

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF VETERANS AFFAIRS

Henry G. Hanson,
Petitioner,

v.

Itasca County,
Respondent.

**FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Steve M. Mihalchick, Administrative Law Judge, on July 15 and 16, 2004, at the First Floor West Board Room, Itasca County Courthouse, 123 NE 4th Street, Grand Rapids, MN. The hearing record closed at the end of the hearing on July 16, 2004.

Ellen Tholen, Attorney at Law, 525 Itasca Street, Grand Rapids, MN 55744, appeared on behalf of Henry G. Hanson (Petitioner).

Michael J. Haig, Assistant Itasca County Attorney, 123 NE 4th Street, Grand Rapids, MN 55744, appeared on behalf of Respondent Itasca County (County).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make a final decision after a review of the record. The Commissioner may adopt, reject or modify this Recommendation. 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 Clinton Bucher, Department of Veterans Affairs, Room 206C, 20 West 12th St., St. Paul, MN 55155-2079, (651) 284-3408, 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.

STATEMENT OF ISSUES

Whether Itasca County's extension of medical leaves of absence to Petitioner when he was unable to work due to his disabling medical condition constitutes a removal for the purposes of the Veterans Preference Act, Minn. Stat. § 197.46,.

The Administrative Law Judge concludes that it was not a removal.

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

FINDINGS OF FACT

1. Petitioner is an honorably discharged veteran of the United States Army, having served on active duty from July 1977 to July 1981.^[1]

2. Petitioner suffered a back injury while working in construction with another employer in 1993. Petitioner started his employment with the County in July 1994.^[2] He began work as a Machinist/Welder/Mechanic in the County Road and Bridge Department. On December 6, 1996, Petitioner submitted a request for unpaid leave under the Family and Medical Leave Act (FMLA). The FMLA leave was requested due to incapacity to work arising from the 1993 injury.^[3] The request was approved on February 11, 1997.

3. Petitioner suffered a second back injury while at work on July 26, 2001.^[4] On July 28, 2001, Petitioner started a six-month nonworkers' compensation light duty assignment as a Sign Installer/Truck Driver/Snowplow Operator.^[5] That light duty assignment was scheduled to conclude on January 25, 2002. Petitioner was advised of his options in a letter dated December 11, 2001, from Louise Koglin Fidely, Administrative Services Supervisor for the County. Included in that letter was the following:

If you are unable to fulfill the essential functions of the job, there is no reasonable accommodation that Itasca County can make, earned leave has expired, and unearned leave has expired/is not what you elect, and you do not qualify for other open Itasca County jobs, then termination will result.^[6]

4. Since 2001, Petitioner has retained the Sign Installer/Truck Driver/Snowplow Operator position, but he has not been required to drive a large truck or snowplow, except in emergencies.^[7] Petitioner works on road signs in the County shop and installs those signs. Petitioner drives a smaller truck when performing these duties. The County accommodated Petitioner's condition by requiring him to "work to ability and rest as needed."^[8] Petitioner was also to take any required medication,

including pain medication. Petitioner's medical condition caused some conflicts at work. Petitioner discussed his limitations with others in the County.

5. On October 20, 2003, a meeting took place in the sign shop between Petitioner; his supervisor, Joe Miscovich; and William Bruce, Jr. (now Sign Manager). The meeting was to address only work to be done in the sign shop. Petitioner's work issues were not supposed to be discussed. Near the end of the meeting, Petitioner asked if he could take some time off to tend to some legal business. Miscovich then told Petitioner to get some forms to the County relating to his seeking an accommodation in his work restrictions. Petitioner's demeanor in response angered Miscovich and he told Petitioner to either get the forms in or Miscovich would "throw him [Petitioner] down the stairs." Petitioner did not react to the remark when it was made. Further discussions were held and then the meeting concluded. There was no further contact, discussion, argument, or confrontation between Petitioner and Miscovich.

6. Petitioner complained about the Miscovich comment to others in the County, including supervisory personnel. Petitioner characterized the comment as a terroristic threat. Miscovich acknowledged later to his supervisors that he was wrong to have made that comment.

7. David Christy is the County Highway Engineer and Director of Transportation and Land Management for the County. Christy has been the person in charge of the County department where Petitioner worked at all times relevant to this matter. After an investigation into the Miscovich incident, Christy changed the reporting structure. Under the new structure, Petitioner would not be supervised by Miscovich. Their work assignments would be in separate buildings. At the conclusion of the investigation, Christy concluded that there was no risk of future problems.

8. On October 28, 2003, Petitioner returned to his physician, Dr. William Rutherford, due to severe back pain. Petitioner was seen by Jean Thom, CFNP, who examined Petitioner and indicated that he should be off work for three days.^[9] In the comments, she noted that that Petitioner was "unable to work until seen by WLR [Dr. Rutherford]."^[10] A follow-up visit was set for October 31, 2003. Thom sent a work ability report to Susan Herboldt, R.N. COHN-S, who is the Risk Manager/Safety Officer for the County.^[11] The report indicated that Petitioner was taking Percocet to address the pain he was experiencing.

9. Herboldt noted that Percocet was a controlled substance that falls under the class of drugs that the County's drug and alcohol policy identifies as a safety risk when an employee is operating motor vehicles.^[12] On October 30, 2003, Herboldt wrote to Petitioner, indicating that he would need a physician's release, a functional capacity evaluation, and clarification of the drug and alcohol policy for safety sensitive positions.^[13]

10. On October 31, 2003, Dr. Rutherford, Petitioner's treating physician, examined Petitioner and concluded that he was unable to work.^[14] Dr. Rutherford indicated that Petitioner should be off work "to further notice."^[15]

11. Herboldt telephoned Dr. Rutherford regarding the effect of the Percocet on Petitioner's ability to work. On November 4, 2003, Dr. Rutherford wrote back, stating that the medication was not an issue, since Petitioner was off of work.^[16] Dr. Rutherford made no assessment of Petitioner's ability to operate machinery or motor vehicles while taking Percocet. Dr. Saffo, Medical Safety Officer for the County, informed Margaret Clayton, Administrative Services, that any employee taking Percocet should not be operating any vehicle. That information was passed on to Herboldt.^[17]

12. Koglin Fidely looked into what arrangements could be made to preserve Petitioner's position with the County.^[18] She wrote to Petitioner on November 3, 2003 to clarify his employment status and indicate what options were available to him. Koglin Fidely indicated what was needed to obtain approval for FMLA unpaid leave.^[19] In addition to describing possible arrangements available under the collective bargaining agreement, Koglin Fidely's letter also stated:

In the event that you do NOT qualify for FMLA, then you must cover your absence with vacation, sick leave, comp time or unpaid leave of absence. I understand from Marge Kelley that you have available sick leave and vacation but I do not know what those exact amounts are...

* * *

You are responsible to make arrangements to cover your absence otherwise you will have no payroll status except absent from work without authorization....^[20]

13. Petitioner made no response to Koglin Fidely's letter. On November 16, 2003, Koglin Fidely telephoned Petitioner and left a voicemail to inform him that his leave would be exhausted on November 18. On November 17, 2003, Koglin Fidely wrote to Petitioner repeating this information and indicating that failure to make arrangements would result in Petitioner being absent from work without authorization.^[21]

14. The County received a notice regarding an application by Petitioner for unemployment benefits.^[22] On November 20, 2003, Koglin Fidely wrote to Petitioner inquiring as to his payroll status. After recounting the efforts made to arrange a leave, Koglin Fidely wrote:

I unsuccessfully tried contacting you via telephone on 11/17/03^[23] and followed up with correspondence dated 11/17/03 to inform you of the latest information from Marge and to encourage you to have your health care provider complete the "Certification of Health Care Provider" form (another copy was sent) **as soon as possible so that you and we know whether you are eligible for FMLA, what your eligibility for insurances will be and so forth.**

Then today Marge informed me of forms she received from the Minnesota Department of Employment and Economic Development requesting information about your discharge! Itasca County has not discharged you.

Itasca County does not know how to interpret your filing for unemployment compensation and claiming that Itasca County has discharged you. Have you voluntarily terminated employment with Itasca County? **Please clarify, in writing no later than noon Monday, 12/01/2003, whether or not you have voluntarily terminated employment with Itasca County and/or provide additional information to confirm your payroll status so that we may appropriately follow up.** ^[24]

15. On December 3, 2003, Petitioner's Workers' Compensation counsel informed Koglin Fidely that Petitioner had not voluntarily terminated employment with the County. He described the application for unemployment compensation as a requirement of the workers' compensation system when the employer is unable to furnish work within an employee's functional limitations. ^[25] Koglin Fidely provided Petitioner with the Eligibility List index to show what positions have been available with the County. She also gave the Petitioner a copy of the County's Light Duty Policy to show how a light duty assignment could be obtained. ^[26]

16. In mid-December 2003, Petitioner underwent a two-day functional capacity evaluation (FCE) to assess his ability to perform the tasks of his position. The physical therapist conducted testing of Petitioner's physical capacity in a controlled setting. No attempt was made to assess possible future abilities. The physical therapist concluded:

It appears that upon review of the job description provided, in this therapist's opinion, Mr. Hanson is unable to perform the critical job demands described. It appears that the client is able to perform at a Sedentary Physical Demand Level only. ^[27]

17. On December 18, 2003, Petitioner's application for unemployment benefits was denied. The reason for the denial was that "the applicant is not fully able to work." ^[28]

18. On December 30, 2003, Koglin Fidely received the completed Certification of Health Care Provider form from Petitioner. ^[29] Koglin Fidely processed the form and awarded Petitioner FMLA leave from October 23, 2003, intermittently until November 19, 2003. From November 19, 2003, onward, the FMLA leave was continuous. Koglin Fidely calculated that Petitioner's FMLA leave period would conclude on Thursday, January 15, 2004. ^[30] Koglin Fidely also spoke to Petitioner about meeting to discuss the workplace threat issue, but Petitioner did not want to discuss that issue at that time. ^[31]

19. On January 5, 2004, Koglin Fidely telephoned Petitioner to inform him of his leave options, the information required for these options, and the consequences of failing to act. Koglin Fidely followed up the telephone call with a letter passing this information on to Petitioner. Included in the letter was the following:

This is to notify you that during the day on Thursday, 01/15/2004 you will run out of approved leave of absence. In the event you are able to return to work on 01/15/2004, please provide to your immediate supervisor, District 2 Foreman Gary Barrett, each of the following before you begin work:

2) a fitness-for-duty certificate from your health care provider to perform the essential functions of your job Sign Person/Truck Driver/Snowplow Operator; if there are limitations, the health care provider is to inform the County accordingly and with an estimation on the duration of the limitations.

2) clearance from your health care provider to perform the essential functions of your job Sign Person/Truck Driver/Snowplow Operator while using Percocet or any other controlled substance(s) without adversely affecting your driving ability to safely operate a commercial vehicle.

* * *

In the event you are UNable to return to work on 01/15/2004, **you or your representative are responsible to make the necessary arrangements for approved absence from work otherwise you will have an employment status except absent from work without authorization.**^[32]

20. Included in the January 5 letter was Koglin Fidely's description of the leave of absence process that was available through the County Board. That process required a Request for Board Action (RBA) that would be considered with supporting medical information. Petitioner took no action, so, on January 7, 2004, Koglin Fidely submitted an RBA on Petitioner's behalf, to be considered at the Board meeting on January 13, 2004.

21. On January 13, 2004, the County Board granted the unpaid leave of absence for a period of six months.^[33] On January 16, 2004, Koglin Fidely wrote to Petitioner to request the required medical information to support the leave of absence.^[34]

22. On February 5, 2004, Petitioner was examined by Dr. Rutherford for the purpose of completing an "Employee's Work Status Report." Dr. Rutherford concluded that Petitioner should be off work "indefinitely."^[35] That conclusion was noted on the Employee's Work Status Report that Petitioner was required to provide when resuming work with the County.

23. On February 10, 2004, the County Board revoked Petitioner's medical leave due to his failure to supply required documentation.^[36] Petitioner was required to appear on February 11, 2004 or be disciplined. Petitioner telephoned Dave Christy, asked for an additional day to report, and said that Petitioner needed to find someone to accompany him to work because of the hostile work environment there.^[37] Petitioner

claimed that there were four threats made against him while at work. Petitioner said that he had the Work Status Report. He told Christy that the report would be faxed to the County the next day. Petitioner did not tell Christy that the Work Status Report indicated that Petitioner should be off of work indefinitely.

24. Petitioner did not appear for work on February 11, 2004. Koglin Fideldy emailed Christy about Petitioner's claim of four threats and a hostile work environment. Koglin Fideldy received the faxed Work Status Report and FCE results later on February 11, 2004.^[38] She forwarded the Work Status Report to Christy.

25. On February 11, 2004, Christy wrote to Petitioner, recounting the history of Petitioner's job status and noting that Petitioner had not reported for work on February 11, 2004 as required, nor submitted the required reports showing that he could perform the duties of his position.^[39] Christy issued Petitioner a reprimand for failing to appear for work without an approved leave. Petitioner was informed that that he was responsible for obtaining another Board-approved leave. Christy also outlined what information was required to address the claims regarding hostile work environment.^[40]

26. Petitioner did not submit any request for a medical leave to the County Board. On February 18, 2004, Christy sent Petitioner a letter informing him that his failure to address his job status situation was the reason for imposing a three-day unpaid suspension to be imposed when Petitioner returned to work.^[41] Christy submitted an RBA on Petitioner's behalf and informed Petitioner that he should keep his supervisor informed of the Petitioner's status for returning to work. Christy also reminded Petitioner that a fitness-for-duty certificate and physician's clearance for the essential functions of the job was required when Petitioner was resuming work.^[42]

27. On February 24, 2004, Petitioner telephoned Mark Alan Mandich, an Itasca County Commissioner, about the proposed medical leave. Petitioner told Commissioner Mandich that Petitioner would prefer a letter of termination that would allow him to invoke his rights under the VPA.^[43]

28. On March 5, 2004, Koglin Fideldy and Anthony Carter, Deputy Director of Transportation for the County, wrote to Petitioner to clarify that if the Board were to deny the leave of absence, Petitioner could only keep his job if he was fit to return to work.^[44] Koglin Fideldy and Carter wrote "We believe it is in your best interest to get well and return to complete your job."^[45]

29. On March 9, 2004, Christy submitted a request for unpaid leave to the Board on behalf of Petitioner.^[46] Christy's expectation in seeking that the Board grant the leave of absence was that Petitioner's condition would improve to the point where Petitioner could return to work.^[47] The Board approved the leave, with the following notation:

Commissioner Mandich moved to take the following actions: 1) approve the RBA signed by Dave Christy for an unpaid leave of absence (loa) for a

Local 1452 employee for a period of up to six months, retroactive to 1/15/2004; 2) authorize the employee to terminate the unpaid loa at any time prior to its expiration so long as, from a medical standpoint, the employee is able to return to work and provides the necessary medical documentation about employee's ability to work to complete the essential functions of his job; and 3) rescind the Board's action of 02/10/2004 which revoked the leave of absence after the employee failed to supply timely updated medical information.^[48]

30. On March 26, 2004, Dr. Rutherford examined Petitioner and concluded that he remained unable to work.^[49] Dr. Rutherford indicated that Petitioner should be off work "indefinitely."^[50]

31. In April 2004, Petitioner submitted two RBAs. One withdrew the unpaid leave and the other afforded Petitioner a paid leave retroactive to November 15, 2003.^[51] Petitioner amended the second RBA to make the retroactive date January 15. There is no provision in the County's collective bargaining agreement for paid leave under the Petitioner's circumstances. The Board did not act on those RBAs.

32. Petitioner has consulted with a surgeon regarding medical procedures that could improve Petitioner's medical condition to allow him to return to work.^[52] Petitioner has not undertaken any such medical procedure. At the hearing, Petitioner indicated that the County should pay for that procedure. He has filed a Workers' Compensation claim that is scheduled for hearing in October 2004. Petitioner's health insurance coverage ended with the expiration of his FMLA leave.

33. One mechanic working for the County had computer skills. He was asked to perform some office work regarding the County's use of a particular computer program.^[53] This change in job duties was not done to accommodate any work restriction on that employee. That employee retains the job title and duties of a mechanic. Petitioner does not have the computer skills required to perform the work being done by that employee.

34. Petitioner filed a Petition for Relief under the Veterans Preference Act on May 5, 2004, asserting that the County was imposing unpaid leave of absences that constituted a removal for the purposes of the Veterans Preference Act.^[54]

35. The Department of Veterans Affairs issued a Notice of Petition and Order for Hearing on May 20, 2004, setting this matter on for hearing on July 15, 2004.

36. On July 14, 2004, Dr. Rutherford examined Petitioner and concluded that he should be off work "continuous days - indefinitely."^[55] Dr. Rutherford indicated that Petitioner experienced "No improvement in past year, back surgeon consult pending."^[56]

37. Petitioner does not receive Workers' Compensation benefits. Petitioner applied for Public Employee Retirement Association (PERA) disability benefits in April 2004. As part of that application, Dr. Rutherford certified that Petitioner was disabled

from his employment for at least one year.^[57] PERA granted the request and pays disability benefits to Petitioner. The benefits were granted retroactive to April 2004.

38. Petitioner has not requested reinstatement to his existing position of Sign Installer/Truck Driver/Snowplow Operator. Rather, Petitioner requested that the County “accommodate” Petitioner’s disability.^[58] As of the date of the hearing, Petitioner has not received clearance from his physicians to perform the duties of his position and he does not expect to be able to perform the necessary functions of his position at this time or in the future. Petitioner indicated that he cannot provide a work ability report indicating what his work restrictions are because “I [Petitioner] can’t work.”^[59]

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

CONCLUSIONS

1. Pursuant to Minn. Stat. §§ 14.50 and 197.481, the Commissioner of Veterans Affairs and the Administrative Law Judge have jurisdiction in this matter.

2. The Department of Veterans Affairs has complied with all procedural and substantive requirements of law or rule. In all respects, the Notice of Hearing was proper as to form and content.

3. Petitioner is an honorably discharged disabled veteran within the meaning of Minn. Stat. §§ 197.46 and 197.447 entitled to all benefits and protections of the Minnesota Veterans Preference Act.

4. Itasca County is a political subdivision in the State of Minnesota within the meaning of Minn. Stat. § 197.46.

5. Minn. Stat. § 197.46 prohibits the removal of a veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice and upon stated charges, in writing.

6. Under the Veterans Preference Act, a veteran is removed from his position or employment when the effect of the employer’s action is to make it unlikely or improbable that the veteran will be able to return to the job.^[60]

7. The County’s action of extending an unpaid medical leave of absence due to having no work available for Petitioner under his medical restrictions did not make Petitioner’s ability to return to his job either unlikely or improbable. The action was a temporary response to an indefinite restriction from the physician and made under reasonable assumptions that Petitioner’s condition could improve and that he would then return to work.

8. Petitioner was not “removed” from his employment within the meaning of Minn. Stat. § 197.46 by the actions of the County. Thus, he was not denied any rights under that statute.

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

RECOMMENDATIONS

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs dismiss the petition of Henry G. Hanson.

Dated August 11th, 2004

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped (8 tapes).

MEMORANDUM

Under the Veterans Preference Act, a veteran is removed from his position or employment when the effect of the employer's action is to make it unlikely or improbable that the veteran will be able to return to the job.^[61]

Petitioner contended that he has been removed from his position by the County Board actions placing him on medical leave.^[62] The County responded that Petitioner must be medically able to work in his position before he can return to work. At no time since going on medical leave has Petitioner expressed that he is physically able to work or received clearance to work from his physician.

Petitioner described his condition as a "Catch-22"; that is, if he does not appear for work, he will be terminated for abandoning his position. If he appears and is asked to work, he will be terminated because he cannot perform the duties of his position.^[63] The County adopted a third way. The County has not required Petitioner to appear for work and therefore has not terminated Petitioner's employment.

Initially, the County's approach was accomplished by granting FMLA leave, thereby maintaining Petitioner's health benefits. Upon the expiration of FMLA leave, the County extended unpaid medical leave to Petitioner, thereby keeping Petitioner's position open for him in the event his condition improves. These leaves have been of limited duration and at the conclusion of each leave, the Petitioner has had the opportunity to appear for work and resume his job, conditioned only on submission of a clearance by Petitioner's physician that Petitioner is fit to perform his job duties. Petitioner was expressly authorized to terminate the unpaid medical leave at any time, with the presentation of medical clearance to work.

Petitioner relies on the **Myers II** decision in asserting that the County has removed him from employment.^[64] The veteran in that matter was a police officer who suffered a lower back injury. Different physicians assessed the veteran as being able to return to work, with varying restrictions.^[65] The employer placed the veteran on an indefinite medical leave of absence that would end when the veteran could provide medical clearance to perform all the tasks of a police officer.^[66] The Minnesota Supreme Court concluded that:

[A] veteran is removed from his or her position or employment when the effect of the employer's action is to make it unlikely or improbable that the veteran will be able to return to the job.^[67]

At the hearing, Petitioner asserted that the County has all the information needed to make a decision regarding terminating him from employment. The record in this matter does not support that contention. Petitioner has not made all medically available efforts to ameliorate his back condition. Under these circumstances, the extension of leaves of absence for definite periods by the County, with opportunity to resume employment at the conclusion of each leave, does not render Petitioner's return to his position unlikely.

The relief available under **Myers II** has been significantly limited by the holding in subsequent litigation between the same parties. In **Myers III**, the veteran sought backpay for the period of his unpaid leave of absence.^[68] The Minnesota Court of Appeals noted that the veteran had not been able to work and that PERA disability benefits had been awarded to the veteran. The Court of Appeals held that a veteran who is medically unable to perform the duties of the position cannot receive back pay for the period of medical incompetence.^[69]

Petitioner has never exercised the option to return to work. At no time has Petitioner been physically able to return to his job. Petitioner has indicated that he wants to resume work, but in another position, or with his job duties significantly changed. A veteran's rights under the Veterans Preference Act (VPA) do not extend to requiring an employer to accommodate work restrictions. A veteran who has been off work due to a physical limitation does not have an actionable claim under the VPA until the veteran is ready to resume the work duties of his job.^[70] If the veteran cannot resume those duties, there is no remedy available under the VPA.

Petitioner maintains that, while he was on medical leave, the County changed the duties of his position to render his return more unlikely. Petitioner also asserts the inadequate safeguards exist to protect him from his former supervisor. Both claims are based upon erroneous assumptions. The job duties are there if he returns. His former supervisor has apologized for his behavior and is not a threat. Moreover, since Petitioner has not been physically able to report for work, neither of these issues could have any bearing on the outcome of this matter.

Petitioner has not been removed from employment by the actions of the County. If Petitioner seeks to have his employment with the County terminated, he can simply

not appear for work. The County can then proceed to terminate Petitioner's employment. At that time, the County is obliged to give Petitioner notice of his Veterans Preference rights. If a hearing is held, Petitioner must demonstrate that his discharge is not for "incompetency or misconduct."^[71] Such a demonstration is likely to require that Petitioner demonstrate that he is fit for duty. Unfortunately, at the present time, he is not fit for duty.

The County has not violated Minn. Stat. § 197.46. The Administrative Law Judge recommends that the Petition of Henry Hanson be DISMISSED.

S.M.M.

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- [1] Notice of Petition and Order for Hearing, Attached Form DD214.
- [2] Testimony of Henry Hanson; Petitioner's Ex. 2.
- [3] *Id.*
- [4] Petitioner's Ex. 30.
- [5] Petitioner's Ex. 3.
- [6] *Id.*
- [7] Testimony of Hanson.
- [8] *Id.*
- [9] County Ex. 2.
- [10] *Id.*
- [11] COHN-S stands for Certified Occupational Health Nurse Specialist.
- [12] Testimony of Susan Herboldt.
- [13] County Ex. 1.
- [14] Petitioner's Ex. 9.
- [15] *Id.*
- [16] County Ex. 4.
- [17] Testimony of
- [18] Testimony of Louise Koglin Fideldy.
- [19] County Ex. 5.
- [20] *Id.* (emphasis in original).
- [21] County Ex. 6.
- [22] County Ex. 7.
- [23] This appears to be the telephone call made on November 16, 2003, discussed in Finding 13.
- [24] County Ex. 7 (emphasis in original).
- [25] Petitioner's Ex. 15.
- [26] Petitioner's Ex. 16.
- [27] Petitioner's Ex. 17.
- [28] Petitioner's Ex. 18.
- [29] County Ex. 8.
- [30] County Ex. 9.
- [31] Testimony of Koglin Fideldy.

- [32] County Ex. 9 (emphasis in original).
- [33] County Ex. 11.
- [34] *Id.*
- [35] County Ex. 13.
- [36] County Ex. 12; Testimony of Koglin Fideldy.
- [37] County Ex. 14.
- [38] The Work Status Report fax was received either at 11:07 am (as noted on the fax) or 10:07 a.m. (if the fax clock was not adjusted from the switch between standard time and daylight savings time). The FCE was received from Petitioner's union.
- [39] County Ex. 15.
- [40] *Id.*
- [41] County Ex. 16.
- [42] *Id.*
- [43] Testimony of Mark Mandich; County Ex. 17.
- [44] County Ex. 20.
- [45] County Ex. 20.
- [46] Petitioner's Ex. 31.
- [47] Testimony of David Christy.
- [48] Petitioner's Ex. 31.
- [49] Petitioner's Ex. 33.
- [50] *Id.*
- [51] Petitioner's Ex. 35.
- [52] Testimony of Hanson.
- [53] Testimony of Christy.
- [54] Notice of Petition and Order for Hearing, Attached Petition for Relief.
- [55] Petitioner's Ex. 37.
- [56] *Id.*
- [57] Testimony of Hanson.
- [58] Testimony of Hanson.
- [59] *Id.*
- [60] **Myers v. Oakdale**, 409 N.W.2d 848, 850-51 (Minn. 1987).
- [61] **Myers v. Oakdale**, 409 N.W.2d 848, 850-51 (Minn. 1987).
- [62] Petitioner identified Safety Manager Herboldt as the person having removed him from employment. Testimony of Hanson.
- [63] Testimony of Hanson.
- [64] **Myers v. City of Oakdale**, 409 N.W.2d 848 (Minn. 1987) (**Myers II**),
- [65] **Myers II**, at 849.
- [66] *Id.*
- [67] **Myers II**, at 850-51.
- [68] **Myers v. City of Oakdale**, 465 N.W.2d 702, (Minn. 1991), *rev. denied* (Minn. April 18, 1991) (**Myers III**).
- [69] **Myers III**, at 706.
- [70] **Tombors v. City of Brooklyn Center**, 611 N.W.2d 24, 27 (Minn. App. 2000)(distinguishing **Myers III**). In **Tombors**, the veteran always maintained that he was fit to work and the employer required the veteran to remain on medical leave. *Id.*
- [71] Minn. Stat. § 197.46.