

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

James F. Lewis,

Petitioner,

V.

City of Minneapolis,

Respondent.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 9:30 a.m. on December 28, 1989 in the Office of Administrative Hearings, 5th Floor, Flour Exchange Building, 310 - 4th Ave. South, Minneapolis, Minnesota 55415. The Petitioner, James F. Lewis, 1520 Vincent Avenue No., Minneapolis, Minnesota 55411, appeared and was represented by his attorney, Thomas Bennett Wilson III, Suite 504, 5101 Vernon Ave., Edina, Minnesota 55436. Peter W. Ginder, Assistant City Attorney, A-1700 Hennepin County Government Center, Minneapolis, Minnesota 55487 0170, appeared on behalf of the Respondent, City of Minneapolis (City). The record in this matter was closed upon the receipt of the final brief on March 7, 1990.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, the final decision of the Commissioner of Veterans Affairs shall not be made until this report has been made available to the parties to the proceeding for at least 10 days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this report, if any, shall be filed with Commissioner William J. Gregg, Department of Veterans Affairs, 2nd Floor, Veterans Service building, 20 West 12th Street, St. Paul, Minnesota 55155.

STATEMENT OF ISSUES

1. Whether claims of denials of veterans preference rights under Minn. Stat. 197.45 and 43A.11 arising out of promotional examinations given more than six years prior to commencement of the contested case are barred by Minn. Stat. 541.05, subd. 1(2).
2. Whether a non-disabled veteran is entitled to veterans preference under Minn. Stat. 43A.11 in promotional examinations.

3. Whether a demotion for medical reasons to a lower paying job, supplemented by workers' compensation payments, is a "removal" under Minn. Stat. 197.46.

4. Whether a veteran so demoted is entitled to a veterans preference hearing in addition to a civil service hearing conducted by the Civil Service Commission.

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

FINDINGS OF FACT

1. Petitioner served on active duty with the United States Army for three years. Petitioner received an honorable discharge on October 23, 1956. Petitioner does not have a service-connected disability.

2. Petitioner has been a permanent employee of the City since April 1962 when he was hired as a junior account clerk. On his application for that job, he indicated that he had served in the U.S. Armed Services. Ex. B, item 20.

3. The City has had a long standing practice of notifying every applicant of veterans preference eligibility and how it is to be claimed. Each application form contains a notice explaining veterans' rights and the necessary documentation required to be submitted to the City. At all times relevant here, all promotional examination application forms contained a detachable form for claiming veteran's preference. The form was detachable so that persons evaluating the examination would not know of the claim. After the ratings are made, the form is reattached, if a veterans preference claim has been made. Otherwise it is discarded. T. 38-39, 48, 76.

4. Petitioner has been a Water Meter Reader I in the City's Department of Public Works since 1965. T. 16. Since 1969, Petitioner unsuccessfully sought promotion to the position of Water Meter Reader II on four occasions.

5. As applied by the City, there are two types of examinations, open and promotional. The Personnel Department chooses the examination type it believes is most appropriate for filling a given vacancy. An "open" examination is an examination which can be applied for and taken by anybody who meets the minimum qualifications. This includes both current civil service employees as well as non-employees or outside applicants. On the other hand, a "promotional" examination is an examination which can only be applied for and taken by current employees in the classified service who have successfully completed probation and meet minimum qualifications. It is an examination closed to persons who are not current employees of the civil

service. T. 53.

6. Petitioner applied for and took the examination for Water Meter Reader II four times. Each of these four times the Personnel Department identified and considered the examination to be a "promotional" examination rather than an "open" examination. Petitioner successfully passed the "promotional" examination each time, but was never promoted. The year, score, and Petitioner's initial ranking on the eligible list for the examinations are as follows:

TABLE 1. Petitioner's Meter Reader II Examination Results

Exam. No.	Year	Score	Eligible List Ranking
8075	1969	77.15	2
11437	1977	81.14	2
1 3 3 1 3	1985	-	-
13907	1987	82.43	5

7. An "eligible list" contains the names of candidates who are "eligible" for a particular position. The names of the eligibles are placed on the list in descending order of their total examination scores. Since 1975, the City has added veteran's preference points to the total examination scores, if applicable. In the event two or more eligibles hold identical total examination scores, their names are placed on the list of eligibles in the order of their respective City seniority. However, the names of veterans are placed ahead of the names of non-veterans who have identical scores.

8. The application forms for the Meter Reader 11 promotional examination have a place on them for the veteran-applicant to indicate to the City that they are a qualifying veteran and entitled to veterans preference points. The application gives notice to each applicant that veteran's preference points and rights are available. The front page instructions on both of Petitioner's 1985 and 1987 application's, Exs. Z and C, request that Petitioner "be sure to include with the application all requested proofs of . . . veteran's eligibility." Inside Petitioner's 1985 application are instructions on how to claim veteran's preference. The application form explicitly states that it is to be filled out by any person eligible for veteran's preference. It continues on to state: "To qualify for Veteran's Preference on this promotional exam, a veteran must be entitled to disability compensation for a service connected disability rated at 50% or more Those qualifying for Veteran's Preference shall have five (5) points added to a passing exam score." Similar instructions appeared on the detachable form that was part of Petitioner's 1987 application.

9. The Petitioner's rankings on the eligibility lists as indicated in Table I were calculated without taking into account Petitioner's veteran status. The Petitioner never filled out or completed the veteran's preference portion of any one of the four application forms. Furthermore, the Petitioner has never submitted any documentation to the City verifying his veteran status. T. 39-44. He probably failed to do so because he is not disabled and did not meet the requirements stated in the applications he filled out after 1975. T. 101-102. The 1969 examination results form contained a notice that veterans preference information was attached. Ex. Y. There is no indication in the records as to whether Petitioner claimed veterans preference in 1969 examination.

10. Petitioner was injured on July 27, 1987, while performing the duties of Meter Reader I. Due to gas which was present in a manhole in which the Petitioner was working, Petitioner passed out and fell approximately fifteen feet and landed face down in four feet of water. Petitioner filed a workers' compensation claim regarding the injury. The Petitioner returned to work shortly thereafter, but in a medically restricted light duty, desk capacity.

In this capacity, the Petitioner was allowed to work four hours per day. The medical restrictions were placed on Petitioner by Park Nicollet Medical Center. The Petitioner remained classified as a Meter Reader 1. Petitioner's salary was not reduced. It was unclear at that point whether Petitioner would ever be able to return to his original full-time duties as a Meter Reader 1. By September of 1988, Petitioner was working eight hours per day, but still at the medically restricted light capacity.

11. Petitioner was one of three eligibles certified to the Department of Public Works for the Meter Reader II position on June 20, 1988. The Department of Public Works denied the position to Petitioner because he was physically incapable of performing the duties of the position. The Department of Public Works cited these reasons in a letter to the Personnel Department, dated July 8, 1988. The letter requested that the Petitioner's name be placed on hold on the eligibility list until such time as he is medically approved to perform the duties of Meter Reader II. Ex. E.

12. By letter dated July 13, 1988, the Personnel Department notified Petitioner that a hold had been placed on certifying him to future openings for Meter Reader II. The letter expressly stated that the hold would be in effect until the Petitioner was medically capable of performing the duties of the position. Ex. P. On July 7, 1988, prior to Petitioner's receiving the letter, Petitioner's supervisor met with the Petitioner to discuss Petitioner's current inability to perform the duties of Meter Reader 11. There was no question at the time that Petitioner was unable to perform the duties of Meter Reader II. Ex. F.

13. On October 27, 1988, the Public Works Department asked Park Nicollet Medical Center to assess Petitioner to determine whether he would be able to return to the duties of a Meter Reader 1. At this time, Petitioner was still classified as a Meter Reader 1, but was not performing the duties demanded by the job description. Instead, Petitioner was still performing light capacity desk duties.

14. The Public Works Department received a letter from Park Nicollet Medical Center on November 9, 1988, giving the opinion that Petitioner would most likely not be able to return to his original position of Meter Reader 1. Ex. JJ. The physician noted some inconsistencies in Petitioner's functional capacity evaluation, but stated that he would not anticipate that Petitioner would be able to return to this sort of job. Ex. II.

15. Based on the Park Nicollet medical assessments of Petitioner, on or

about November 23, 1988, the City offered Petitioner a permanent Clerk 11 position. This offer was orally made to Petitioner at a meeting where Petitioner's attorney was present and was also made in writing. Ex. FF. Petitioner did not accept the position offer. Shortly afterwards, the Public Works Department initiated an involuntary demotion of Petitioner from Meter Reader I to Clerk 11. T. 85-86.

16. While the involuntary demotion to Clerk 11 was pending, the City detailed Petitioner to the position of Clerk II effective December 5, 1988. Ex. KK. T. 83.

17. Petitioner received a salary reduction effective December 5, 1988. Ex. KK. He also received temporary partial disability payments under workers' compensation, apparently equal to two thirds of the difference between new Clerk II salary and his salary at the time of the injury on July 27, 1988. Those payments make up part, at least, of the reduction. T. 22-23. He is still receiving those payments. T. 29.

18. By letter of February 2, 1989, Petitioner was notified that the Department of Public Works had submitted a recommendation to the Civil Service Commission that he be involuntarily demoted to Clerk II, effective December 5, 1988. The letter informed Petitioner of the reasons for demotion: disability due to a worker's compensation injury, notified Petitioner that he had a right to appeal the Department of Public Works' decision to request Petitioner's involuntary demotion and stated that Petitioner must submit such an appeal in writing within 10 calendar days. Ex. LL.

19. Petitioner notified his union, AFSCME Local 9, and on February 8, 1989, they filed an appeal to the Civil Service Commission of Petitioner's demotion from Meter Reader I to Clerk II. Ex. L. Petitioner elected to proceed with a Civil Service appeal rather than to grieve the demotion under the union contract. T. 26.

20. On March 21, 1989, Petitioner filed a charge with the Minnesota Department of Human Rights against the Department of Public Works alleging discrimination on the basis of race, sex, and disability. Ex. N.

21. At the March 23, 1989, Civil Service Commission hearing on the matter, the Department of Public Works stated that it had followed its long standing policy concerning injured employees covered by workers compensation. The Department of Public Works stated that when an injured employee is able to return to work, it looks for an available position within the injured employee's restrictions. An Assistant City Attorney representing the Department, stated that the Department was in complete compliance with the workers compensation laws and that there was absolutely no legal requirement that the City be required to create a new position for Petitioner, as Petitioner had requested. Petitioner's attorney stated that the Department might be racially discriminating against Petitioner. Ex. M.

22. Because of the racial discrimination charges, the Civil Service Commission requested the Director of the Affirmative Action Management Program to investigate: (1) the issue of the Department's effort to find a reasonable accommodation for Petitioner and (2) whether there was any evidence of a discriminatory pattern regarding the Department's handling of injured workers. The President of the Civil Service Commission also ordered the Department to determine whether there were any appropriate vacancies in the Department or other City Departments which, if reasonably modified, would allow Petitioner to adequately perform its duties. The Commission then laid over the appeal of Petitioner until these issues were appropriately

investigated.

23. The Civil Service Commission met again on April 14, 1989, to consider Petitioner's demotion. The Affirmative Action Management Program Director informed the Commission that although he had been requested to investigate the issues of the reasonable accommodation of Petitioner and

evidences of any discriminatory patterns, he had withdrawn from those investigations on the advice of the City Attorney's office that the Department of Human Rights was already performing an investigation and there was no sense in duplicating the effort. The matter of Petitioner's demotion was again laid over pending the outcome of the Department of Human Rights investigation.

24. On June 22, 1989, the Department of Public Works received notice from the State Department of Human Rights that it had found that Petitioner's charge did not warrant additional use of its resources since further investigation would almost certainly lead to a determination of no probable cause. Ex. T.

25. The Civil Service Commission met again on July 27, 1989. At that meeting, Petitioner's attorney informed the Commission that Petitioner had filed a lawsuit regarding the same issues the Department of Human Rights had just recently completed investigating and argued that because of the pending lawsuit, the Commission should not make a decision on Petitioner's demotion. Petitioner also contended that he was able to carry on the duties of a job created for another disabled worker in 1987 and that because he had more seniority than that employee, he should be allowed to bump the employee and take the position for himself. Following an inquiry by the President of the Commission, the Department of Public Works informed the Commission that the position Petitioner was referring to had been created and filled prior to Petitioner's injury. Furthermore, the Department of Public Works stated that Petitioner had medical restrictions which did not permit him to perform any Meter Reader I positions. The Commission then voted to deny the appeal. Ex. N.

26. On or about August 16, 1989, Petitioner filed a Petition with the Commissioner of Veterans Affairs pursuant to Minn. Stat. 197.481 seeking an order to the City restoring Petitioner to the position of Meter Reader I retroactive to December 5, 1988. In addition, the Petition sought a promotion to Meter Reader 11 retroactive to July 1988. The Petition also prays for back pay and benefits up to the date when the City finally complies with the Veterans Preference Act. At the hearing in this matter, Petitioner added claims to promotion back to 1969.

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

CONCLUSIONS OF LAW

I. The Administrative Law Judge and the Commissioner of Veterans Affairs have jurisdiction in the matter pursuant to Minn. Stat. 14.50 and 197.481. The Petition was duly filed. The Notice of Hearing issued by the Department of Veterans Affairs was proper and all substantive and procedural requirements have been fulfilled.

2. Petitioner is a veteran within the meaning of Minn. Stat. 197.447. Petitioner was separated under honorable conditions from the armed forces of the United States after having served on active duty for more than 181 consecutive days. Petitioner is not a disabled veteran within the meaning of Minn. Stat. 43A.11, subd. 5.

3. As the party initiating this contested case, the Petitioner has the burden of proving the facts at issue by a preponderance of the evidence. Minn. Rule 1400.7300, Subp. 5.

4. Petitioner's claim that he is entitled to either retroactive promotion to Meter Reader 11 or back pay because he successfully passed the 1969 and 1977 promotional examinations is barred by the statute of limitations, Minn. Stat. 541.05.

5. Even if Petitioner's claim regarding the 1969 promotional examination were not barred by the statute of limitations, Petitioner was not denied his veterans preference rights with regard to that examination because he has failed to prove that he claimed the preference after being informed of his right to do so or that a non-veteran was appointed to the position

6. The examinations for Water Meter Reader II taken by Petitioner in 1977, 1985 and 1987 were "competitive promotional" examinations as defined by Minn. Stat. 43A.02, subd. 16, for the purposes of Minn. Stat. 43A.11,

7. Petitioner was not entitled to any veterans preference credits for the Meter Reader II examinations he took and passed in 1977, 1985, and 1987, because a non-disabled veteran is granted preference credits only in competitive open examinations, not competitive promotional examinations. Minn. Stat. 43A.11, subsd. 4 and 5.

8. Petitioner was not denied any rights of veterans preference with regard to the Water Meter Reader II examinations he took and passed in 1977, 1985 and 1987.

9. The demotion of Petitioner from Water Meter Reader I to Clerk 11 effective December 5, 1988, was a removal within the meaning of Minn. Stat. 197.46.

10. Minn. Stat. 197.46 requires that a veteran removed from his position be provided the right to a veterans preference hearing in addition to any civil service or collective bargaining agreement arbitration hearing, that the notice be given in writing, with written charges and with a right to request a hearing within sixty days of the receipt of the notice.

11. The City failed to provide Petitioner with a notice as required by Minn. Stat. 197.46 in that it did not notify him of a right to a separate veterans preference hearing or allow him sixty days to request such a hearing.

12. The civil service hearing conducted by the Civil Service Commission under the Civil Service Rules did not fulfill the requirements of Minn. Stat. 197.46 for a veterans preference hearing.

13. Petitioner's veterans preference rights under Minn. Stat. Sec. 197.46

have been denied by the City with regard to his demotion of December 5, 1988.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs order that:

1. The Petition of James F. Lewis as to the 1969, 1977, 1985 and 1987 promotional examinations be denied.
2. That the Petition as to the December 5, 1988, demotion from Water Meter Reader I to Clerk II be granted.
3. That the City immediately reinstate Petitioner as Water Meter Reader 1, assigned to light duty commensurate with his medical limitations.
4. That the City reimburse Petitioner the amount of pay he would have received had he not been demoted effective December 5, 1988, less amounts paid to him as Clerk 11, less amounts paid as benefits under workers' compensation including the tax benefits derived therefrom, if any, plus the value of any other benefits Petitioner may have lost because of the demotion, together with interest thereon at the statutory rate from the date such payments should have been made.
5. If the parties are unable to agree as to the amount of reimbursement ordered in Paragraph 4, either party may move the Administrative Law Judge to take evidence and make a recommendation thereon to the Commissioner of Veterans Affairs.

Dated this day of April, 1990.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, transcript prepared.

MEMORANDUM

Until 1975, the Veterans Preference Act provided that as long as an honorably discharged veteran passed the requisite examination, that veteran was to be promoted to an available position before any other person. Minn. Stat. 197.45, subd. 2 (1969). The statute also provided: "A refusal to allow the preference provided for in this . . . section to any honorably discharged veteran . . . shall entitle such honorably discharged veteran to a right of action therefor in any court of competent jurisdiction. Petitioner passed the Meter Reader 11 examination in 1969 and was placed second on the eligibility list. Petitioner had an absolute veterans

preference right to the next Meter Reader 11 vacancy over any non-veterans. For reasons we do not know, Petitioner was never promoted. Perhaps another veteran was appointed. Eventually Petitioner's eligibility expired as required by law.

There is a statute of limitation for enforcement of statutory rights. Minn. Stat. 541.05, subd. 1, in relevant part, states: "Except where the uniform commercial code otherwise prescribes, the following actions shall be commenced within six years: . . . (2) Upon a liability created by statute . . ." The time an action accrues is the time the action can be commenced, and ignorance of the law or cause of action will not toll the Statute of limitations. *Wild v. Rarig*, 302 Minn. 419, 234 N.W.2d 775 (1975), cert. denied 96 S.Ct. 1094.

If Petitioner was denied his veterans preference rights, it would have happened in 1970 when the vacancy for Meter Reader 11 was filled with an employee other than himself. Therefore, the statute of limitations for Petitioner's cause of action against the City commenced running in 1970. Petitioner had until 1976 to commence his action. Petitioner's claim for retroactive promotion was not raised until the hearing in this matter on December 28, 1989. Petitioner's claim is barred by the statute of limitations since it was not filed within six years after the right accrued. Statutes of limitations on actions in court also apply to the initiation of contested case proceedings. *Oak Ridge Care Center v. Department of Human Services*, N.W.2d . (Minn. App. 1990). For this same reason, the claim regarding the 1977 examination is also barred because that is also more than six years old.

The absolute preference given to honorably discharged veterans was repealed in 1975. Minn. Laws 1975, Ch. 45 7. Since then, Minn. Stat. 197.455 has provided that what is now Minn. Stat. 43A.11, which grants preference to veterans in the state's civil service, shall also govern preference for veterans in employment in all political subdivisions of the State .

Petitioner was not entitled to any veterans preference credit for the Meter Reader II examinations he took and passed in 1977, 1985, and 1987. The Veterans Preference Act states: "There shall be added to the competitive open examination rating of a nondisabled veteran, who so elects, a credit of five points provided the veteran obtained a passing rating on the examination without the addition of credit points." Minn. Stat, 43A.11, subd. 3. But only disabled veterans are eligible for a preference on competitive promotional examinations. Minn. Stat. 43A.11 subd. 4. Petitioner is not a disabled veteran. The Meter Reader II examinations Petitioner took were competitive promotional examinations, not competitive open examinations. They were limited to employees of the City.

Petitioner points out that the examination announcement for the 1987 promotional examination stated that the position was open to permanent employees of any city council department and also noted that under the union contract, if fewer than seven qualified applicants apply, "a combined union open exam may be conducted." Attachment to Ex. F. Petitioner then argues that under the Minneapolis City Charter, Ch. 19, 4, not all city council department employees are employees occupying civil service positions. Thus, Petitioner argues, the examination is open to employees who are not in the civil service and, therefore, it is a "competitive open" examination. However, the cited provision of the City Charter describes the jurisdiction of

the Civil Service Commission as extending only to the classified service
which
it defines as the entire service of the City except for certain specified

persons known as the "unclassified service". The listed persons are elected officials and department heads and their secretaries and assistants. Ex. A.

It would appear that those persons in the unclassified service are not employees of "any city council department." Thus, the examinations are limited to employees in the civil service. They are, therefore, "competitive promotional" examinations as defined by Minn. Stat. I 43A.02, subd. 16. In summary, all the examinations for Water Meter Reader II that Petitioner took since 1975 were promotional examinations and only veterans with a service-connected disability of 50% or more were entitled to a veterans preference credit. Petitioner does not have such a disability, so he was not entitled to any veterans preference on the examinations and the City has not denied him any veterans preference rates in that regard.

The Veterans Preference Act provides, in relevant part:

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 military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon notice, upon states charges, in writing.

Any veteran who has been notified of the intent to discharge him from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of his right to request a hearing within 60 days of receipt of the notice of intent to discharge

. . . [S]uch hearing for removal or discharge shall be held before such civil service board or commission

Minn. Stat. 197.46.

In this case, the Petitioner was involuntarily demoted to a lower paying job which the City felt was within his medical restrictions. His pay reduction is largely being made up by workers' compensation payments. The demotion occurred within the same City Department and was, apparently, permanent. Whether this demotion, in accordance with the Worker Compensation Act and long-standing City policy, constitutes a "removal" as the word is used in the Veterans Preference Act requires an analysis of the meaning given to "removal."

Our Supreme Court has interpreted Minn. Stat. 197.46 to mean "an employee who is a veteran cannot be dismissed or demoted except for

incompetency or misconduct.'" *Leininger v. City of Bloomington*, 299 N.W.2d 723, 726 (Minn. 1980). Likewise, in *Meyers v. City of Oakdale*, 409 N.W.2d 848 (Minn. 1987), the Court stated, "While we have not defined what it means to be 'removed from such position or employment,' we have recognized that a veteran is entitled to a hearing not only before he or she is discharged, but also before being demoted." The Court went on to hold "that whether an employer has by its action removed a veteran is a matter of substance and not form. We

hold that under the Veterans Preference Act, 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."

The facts in City of Oakdale are very similar to those here. In City of Oakdale, a police officer suffered a back injury while in course of employment. The officer, however, did not return to work in any capacity. Following an assessment, a doctor recommended that the officer be put on medical retirement. Soon afterwards, the City placed the veteran officer on indefinite medical leave.

Applying the City of Oakdale holding to Petitioner's case, it must be concluded that Petitioner's demotion to the position of Clerk 11 makes it unlikely or improbable that he will be able to return to his job as Water Meter Reader I. That is, in fact, why he was demoted. Nothing in the demotion indicates that it is temporary or that he will be able to automatically return to his former position if his condition improves. Therefore, the demotion of Petitioner constitutes a removal from his position of Meter Reader I under Minn. Stat. 197.46.

The Court in City of Oakdale also held that an employee veteran removed for physical inability to perform the duties of his pre-injury job, was removed for "incompetency." Therefore, the employee veteran was entitled to a veterans preference hearing to determine whether, in light of any restrictions placed on the veteran by examining and treating doctors, the employer acted reasonably. Petitioner in this case is entitled to the same type of hearing.

The City argues that Petitioner's claim for a veterans preference hearing in these circumstances is barred by the exclusive remedy provision of the Workers' Compensation Act, at Minn. Stat. 176.031. That section provides in pertinent part as follows:

The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death.

This exclusive remedy provision appears to be directed at the underlying premise of workers' compensation laws, that is, that instead requiring employees with a work-related injuries to bring a negligence or other tort actions to recover damages, a no-fault, strict-liability compensation system is established for work-related injuries and employees are limited to making their claims for injuries under that system. In this case, Employee is not making a claim for damages arising out of his work-related injury, he is appealing his demotion. While that demotion is a result of his injury, in light of the cases interpreting Minn. Stat. 197.46 cited above, it must be concluded that a public employee who is a veteran and incurs a work related injury is entitled to a veterans preference hearing if he is removed on account of that injury.

The City also argues that it has, in effect, provided Petitioner with a veterans preference hearing. Petitioner was informed that he had a right to a

hearing before the Civil Service Commission on the demotion and that he had ten days to request such a hearing. He was not told that he had a right to a veterans preference hearing. Petitioner elected to have a hearing before the Civil Service Commission, rather than an arbitration under the collective bargaining agreement, and that hearing was held. The Civil Service Commission, which would be the same body to conduct a veterans preference hearing, heard evidence on the reasons for the demotion and required investigations to be made regarding issues that Petitioner raised. It considered the medical reports from the Park Nicollet Clinic examining physicians and ultimately determined that the demotion was appropriate and denied the appeal. The Commission did not consider any evidence that, in fact, Petitioner's medical condition might be improving and that he might as some point be able to return to his prior duties. However, while such evidence may now exist, nothing appears in the reports of the Commission's proceedings that Petitioner raised this issue before the Commission or offered to present such facts.

Despite the fact that Petitioner has already had one hearing before the Commission, the law is quite clear that Petitioner is also entitled to a veterans preference hearing before the Commission. In *AFSCME Council 96 v. Arrowhead Regional Correction\$ Board*, 356 N.W.2d 295 (Minn. 1984), the Court noted that in public employee termination proceedings, non-veteran employees must elect between a civil service system hearing and the collective bargaining agreement grievance proceeding. The Court held, however, that a veteran who had elected to proceed under the collective bargaining agreement proceeding also had a right to a veterans preference hearing. In *Young v. City of Duluth*, 372 N.W.2d 57 (Minn. App. 1985), affirmed as modified 386 N.W.2d 732 (Minn. 1986), the Court of Appeals held that a discharged veteran was entitled to both a hearing under the collective bargaining agreement and the Veterans Preference Act. Again, in *Pawelk v. Camden Township*, 415 N.W.2d 47 (Minn. App. 1987), the Court held that a veteran does not waive his veterans preference rights and is not estopped from bringing an action under Minn. Stat. 197.46 because he has chosen another remedy available to him. The law permits a veteran to pursue a veterans preference claim in addition to any other rights he may have. For these reasons, Petitioner is entitled to a veterans preference hearing under Minn. Stat. 197.46 to determine whether, in light of the medical evidence, the demotion is reasonable. At that hearing, Petitioner would be entitled to show medical evidence that he is able to perform the duties of the position. While this may seem like a duplication, it is what Minn. Stat. 197.46 requires.

smm