

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Casey L. Sandven, Petitioner, vs. Redwood County, Respondent.	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above entitled matter came on for hearing before Administrative Law Judge Scott Newman commencing at 10:00 a.m., on July 24, 2008, in the Commissioners Room, Redwood County Courthouse, Redwood County, Minnesota, and the record closed on that date. The hearing was held pursuant to a Notice of Petition and Order for Hearing dated June 9, 2008.

Raymond Walz, Attorney at Law, appeared on behalf of Petitioner Casey L. Sandven. Ann R. Goering, Attorney at Law, appeared on behalf of Respondent Redwood County.

STATEMENT OF ISSUE

Whether the Petitioner is entitled to a Veterans Preference hearing under Minn. Stat. § 196.46 prior to being removed as the Redwood County Veterans Service Officer?

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

FINDINGS OF FACT

1. Petitioner is an honorably discharged veteran for all purposes contemplated by Minn. Stat. § 197.46 the Veterans Preference Act (VPA).¹

¹ Stipulation by the parties.

2. Respondent is an employer for all purposes contemplated by the Veterans Preference Act.

3. On or about January 7, 2008, the Petitioner was hired by the Respondent as the Redwood County Veterans Service Officer.²

4. On April 4, 2008, a meeting was held between the Petitioner, Redwood County Administrator Vicki Knobloch, and John Schueller, Chairman of the Board Redwood County Board of Commissioners.³

5. At the April 4, 2008 meeting, Vicki Knobloch delivered to the Petitioner a "Notice of Intent to Terminate for Cause."⁴

6. At the April 4 meeting, the Petitioner was told by the County Administrator that she could "either resign willingly or she would be terminated." Further, that if she did not submit a written resignation to the County Administrator by noon on April 7, she would be terminated.⁵

7. At the April 4 meeting Vicki Knobloch told the Petitioner that the County was giving her the "opportunity to submit a resignation if she chose or a termination if she did not resign." Further, the County Administrator told the Petitioner that if she did not resign, a Notice of Termination would be put in her file effective noon on Monday, April 7. The County Administrator further told the Petitioner that if she did resign by noon on April 7, the Notice of Termination would not be placed in her file.⁶

8. At the April 4 meeting, the County Administrator orally told the Petitioner that she had a right to request a hearing but must submit the request to the County Administrator within sixty (60) days.⁷

9. At the April 4, 2008 meeting, the County Administrator told the Petitioner:

a) The County was willing to give her the opportunity to submit a resignation rather than having a termination put in her file. That it was her right and her choice to submit a resignation letter.

b) If she did not request a hearing within sixty (60) days, she would be terminated from employment with Redwood County.

c) She requested that the Petitioner turn over to her her keys and County I.D. before she left the courthouse that day.

² Testimony of Casey Sandven.

³ Testimony of Vicki Knobloch

⁴ Test. of C. Sandven, V. Knobloch, John Schueller and Ex. 1.

⁵ Test. of C. Sandven.

⁶ Test. of V. Knobloch

⁷ Test. of V. Knobloch.

d) She instructed the Petitioner on her “COBRA” rights.

e) She requested that the Petitioner make arrangements with her to clean out her desk.⁸

10. At the April 4, 2008 meeting, Chairman of the Board John Schueller told the Petitioner:

a) That she had a right to a Veterans Preference Hearing.

b) The County wanted to give her an “opportunity” to resign.

c) That if the Petitioner choose to resign, she would be waiving any right to the Veterans Preference Hearing.⁹

11. On Monday April 7, 2008, the Petitioner faxed to the County Administrator a written resignation.¹⁰

12. The County Administrator received Exhibits 2 and 3 at approximately 11:00 a.m. on Monday, April 7, 2008.¹¹

13. On April 15, 2008, the Redwood County Board of Commissioners met in regular session pursuant to prior proper legal notice. The resignation letter by the Petitioner was on the agenda for the April 15, 2008 meeting.¹²

14. Petitioner did not have actual notice of the April 15, 2008, meeting or the agenda.¹³

15. On April 15, 2008, the Redwood County Board of Commissioners accepted the resignation of the Petitioner.¹⁴

16. On or about April 24, 2008, the Petitioner submitted to the Redwood County Administrator and Redwood County Board of Commissioners a written demand for a hearing pursuant to the provisions of the Minnesota Veterans Preference Act.¹⁵

17. On April 30, 2008, the Redwood County Administrator acknowledged receipt of the Petitioner’s Demand for a Veteran’s Preference Hearing.¹⁶

⁸ Test. of V. Knobloch.

⁹ Test. of J. Schueller.

¹⁰ Exs. 2 and 3.

¹¹ Test. of V. Knobloch.

¹² Test. of V. Knobloch.

¹³ Test. of C. Sandven.

¹⁴ Ex. 6.

¹⁵ Test. of C. Sandven and Ex. 4.

¹⁶ Ex. 5.

18. In her letter to the Petitioner dated April 30, 2008, (Ex. 5) the County Administrator reiterated the County's position that she was not entitled to a hearing because she had resigned her position and therefore waived any right to the requested hearing.¹⁷

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

CONCLUSIONS

1. Pursuant to Minn. Stat. §§ 14.50 and 197.481, the Administrative Law Judge and the Commissioner of Veterans Affairs have the authority to determine if the Petitioner was denied a hearing under the Veterans Preference Act.

2. Petitioner is an honorably discharged veteran for purposes of Minn. Stat. §§ 197.447 and 197.46.

3. When issuing the Notice of Petition and Order for Hearing, the Department complied with all substantive and procedural requirements of statute and rule.

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

5. The parties have complied with all relevant substantive and procedural requirements of statute and rule and this matter is properly before the Administrative Law Judge.

6. Under Minn. R 1400.7300, subp. 5, the Petitioner has the burden of proof to establish by a preponderance of the evidence that she was removed from her employment with the County and denied her rights under the Veterans Preference Act, Minn. Stat. § 197.46.

7. For all purposes contemplated by Minn. Stat. § 197.46, the Petitioner did not voluntarily resign, she was terminated.

8. The Petitioner was given written notice of intent to terminate for cause and her right to a hearing within sixty (60) days of April 4, 2008, all in compliance with the Veterans Preference Act.

9. The Petitioner, in compliance with the Veterans Preference Act, submitted a written demand for a hearing on April 24, 2008, well within the sixty (60) day statutory deadline.

10. The County refused to provide the Petitioner with the requested Veterans Preference Hearing as required by Minn. Stat. § 197.46.

¹⁷ Ex. 5. and test. of V. Knobloch.

11. Minn. Stat. § 197.46 prohibits the removal of a qualified veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges in writing. The County Boards Resolution “accepting” the Petitioner’s “Resignation” does not abrogate the Petitioner’s statutory right to a hearing pursuant to Minn. Stat. § 197.46.

12. The Petitioner is entitled to a hearing together with all available legal remedies as outlined by Minn. Stat. § 197.46.

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

RECOMMENDATION

IT IS RECOMMENDED THAT:

The Commissioner of the Minnesota Department of Veterans Affairs GRANT the Petition for Relief.

Dated: August 15, 2008

s/Scott J. Newman

SCOTT J. NEWMAN
Administrative Law Judge

Reported: Digitally Recorded

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 these 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 Clark Dyrud, Commissioner of Veterans Affairs, State Veterans Service Building, 20 West 12th Street, Room 206C, St. Paul, Minnesota 55155-2006, 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 decision of that agency 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 Commissioners, or upon expiration of the deadline for doing so. The Commissioners 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 Commissioners are required to serve their final decisions upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

By any interpretation, the evidence in this case is overwhelmingly clear that the Petitioner was given a choice of either resigning or she would be terminated. The case of *Johnson v. County of Anoka*, 536 NW2d 336 (Ct. App. 1995) clearly holds that where an employee is given the choice of resigning or being terminated, such choice constitutes removal for purposes of the Minnesota Veterans Preference Act because it has the effect of taking away the veterans employment. The Court in *Johnson, supra*, used the case of *Meyers v. City of Oakdale*, 409 N.W.2d 848 (Minn. 1987) which held “a veteran is removed from his or her position on 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”. By the County’s own account of the facts, Ms. Sandven was given an “opportunity” to resign or the Notice of Intent to Terminate (Ex. 1) would be placed in her file. She was then requested to deliver her courthouse keys and County I.D. to the County Administrator before leaving the courthouse on April 4. Also, the County Administrator requested that Ms. Sandven make arrangements to clean out her desk before leaving on April 4. Finally, the County Administrator explained to Ms. Sandven her rights to “COBRA” on the County’s medical insurance coverage. These are all unequivocal signs that Ms. Sandven would no longer be employed by the Respondent. For all of these reasons, the ALJ concludes that, for purposes of the Veterans Preference Act, the Petitioner did not resign; her employment was terminated.

Minn. Stat. § 197.46 clearly states that a veteran has a right to request a hearing within sixty (60) days of receipt of Notice of Intent to Discharge. The Petitioner received that notice on April 4 and requested her hearing following the termination, well within the sixty (60) day statutory requirement. Consequently, the Petitioner is entitled to a Veteran’s Preference Hearing which is also guaranteed by the Veteran’s Preference Act, *supra*.

The fact that the County Board “accepted her resignation” by passing a resolution is of no consequence. The employer cannot unilaterally take action which

would deprive the veteran of her statutory rights. Clearly, Minnesota State Statutes trump County Board Resolutions in this regard.

Because the veteran has in a proper and timely manner submitted her request for a hearing, she is entitled to that statutory hearing. Until she has been afforded a formal hearing pursuant to Minn. Stat. § 197.46, she is entitled to her salary less any wages earned.¹⁸

For these reasons, the ALJ recommends that the Commissioner of Affairs grant the Petitioner's Petition for Relief under the Veterans Preference Act.

S. J. N.

¹⁸ *Wagner v. Minneapolis Public Schools*, 581 N.W.2d 49 (Minn. Ct. App. 1998) and *Tombers v. City of Brooklyn Center*, 611 N.W.2d 24 (Ct. of App. 2000).