

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

David L. Olson,

Petitioner,

RULING_ON_MOTION_FOR
SUMMARY_DISPOSITION

vs.

Otter Tail County,

Respondent.

By written motion received on November 22, 1991, Otter Tail County seeks an Order of the Administrative Law Judge dismissing the claim of David L. Olson in the above-captioned matter. A written response to the motion was filed on January 27, 1992. The County filed a reply memorandum on February 10, 1992. A prehearing conference was held by telephone on February 13, 1992, at which the Motion was discussed. In a letter dated February 21, 1992, the County withdrew its request for an in-person oral argument and submitted the Motion on the existing record.

Appearances: Michael T. Rengel, Hefte, Pemberton, Sorlie & Rufer, Attorneys at Law, Law Office Building, 110 North Mill Street, P.O. Box 866, Fergus Falls, Minnesota 56538-0866, appeared on behalf of Otter Tail County (Otter Tail or County); and Peter M. Irvine, Irvine, Ramstad, Briggs & Karkella, Attorneys at Law, 450 West Main Street, P.O. Box 160, Perham, Minnesota 56573, appeared on behalf of David L. Olson (Olson, Employee or Petitioner).

The record on the Motion closed on February 24, 1992, with the receipt by the Administrative Law Judge of the County's letter waiving additional oral argument.

Based on the Motion, the written and oral comments of counsel, and on all the files and records herein, the Administrative Law Judge makes the following:

ORDER

The Motion of the County to dismiss the claims of David L. Olson on the basis of laches is DENIED. Material issues of disputed fact require that a

hearing in the above-captioned matter be conducted.

Dated this ____ day of February, 1992.

BRUCE D. CAMPBELL
Administrative Law Judge

MEMORANDUM

Viewed in the light most favorable to the nonmoving party, the following facts are accepted for purposes of this Motion. On or about July 1, 1974, Claimant was dismissed from his civil service position as an Otter Tail County Deputy Sheriff. Although the Employee was a veteran, the County did not advise him of his right to a hearing under Minn. Stat. § 197.46 (1974). Mr. Olson only became aware of his veterans rights by chance in mid-February of 1991. The Petitioner filed his veterans claim on May 13, 1991.

The County asserts that application of the doctrine of laches entitles it to a ruling dismissing Mr. Olson's claim as a matter of law. It argues that its supporting affidavits affirmatively establish extreme prejudice if the Petitioner's 17-year-old claim is considered. Further, it contends that Mr. Olson had knowledge of his veterans rights long prior to the filing of the current claim.

The County has requested that the Administrative Law Judge dispose of the Employee's claim without hearing. The request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. The same standards apply. Minn. Rule part 1400.5500 K (1991). Summary disposition of a claim is appropriate when there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law. Minnesota Rule of Civil Procedure, Rule 56.03.

A material fact is one which is substantial and will effect the result or outcome of the proceeding, depending on the determination of that fact. Highland Chate

With a motion for summary disposition, the initial burden is on the moving party to show facts establishing a prima facie case for the absence of material facts at issue. *Theile_v._Stick*, 425 N.W.2d 580, 583 (Minn. 1988). Once the

moving party has established a prima facie case, the burden shifts to the non-moving party. Minnesota Mutual Fire and Casualty Company v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990). To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.

Hunt v. IBM

Mid America Employees Federal, 384 N.W.2d 853, 855 (Minn. 1986). The non-moving party may not rely on general assertions; significant probative evidence must be offered. Minnesota Rules of Civil Procedure, Rule 56.05; Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1989); Celotex

Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The evidence introduced to defeat a summary disposition motion need not be admissible trial evidence, however. Carlisle, 437 N.W.2d at 715, citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

The County first argues that any rights asserted by Mr. Olson would be long barred even by the least restrictive period of limitations contained in Minn. Stat. Ch. 541 (1990). For the reasons hereinafter discussed, the Administrative Law Judge concludes that Minn. Stat. Ch. 541 (1990), which relates to time limitations on bringing actions, has no application to Mr. Olson's assertion of veterans rights.

Minn. Stat. § 541.05 (1990), Minn. Stat. § 541.07 (1990) and all of Minn. Stat. Ch. 541 (1990), limit the time within which an action may be brought. Minn. Stat. § 645.45(2) (1990), defines an action as, "any proceeding in any court of this state" (emphasis added). Since the definition of "action" contained in Minn. Stat. § 645.45(2) (1990), predates Laws of 1941, Ch. 492, § 45, as referenced in the introductory paragraph to the definitions contained in Minn. Stat. § 645.45 (1990), it is also necessary to define the word "action" at common law. The Minnesota courts have clearly held that the word "action", whether contained in a statute or at common law, specifically means a legal proceeding brought in a judiciary branch court. In Har-Mar, Inc. v. Thorsen & Thorshov, Inc., 218 N.W.2d 751, 754 (Minn. 1974), the court held that the word "action" relates solely to judicial proceedings in a court within the judiciary branch:

It thus appears that § 541.05, both by statutory definition and at common law, was intended to be confined to judicial proceedings.

On a number of occasions the Minnesota courts have reached the same conclusion.

Spiva v. American Standard Insurance Co., 361 N.W.2d 454, 457 (Minn. App. 1985); Muirhead v. Johnson, 46 N.W.2d 502, 505 (Minn. 1951); In the Matter of Wage and Hour Violations of Holly Inn, 386 N.W.2d 305 (Minn. App. 1986).

Petitioner's assertion of veterans rights under Minn. Stat. § 197.46 (1990) does not constitute an action for purposes of the application of any portion of Minn. Stat. Ch. 541 (1990). In Wage and Hour Violations of Holly

Inn,_Inc., 386 N.W.2d 305 (Minn. App. 1986), the court held that the two-year statute of limitations had no application to a contested case proceeding for the administrative recovery of wages less than the state minimum. The court held:

La Fonda urges this court to conclude that the two year statute of limitations found in Minn. Stat. § 541.07(5) (1984) governs this proceeding and therefore bars at least a portion of the Department's claim. The statute

provides that "actions" shall be commenced within two years "[f]or the recovery of wages or overtime or damages, fees or penalties accruing under any federal or state law respecting the payment of wages or

386 N.W.2d at 307. In *Holly*, supra, the court reviewed the holding of the Minnesota court in *Har-Mar_Inc._v._Thorsen*, 218 N.W.2d 751 (Minn. 1974) and the later decision of the Court of Appeals in *Spiva*, supra. The court concluded:

In light of section 645.45(2), which continues to define "action" as "any proceeding in any court of this state," Minn. Stat. § 645.42(2) (1984) (emphasis supplied), and case law which continues to apply that same definition, we believe the general statute of limitations does not apply to this administrative proceeding.

386 N.W.2d at 308.

Similarly, in *Bednarek_v._Bednarek*, 430 N.W.2d 9 (Minn. App. 1988), the court refused to apply Minn. Stat. § 541.04 (1988) to an administrative remedy, citing *Har-Mar,_Inc._v._Thorsen_&_Thorshov*, 218 N.W.2d 751, 755 (Minn. 1974).

The holdings of the Minnesota courts follow the great weight of judicial authority that statutes of limitations do not apply to administrative proceedings generally. *Latreille_v._Michigan_State_Board_of_Chiropractic_Examiners*, 98 N.W.2d 611 (Mich. 1959).

The Administrative Law Judge recognizes that the statutory definition of the word "action" and similar common law definitions limiting that word to proceedings in a judicial forum would not be applicable if the particular type of proceeding or context clearly indicated the word was to have a broader meaning. There is no indication that an assertion of veterans rights is such a proceeding that it would be appropriate to vary the statements by the Minnesota courts regarding a limitation of the word "action" to judicial proceedings. The Administrative Law Judge, therefore, applies the general rule that statutes of limitations which require the existence of an "action" do not apply to this contested case proceeding. *Pawelk_v._Camden_Township*, 415 N.W.2d 47, 52 (Minn. App. 1987).

The County relies primarily on the concept of laches in seeking dismissal of Mr. Olson's claim. The equitable concept of laches has clear application to a veterans rights claim. In *Pawelk_v._Camden_Township*, 415 N.W.2d 47, 52 (Minn. App. 1987), the court stated:

A veteran should promptly assert rights in order to minimize an employer's liability. (Citation omitted.) However, laches does not bar recovery when the delay was occasioned by a failure on the part of the party asserting the defense.

See, *City_of_St._Paul_v._Harding*, 356 N.W.2d 319 (Minn. App. 1984); *State_v._Heise*, 67 N.W.2d 907, 912 (Minn. 1954).

In *State_v._Bentley*, 12 N.W.2d 347, 355 (Minn. 1943), the court discussed the equitable doctrine of laches:

The state contends that respondents are barred by laches because more than seven years have elapsed since the commencement of the condemnation proceedings and more than four years since the serving of the first petition in intervention. "Laches in a general sense is such negligence in bringing an action or otherwise asserting one's right as will preclude him from obtaining equitable relief". *Lloyd_v._Simons*, 97 Minn. 315, 317, 105 N.W. 902. The doctrine of laches depends entirely upon the peculiar circumstances surrounding each case, upon the nature of the claim, and whether the delay has been unnecessary and unreasonable. *St._Paul_M._&_M._Ry._Co._v._Eckel*, 82 Minn. 278, 84 N.W. 1008. Lapse of time is only one of the considerations involved in the defense of laches. A party is held barred where the delay is so long and the circumstances of such character as to establish a relinquishment or abandonment of the right. *Ricker_v._J.L._Owens_Co.*, 149 Minn. 130, 182 N.W. 960. The main question to be determined is whether the defendant will be prejudiced -- whether he will be placed in a posi

In *Shortridge_v._Daubney*, 425 N.W.2d 840, 842 (Minn. 1988), the court rephrased the elements of laches as follows:

Relief will be denied in those cases where "unreasonable delay in asserting a known right, resulting in prejudice to others, . . . make[s] it inequitable to grant the relief prayed for." *Klapmeier*, 346 N.W.2d at 137 (citing *Fetsch_v._Holm*, 236 Minn. 158, 163, 52 N.W.2d 113, 115 (1952)).

Hence, the elements of a defense of laches include the following:

Availability of the defense as determined by the nature of the action; unreasonable delay; prejudice; and policy considerations. *M.A.D._v._P.R.*, 277 N.W.2d 27, 29 (Minn.

1979). As previously discussed, a veterans rights action is one in which the defense of laches may apply. Laches is available in the absence of a governing statute and a governing statute of limitations under Minn. Stat. Ch. 541 (1990). See, *In_re_Barlow's_Estate*, 188 N.W. 282, 283 (Minn. 1922).

In analyzing the factor related to the reasonableness of the delay, one must consider not only the length of the delay, but the existence of knowledge of the rights to be asserted. Laches is usually defined as the knowing failure to assert rights to the prejudice of an adverse party. *Aronovitch_v._Levy*, 238 Minn. 237, 46 N.W.2d 570 (1953); *Knox_v._Knox*, 222 Minn. 477, 25 N.W.2d 225 (1946); *State_v._Brooks_--_Scanlon_Lumber_Co.*, 122 Minn. 400, 142 N.W. 717 (1913). While some cases discuss constructive, as opposed to actual knowledge, and may impute knowledge of the law to establish laches, some culpable conduct on the part of the party now asserting rights is required. See, *West_v._Upper Mississippi_Towing_Corp.*, 221 F.Supp. 590 (D. DC 1963); *Brothers_Jurewicz,_Inc. v._Atari,_Inc.*, 296 N.W.2d 422 (Minn. 1980).

As should be apparent, the state of Mr. Olson's knowledge about his veterans rights is a material factor in the application of the doctrine of laches. In its initial memorandum, the County takes the position that the petitioner knew or must have known of his veterans rights at a date much earlier than the date on which the instant claim was filed. In his Supplemental Affidavit, Mr. Olson asserts that he had no knowledge of his veterans rights until shortly before he filed the instant claim. When Mr. Olson obtained knowledge of his potential veterans rights is, therefore, a disputed issue of material fact which makes a grant of the Motion inappropriate.

The County also argues strenuously that the delay in asserting rights, seventeen years, is itself of so long a duration as to make application of the doctrine of laches virtually automatic. There is no stated period of time which automatically establishes laches. Some courts have found laches in delays of one to four years. See, e.g., *Brothers_Jurewicz_v._Atari,_Inc.*, 296 N.W.2d 422, 428-29 (Minn. 1980) (one year delay in exercising right to arbitration constituted laches); *Shortridge_v._Daubney*, 425 N.W.2d 480 (Minn. 1988) (four year delay in challenging special assessment constituted laches). Other courts have failed to find laches in longer delays. See, e.g., *Searles v._Searles*, 412 N.W.2d 11, 13 (Minn. App. 1987), *aff'd.* 420 N.W.2d 581 (Minn. 1988) (triable issue as to whether fifteen year delay in bringing partition action constituted laches); *Bonhiver_v._Fugelso,_Porter,_Simick*, 355 N.W.2d 138 (Minn. 1984) (seven year period between accident and request for conversion of suit to wrongful death action did not establish laches); *Corah_v._Corah*, 75 N.W.2d 465 (Minn. 1956) (eighteen year period in enforcing marital rights does

not automatically establish laches); *Ryan_v._Minneapolis_Police_Relief_Association*, 89 N.W.2d 17 (Minn. 1958) (five year delay in enforcing pension rights not laches).

The Administrative Law Judge may not, therefore, merely assume, without more, that the passage of seventeen years automatically establishes a defense of laches. The longer rights have not b

As previously discussed, assertion of a defense of laches requires prejudice to the opposing party, so that a grant of relief at the late date requested would be inequitable. *Modjeski_v._Federal_Bakery*, 307 Minn. 432, 240

N.W.2d 542 (1976); *Desnick_v._Mast*, 311 Minn. 356, 249 N.W.2d 878 (Minn. 1976).

The existence of substantial prejudice has been asserted by the County. Prejudice, however, is a fact issue which is rarely determinable on a motion for summary disposition, unless the facts establishing prejudice are uncontroverted. In *EEOC_v._Martin_Processing,_Inc.*, 533 F.Supp. 227 (D.W.Va. 1982), the court discusses cases in which the federal courts have held that a failure to prosecute for an unreasonable period of time results in sufficient prejudice to the defendant to dismiss the claim. The court notes that a clear

showing of substantial prejudice for each individual claim is necessary. 533 F.Supp. at 231. Similar laches cases, discussing the existence of prejudice as

presenting issues of fact include *EEOC_v._Westinghouse_Electric_Corp.*, 592 F.2d

484 (8th Cir. 1979); *EEOC_v._Liberty_Loan_Corp.*, 584 F.2d 953 (8th Cir. 1978);

EEOC_v._Massey-Ferguson,_Inc., 622 F.2d 271 (7th Cir. 1980).

The County's claim of extreme prejudice in defending against Mr. Olson's request for relief presents disputed issues of material fact. The County states that it has legitimately long since destroyed all of Mr. Olson's personnel records and that key witnesses are no longer employed by the County.

Mr. Olson, on the other hand, asserts that he can affirmatively establish the circumstances surrounding his separation from service with the County. He also

states in his affidavit that there are other employees of the Sheriff's Department and the County that can establish the circumstances under which he was separated from public employment with the County. Since the amount of prejudice the County will experience is genuinely disputed, a grant of the Motion would be inappropriate.

Apart from application of the doctrine of laches, the County may assert that the passage of time involved in Mr. Olson's claim, seventeen years, makes a defense of his claim at this late stage legally inappropriate.

In *Fisher_v._Independent_School_District_622*, 357 N.W.2d 152 (Minn. App. 1984), the court held that a required defense of charges arising from incidents

occurring twelve to sixteen years prior to a discharge hearing did not result in a denial of due process rights under the facts of that particular proceeding. In *Charge_of_Unprofessional_Conduct_against_NP*, 361 N.W.2d 386,

392 (Minn. 1985), the court held that an investigation delayed for in excess of four years did not deprive the attorney of any protected rights since no prejudice resulted. In an appropriate case, given an inability to reconstruct the facts surrounding far-distant events, due process or the simple requirement of a fair hearing may require a dismissal of charges.

In *Harston_v._District_of_Columbia*, 638 F.Supp. 198, 204 (D. DC 1986), the court stated that a significant delay in completing an administrative determination may, at some point, deprive a party of constitutionally protected rights. Similarly, in *Appeal_of_Plantier*, 126 NH 500, 494 A.2d 270 (1985), the court dismissed as stale, an allegation of sexual abuse against a doctor that had occurred nine years prior to the filing of the charge. The basis for the dismissal was an asserted inability on the part of the physician to defend against the old charge. See also, *Weinberg_v._Commonwealth_of_Pennsylvania*, 501 A.2d 239 (Pa. 1985); *Lyness_v._Commonwealth_State_Board_of_Medicine*, 561 A.2d 362 (Pa. Cmwlth 1989).

While the Administrative Law Judge does not conclude that a governmental entity is entitled to exactly the same due process rights as would be afforded a natural, private person, it has a right to a fundamentally fair hearing. *Juster_Bros._v._Christgau*, 7 N.W.2d 501 (Minn. 1943). A fundamentally fair hearing i to the procedural and substantive rights which satisfy the meaningful hearing requirement previously discussed. *Nyhus_v._Civil_Service_Board*, 232 N.W.2d 779 (Minn. 1975). It might well be argued that requiring the County to defend Mr. Olson's claim after a seventeen year hiatus would deprive it of the procedural and substantive rights inherent in a fair hearing. The passage of time, the lack of contemporaneous records and the unavailability of witnesses may make any hearing afforded the County meaningless.

Even this legal theory, however, depends for its validity on a disputed question of fact, the degree to which events occurring seventeen years ago can be fairly reconstructed now. As previously discussed, determining that question involves disputed issues of material fact. Hence, even under a due process or fair hearing theory, a denial of the Motion is appropriate.

Under Minn. Stat. § 197.46 (1990), the function of the Administrative Law Judge in this proceeding is to determine whether a hearing on Mr. Olson's charge that he was not discharged for cause is appropriate. A second hearing to determine whether his discharge was supported by cause, if the initial inquiry is favorable to Mr. Olson, would be conducted by a three-member panel selected in accordance with Minn. Stat. § 197.46 (1990). If the County, however, claims that Mr. Olson was not discharged, but voluntarily relinquished his duties as deputy sheriff, that claim should be asserted in this veterans rights hearing.

BDC