

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

James L. Jackson,
Petitioner,
Vs.
Minneapolis Public Library,
Respondent.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on June 24, 2004 at the Office of Administrative Hearings in Minneapolis, MN. The OAH record closed on the date of the hearing.

There was no appearance by or on behalf of the Petitioner, James L. Jackson. Pamela Galanter, Esq., of the firm of Frank Madden & Associates, 505 North Highway 169, Suite 295, Plymouth, MN 55441-6444, appeared representing the Minneapolis Public Library.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Jeffrey L. Olson, Commissioner, Dept. of Veterans Affairs, 206c Veterans Service Bldg., 20 West 12th Street, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

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. 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 the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, 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.

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

FINDINGS OF FACT

1. The Petitioner was provided notice of the hearing date in this matter by a letter from counsel for the library dated April 12, 2004 and by a letter from the Administrative Law Judge dated June 22, 2004.
2. The Petitioner failed to file a Notice of Appearance as required by the Notice of Petition and Order for Hearing.
3. The Petitioner has not contacted either the Administrative Law Judge or Ms. Galanter concerning this matter.
4. The Petitioner failed to appear at the hearing on June 24, 2004 and is therefore in default in this proceeding.
5. That the Notice of Petition and Order for Hearing advised the parties that if a party failed to appear the Commissioner would order such relief as he finds justified.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Veterans Affairs and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.50 and 197.481.
2. The Department of Veterans Affairs has complied with all relevant substantive and procedural requirements of law and rule including providing proper notice of this hearing.
3. That the Petitioner James L. Jackson failed to appear at the June 24, 2004 hearing.
4. That the Petitioner is therefore in default in this proceeding.
5. That Petitioner has the overall burden of proof in this proceeding and has failed to sustain that burden by defaulting.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Veterans Affairs DISMISS the petition of James L. Jackson.

Dated this 28th day of June 2004.

/s/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

Reported: Tape-recorded, one tape.
No Transcript prepared.

MEMORANDUM

This appeal must be dismissed because the Petitioner failed to appear and present any evidence and therefore failed to sustain his burden of proof.

The employer appeared with two witnesses who would have testified that Mr. Jackson's layoff as a janitorial assistant was due to budget cuts, that his layoff was accomplished according to seniority (he was the third least senior worker and seven were laid off) and that his duties were not reassigned.

G.A.B.