing before the Dakota County Personnel Board of Appeals (PBA). Following a hearing, the PBA concluded that the county had failed to establish that petitioner was incompetent to fulfill the duties of an accounting specialist and it refused to terminate his employment. Instead, it ordered the county to return Reinardy to work as an accounting specialist with an additional three-month probationary period or assign petitioner to another county job with a full, six-month probationary period. The PBA stated that if the county returned petitioner to his prior position as an accounting specialist it should provide him with regular assessments of his job performance and clarify the steps required of him to satisfactorily complete probation. The PBA's decision was issued on or about May 13, 1996. Petitioner did not appeal the decision to the district court within the 15-day time period set forth in Minn. Stat. § 197.46, and he returned to his former job as an accounting specialist on or about May 20, 1996.

After petitioner returned to work, he stated that he was subjected to "periodic assessments" and "monthly reviews" by Neumann, Gale and Boyden. He alleged that from May to August he was "hyper criticized, humiliated, made to feel inadequate, and simply set up for what came later, a substandard personal evaluation, which I did not deserve."

¹ Based on a job analysis and organization study completed in June 1995, the Account Clerk II position was renamed Accounting Specialist. The retitled position remained at the same salary and grade. Petitioner and other county employees were informed about the result of the study on August 22, 1995.

Petitioner is not a union member. Therefore, the county's Merit Compensation Policy and Plan (merit plan) applies to him. The merit plan provides for performance ratings in the following five levels: Level I, greatly exceeds standards; Level II, exceeds standards; Level III, fully meets standards; Level IV, minimally meets standards and Level V, below standards. Merit Plan at 3. Employees receiving a Level IV or V performance rating do not receive salary increases. Employee Manual, Sec. 3460.10.

On August 20, 1996, petitioner received his first performance review from Neumann. It was based on input from Gale, Boyden and Neumann. The performance review rated petitioner in six areas of responsibility. In four areas petitioner's performance is rated at Level IV. In two areas it was rated at Level III. Hence, petitioner's overall score was at Level IV. Petitioner vehemently objected to this evaluation. At the time of the evaluation, Neumann informed petitioner that he was being transferred to the accounts payable division under the supervision of Richard Lemke, the purchasing manager. When petitioner objected, Neumann told him he would be terminated if he refused to transfer. Petitioner acquiesced. He liked his new supervisor but missed his former job. He felt stressed and depressed and found it difficult to go to work. Consequently, he decided to quit.

On September 5, 1996 petitioner submitted a written resignation from the accounting specialist position. His resignation stated:

DICK -- PLEASE ACCEPT MY RESIGNATION FROM THE A/P POSITION FOR WHICH I HAVE BEEN TRAINING; THIS MEMO SERVES AS MY TWO-WEEK NOTICE. I HAVE ACCEPTED A WORK OFFER FROM ANOTHER COMPANY. I CAN SEE THAT I WILL NEVER BE HAPPY IN THIS POSITION. THE WORK I WAS ORIGINALLY HIRED TO DO AND WAS MOST PROFICIENT AT IS THE WORK THAT WAS MOST SATISFYING TO ME. THE FACT THAT THIS POSITION WAS THE RESULT OF A RE-ASSIGNMENT, AND NOT OF MY DIRECTLY REQUESTING IT, HAS LEFT ME WITH HOLLOW ENTHUSIASM TO PERFORM THESE DUTIES. I AM GRATEFUL FOR YOUR SINCERE EFFORTS ON MY BEHALF AND WANT TO SAY THAT THIS RESIGNATION IS IN NO WAY A REFLECTION OF YOUR SUPERVISION OR SUPERVISORY STYLE.

MY LAST DAY WILL BE 9/19/96, AND I REQUEST FLEX LEAVE FROM SOME POINT TODAY UNTIL THAT TIME. I FEEL THERE IS NOTHING MORE I CAN CONTRIBUTE AT THIS TIME, AND I AM SURE THAT YOU WILL WANT TO FILL THIS OPENING AS SOON AS POSSIBLE.

On the same day that petitioner submitted his resignation, Lemke acknowledged receipt of petitioner's resignation and accepted it. In his letter,

Lemke approved petitioner's request to use flex-leave through his last day of work on September 19.

On October 14, 1997, Reinardy filed a petition for relief with the commissioner of veterans affairs under the Veterans Preference Act (VPA), Minn. Stat. §§ 197.447 et. seq. Reinardy is requesting a hearing before the commissioner to contest the PBA's decision extending his probationary period when he was reinstated, the county's failure to give him salary increases allegedly due on February 15, 1996 and August 20, 1996, and his alleged removal on August 21, 1996, when he was transferred from the receivables unit to the accounts payable unit. Petitioner is also requesting that the commissioner order the county to reimburse him for lost flex/vacation time which he would have earned, additional costs of insurance which he was required to purchase in order to protect his family, lost disability payments which he would have been entitled to receive through the county as an employee while recovering from cardiac surgery shortly after his separation from the county, and any other benefits to which he would have been entitled had his employment not been wrongfully terminated.²

On January 14, 1998, Nancy Hohlbach, the county's deputy employee relations director, notified petitioner by mail of his right to contest his alleged removal under the VPA. The notice letter apparently resulted from petitioner's belief that he was entitled to a hearing under the VPA to contest his reassignment from the receivables unit in the financial services department to the accounts payable and purchasing unit in the financial services department. Petitioner views his reassignment as a removal and contends that his subsequent separation from employment was a constructive discharge. In her letter to petitioner Hohlbach stated, in part, as follows:

Your job classification did not change when you were reassigned on August 21, 1996, and there was no change in your salary or salary range. You submitted a letter on September 5, 1996, giving two weeks notice of your resignation from employment. Your letter was acknowledged and your resignation effective September 20, 1996, was accepted on September 5, 1996. It is the County's belief that there are no actions which constitute a removal that would trigger rights under the Veterans Preference Act.

However, since you have indicated that you believe you have rights under the Veterans Preference Act related to the above matters, this serves as notice of the rights provided by the Act. You have a right to request a hearing within sixty (60) days of your receipt of this notice. Your request for hearing must be in writing must be submitted within the 60 day period to Will Volk, Employee Relations Director. . . . If you fail to request a hearing within the 60 day

² Although the Petition alleges that petitioner was "wrongfully terminated" and "constructively discharged" he is not seeking relief on those grounds in this proceeding. They are the subject of a separate proceeding in district court.

period, such failure will constitute a waiver of any rights you may have to a hearing under the Veterans Preference Act and of all other available remedies for reinstatement. If you make a timely request for hearing, it will be held before the Dakota County Personnel Board of Appeals.

The record does not show whether Petitioner requested a veterans preference hearing before the appeals board within the 60-day period.

ARGUMENTS

The respondent has filed a motion to dismiss on three different grounds: (1) that the commissioner has no jurisdiction to review the PBA's decision extending his probationary period; (2) that the commissioner has no authority to review the county's decision not to grant petitioner two raises; and (3) that the petitioner has received notice of his right to a veterans preference hearing.

Summary disposition is the administrative equivalent to summary judgment and the same standards apply. When matters outside the pleadings are presented to a court in connection with a motion to dismiss, the motion is treated as a motion for summary judgment under Minn. R. Civ. P. 12.03. Summary judgment is appropriate when there are no genuine issues 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 1400.5500K (1995). In ruling on motions for summary disposition in contested case proceedings, 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. Hunt v. ABM Mid America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). 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 Rule 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. 1988).

Does the Commissioner of Veterans Affairs Have Authority to Review the Dakota County Personnel Board's Decision Requiring Petitioner to Serve an Additional Three Months of Probation When It Decided He Should Not be Discharged.

Respondent argues that the VPA does not authorize the commissioner to review the PBA's decision extending his probationary period. The commissioner's authority over the hiring, promotion and removal of veterans is set forth in Minn. Stat. § 197.481, subd. 1 which states in part as follows:

Petition. A veteran who has been denied rights by the state or any political subdivision, municipality, or other public agency of the state under section 43A.11, 197.46, 197.48 or 197.455 may petition the commissioner of veterans affairs for an order directing the agency to grant the veteran such relief the commissioner finds justified by said statutes.

* * *

When the county initially decided to terminate petitioner's employment at the end of his probationary period, it offered him a hearing under Minn. Stat. § 197.46. The statute reads in part:

In all governmental subdivisions having an established civil service board or commission, or merit system authority, such hearing for removal or discharge shall be held before such civil service board or commission or merit system authority. * * * The veteran may appeal from the decision of the board upon the charges to the district court by causing written notice of appeal, stating the grounds therefor, to be served upon the governmental subdivision or officer making the charges within 15 days after notice of the decision and by filing the original notice of appeal with proof of service thereof in the office of the court administrator or the district court within ten days after service thereof.

* * *

Even though Minn. Stat. § 197.46 states that appeals from the decisions of veterans preference hearing panels are appealable to the district court, petitioner argues that the commissioner has the authority to reverse the PBA's extension of his probationary period and order his unqualified reinstatement as a permanent employee. Petitioner's argument is based, in part, on the language in section 197.46 stating that a veteran "may" appeal a veterans preference hearing panel's decision to the district court. Because the word may is permissive, petitioner argues that there is an inference that other remedies exist. In petitioner's view, the commissioner is authorized to review the PBA's decision under section 197.481, which, he argues, offers a reasonable, alternative means for a veteran to obtain relief from the denial of a veterans rights. Petitioner

argues that his petition is not an appeal from the PBA's decision but an alternative procedure for considering whether the PBA's decision was correct.

Petitioner's position arguably has merit under Harr v. City of Edina, 541 N.W.2d 603 (Minn. Ct. App. 1996). Harr was suspended from work on July 2, 1990 under conditions for reinstatement he could not meet. On October 4, 1990 he received notice from the city of his rights under the VPA. On November 14, 1990 Harr requested a veterans preference hearing. On May 4, 1992, the veterans preference hearing was held. The hearing panel upheld Harr's discharge and refused to order back pay. Harr appealed the decision to the district court and on February 22, 1993 the court affirmed the panel's order. On May 27, 1992, shortly after the hearing panel's decision, Harr also filed a petition with the commissioner of veterans affairs. The commissioner ordered a hearing on June 16, 1992. Following an October 1994 hearing, the commissioner found that the city did not violate the VPA by failing to pay Harr between the date of his suspension and his termination. Harr v. City of Edina, OAH Docket No. 69-3100-6701-2, December 5, 1994. Harr appealed the commissioner's decision to the Minnesota Court of Appeals. It reversed and remanded the matter to the commissioner for a determination of Harr's reasonably recoverable back wages. Harr v. City of Edina, *supra*, 541 N.W.2d at 606. In its decision, the Court of Appeals did not discuss the commissioner's authority to consider the same issue that was previously considered by the veterans preference panel and by the district court.

Assuming that the commissioner has authority on the petition of a veteran to reconsider issues that were heard and decided by a veterans preference hearing panel and by a district court on appeal, it does not follow that the commissioner can consider any employee grievance raised by a veteran. The commissioner is only authorized to consider a veteran's rights under sections 43A.11, 197.46, 197.48 or 197.455. None of those statutes authorize the commissioner to review a hearing panel's decision extending an employee's probationary period rather than discharging the veteran, and, except as otherwise required by the VPA, personnel matters are left to the reasonable administrative discretion of public employers. State ex rel Boyd v. Matson, 155 Minn. 137, 193 N.W.30 (1923). Hence, for example veterans are not entitled to a hearing prior to being suspended because suspensions do not constitute removals. Myers v. City of Oakdale, 409 N.W.2d 848, 850 (Minn. 1987). Personnel matters are generally left to the county appeals board or the county board itself. Because the VPA does not authorize the commissioner to review the orders of a county appeal board or the county board on issues relating to the propriety of extending a veterans probationary period, and because petitioner failed to identify any other law authorizing the commissioner to review the appeal board's decision to extend petitioner's probationary period, the respondent is entitled to summary disposition on this issue.

The county's personnel administration system consists of an employee relations department and a personnel board of appeals. Minn. Stat. § 383D.21. The employee relations department and its director have extensive authority over

county personnel matters. Minn. Stat. §§ 383D.23 and 383D.25. Among other things, the director must adopt rules relating to employee classifications, eligible lists, recruitment and promotion, and employee discipline. The county's Employee Relations Policy and Procedures Manual (employee relations manual) deals extensively with personnel matters. Section 3460 (1) states that probationary employees who "satisfactorily" complete probation are eligible for performance increases described in section 3460 (11) which states, in part, as follows:

Employees may, at the responsible authorities' discretion, receive salary increases of one-half of the annual merit increase percentage upon satisfactory completion of the probationary period defined in section 3100 of this manual as substantiated by a performance review. Employees receive an additional one-half of the annual merit increase percentage upon satisfactory completion of the first year of employment as substantiated by a performance review. * * *

Section 3100(5)a contains provisions for extending an employee's probationary period. It generally states that the probationary period may be extended for up to an additional three months.

Under current law, the day-to-day operation of the county's personnel administration is not subject to review by the commissioner. Cf. Ojala v. St. Louis County, 522 N.W.2d 342 (Minn. Ct. App. 1994). The commissioner is only authorized to determine whether a veteran was removed from his employment without a hearing to which some veterans are entitled, and, if so, the appropriate remedies the veteran is entitled to receive. Respondent did not deny petitioner's right to a hearing. On the contrary, it notified him of his right to request a hearing and provided a hearing to him after he requested one. There simply is no violation of the VPA for the commissioner to review because the PBA's original decision did not result in a removal; hence, no violation occurred which would give the commissioner power to consider the remedy petitioner requests. The commissioner's authority is limited to reviewing violations of the VPA. His authority includes the power to determine who is entitled to a veterans preference hearing. That power primarily involves the authority to decide whether a veteran has been removed from his employment and is entitled to a hearing before a veterans preference board.

II

Does the Commissioner of Veterans Affairs Have Statutory Authority to Review a County Personnel Decision Denying Salary Increases to a Veteran.

In his petition Reinardy requested that the commissioner order the county to provide him with a veterans preference hearing to contest the county's failure to give him salary increases he alleges were due on February 15 and August 20, 1996.

Respondent argues that this request must be denied because the failure to grant salary increases does not constitute a removal under Minn. Stat. § 197.46. At oral argument petitioner acknowledged that the county's failure to grant salary increases to the petitioner is not a removal entitling the petitioner to a veterans preference hearing. He argued, however, that the commissioner has broad authority under Minn. Stat. § 197.481 to review the petitioner's situation and determine whether or not the county's actions were appropriate. He relies on the decisions in Young v. City of Duluth, 386 N.W.2d 732 (Minn. 1986) and Gorecki v. Ramsey County, 437 N.W. 2d 646 (Minn. 1989). In Young, the court held that veterans may enforce their rights under the VPA by either petitioning the district court for a writ of mandamus or by requesting an order from the commissioner of veterans affairs. Young involved the procedure a veteran can follow in order to obtain a veterans preference hearing upon removal. The court did not state that a veteran could petition the commissioner to vindicate any legal right but only rights contained in the veterans preference laws. Hence, it does not support petitioner's argument that the commissioner can consider whether petitioner is entitled to salary increases that were not given to him. Likewise, the Gorecki decision does not support the relief petitioner requests. Gorecki involved the rights of several veteran employees to a veterans preference hearing when their positions were reclassified. The commissioner adopted the ALJ's conclusion that the reclassification constituted a demotion (removal) for purposes of the VPA which entitled them to a hearing. Nothing in the Gorecki decision suggests that the commissioner can review any adverse personnel action affecting a veteran.

The county's failure to give petitioner two raises he might otherwise have received had his probation not been extended or he had not quit are simply not reviewable by the commissioner under the facts of this case. The withholding of raises, like the extension of petitioner's probationary period, are not, standing alone, reviewable by the commissioner³. The ALJ is persuaded that a public employer's failure to give a veteran salary increases generally does not constitute a removal.

Salary increases for county employees are governed by the employee relations manual. Section 3460(1) contains wage and salary guidelines. It states, in part:

PROBATIONARY PERIOD COMPENSATION

Employees are not eligible to receive salary increases within the first six months of continuous work comprising the probationary period following the last hire date to Dakota County employment, except for general salary adjustments which may be granted by the County Board of Commissioners. Upon satisfactory completion of

³ In some cases the commissioner has authority to consider salary issues. The commissioner may, for example, determine whether a veteran removed from employment has received the wages that should have been paid to him until he was formally discharged. Harr v. City of Edina, *supra*.

the probationary period, employees are eligible for performance increases as described in Section 3460 (11).

* * *

PERFORMANCE INCREASES

Employees may, at the responsible authorities' discretion, receive salary increases of one-half of the annual merit increase percentage upon satisfactory completion of the probationary period defined in section 3100 of this manual as substantiated by a performance review. Employees receive an additional one-half of the annual merit increase percentage upon satisfactory completion of the first year of employment as substantiated by a performance review. Thereafter, employees are eligible for a merit increases on the anniversary date of employment in their current position.

Pay increases are granted to employees based on the overall rating assigned to their work performance and the salary range assigned to their positions. Performance increases are given in accordance with the Merit Increase Guidelines.

Denied or Delayed Performance Increases

Supervisors may deny or delay merit increases if employees are not performing in a fully capable manner. When merit increases are delayed or denied, a plan of action for improvement and a target date is set by the supervisor. Special performance appraisals are conducted when improvements have been noted or the target date has been reached. If the employees are then performing in a fully capable manner, salary increases may be granted. The decision to grant or deny a delayed merit increase must be made within 90 days of the employee's review date.

* * * *

The merit plan (1996) has specific provisions relating to six-month probationary salary reviews. It states:

Six month probationary salary reviews are based on the plan year merit guidelines within which they fall. Using matrix guidelines for base increases and lump sum actions, 50% of the available increase is provided upon successful completion of the initial probationary period. At the first annual review 50% of an increase based on current performance level and matrix guideline is available.

Petitioner cited no authority authorizing the commissioner to order a veterans preference hearing for the purpose of reviewing a county's decision not to raise his salary on February 15 and August 20, 1996, and the ALJ is persuaded that the VPA generally does not authorize the commissioner to review

county personnel practices. Under section 197.481, the commissioner only has authority to consider petitions relating to removals. Petitioner does not argue that his failure to obtain the salary increases constitutes a removal. He admitted he had not authority for such an argument. Therefore, respondent is entitled to summary disposition on the salary issue.

III

Has the Petitioner Received the Rights Accorded to Him Under the VPA Because the County Offered to Provide Him with a Veterans Preference Hearing on His Claimed Demotion.

Respondent argues that petitioner is not entitled to any relief on his alleged demotion because the county gave him written notice of his right to request a veterans preference hearing which, in respondent's view, is the only issue to be determined with respect to petitioner's demotion claim. That argument is not persuasive.

The issue before the commissioner and the administrative law judge is whether petitioner is entitled to a veterans preference hearing because he was demoted. Under Minn. Stat. § 197.481 that disputed issue must be decided in a contested case proceeding. If the commissioner determines that the petitioner was not removed from his position then the commissioner may dismiss the petition. If the commissioner determines that petitioner was removed, then the commissioner can order a hearing if a hearing has not already been scheduled. Even though the county has notified petitioner of his right to a hearing no such right currently exists because the county disputes petitioner's alleged removal and the commissioner has yet to decide whether a removal occurred. Petitioner has a right to the commissioner's determination of that issue pursuant to the terms of his petition and the provisions of Minn. Stat. § 197.481.

Respondent argues that this case raises issues "almost identical" to the issue decided in Ruther v. Wright County, OAH Docket No. 62-3100-10541-2 (1996). That argument is not persuasive. In Ruther a veteran filed a petition with the commissioner because the veteran had received written notice of his right to a veterans preference hearing on his discharge from employment for misconduct and incompetency and was receiving full pay and benefits pending a hearing on the dismissal. Because the petitioner was not being deprived of any rights by the employer his petition was dismissed. This case is different because petitioner's right to a veterans preference hearing is disputed and must be decided by the commissioner. There were no disputed issues the commissioner was required to decide in the Ruther case.

Respondent also argued that in his request for relief the petitioner requested a veterans preference hearing. Because the respondent has granted petitioner the right to a veterans preference hearing respondent argues that it has granted the very relief the petitioner requested. That argument also lacks merit because petitioner plainly intended to request a contested case hearing to determine whether his reassignment constituted a removal. Although petitioner

requested a “veterans preference” hearing to contest his alleged demotion on August 21, 1996, he clearly intended a contested case hearing before the commissioner on that issue.

IV

Is the Commissioner Authorized to Consider Salary and Benefit Awards.

Respondent argues that it is settled law in Minnesota that veterans preference hearing boards have the authority to decide issues of compensation. In support of that position the respondent correctly cites to Bolden v. Hennepin County Board of Commissioners, 504 N.W.2d 276, 277-78 (Minn. Ct. App. 1993), citing Leininger v. City of Bloomington, 299 N.W.2d 723, 731 (Minn. 1980). Although veterans preference boards have authority to decide issues relating to salary and benefits, those issues can also be considered by the commissioner, when appropriate, under Minn. Stat. § 196.481. In fact, the commissioner has considered a variety of such issues in the past. Although it generally may be preferable to leave most back pay issues to the veterans preference board, the commissioner still has statutory authority to address back pay issues and other related issues of compensation in an appropriate case.

In this proceeding, the petitioner has requested financial relief. He seeks to recover lost salary increases, lost flex/vacation time which he would have earned, additional costs of insurance which he was required to purchase, lost disability payments he would have been entitled to receive from the county as an employee while recovering from cardiac surgery, and other unspecified benefits he would have received had his employment not been wrongfully terminated. However, none of those issues are involved in this proceeding. Due to the fact that the petitioner did not suffer any wage loss as a result of his alleged removal (demotion) it does not appear that any compensatory damages will be granted in this case. However, damage issues are outside of the scope of the county’s motion to dismiss and will not be decided at this point.

V.

Should the Petition be Dismissed in the Interests of Judicial and Administrative Economy and Efficiency.

Respondent argued that if the petition is not dismissed there may be two separate hearings: one before the ALJ and a second before the PBA. In respondent’s view all issues relating to the respondent’s claimed demotion should be adjudicated in one hearing conducted by a veterans preference panel. That argument must be rejected. The VPA contemplates a contested case hearing before the commissioner when a petition for relief is filed by a veteran. There are no statutes or decisions requiring the commissioner to abandon his statutory responsibility and delegate his powers to a veterans preference hearing panel. If it is determined that the petitioner was not removed (demoted) when he was reassigned to a different job, no further proceedings before the PBA will be

required. All claims for relief then will be decided in the district court proceeding petitioner commenced to challenge his separation. Based on the evidence in the record the administrative law judge has some doubts about the petitioner's ability to establish a removal. If he does, however, a hearing before the PBA likely must be held.

J.L.L.