

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Darryll D. Hotvedt,
Petitioner,

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

vs.

City of Apple Valley,
Respondent

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Thursday, December 5, 1991 in Courtroom No. 18, 500 Flour Exchange Building, in the City of Minneapolis, Minnesota. The record closed at the conclusion of the hearing.

Darryll D. Hotvedt, 17565 Ionia Path, Lakeville, Minnesota 55044, the Petitioner, appeared representing himself. Annette M. Margarit, Assistant Apple Valley City Attorney, 600 Midway National Bank Building, 7300 West 147th Street, Apple Valley, Minnesota 55124, appeared representing the City of Apple Valley, the Respondent.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Veterans Affairs will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to 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 Bernie Melter, Commissioner, Minnesota Department of Veterans Affairs, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether or not the Petitioner's veterans preference rights were violated by the City of Apple Valley in its hiring of a meter reader.

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

the following:

FINDINGS OF FACT

1. Darryll D. Hotvedt is a 36-year-old male who was honorably discharged from the United States Army on September 10, 1975. Mr. Hotvedt resides at 17565 Ionia Path in Lakeville, Minnesota. (Ex. 4).
2. In May of 1991 the City of Apple Valley advertised a position as a meter reader in its utilities division. The primary duties were stated to be reading residential water meters using hand-held computers and manual labor. The job announcement also indicated that the position must be available for call-back snow plowing, water main break repairs and other emergencies. The starting pay was stated as \$9.00 per hour plus benefits. The deadline for applications was May 20, 1991. (Ex. 2).
3. The position of utilities meter reader was a new one with the City of Apple Valley. The meter reader was to use a hand-held computer as the meter reader traveled door-to-door reading water meters. The City determined that this was an entry level position.
4. The City received approximately 159 applications for this position. Because it was an entry level position, no experience rating was used in the selection process. Points were awarded towards a ranking for the position in three ways. A maximum of 40 points was awarded based upon the results of a written test. A maximum of 50 points was awarded based upon a screening interview. Additionally, honorably discharged veterans were awarded five points and disabled veterans were awarded ten points. The maximum possible score was 100 points, a total which could be reached only by veterans. (Ex. 7).
5. Mr. Hotvedt submitted an application for employment as a meter reader on May 15, 1991. (Ex. 13). He and the other applicants were advised by a memorandum dated June 11, 1991 that the next step in the selection process would be a written test to be conducted on June 20, 1991. (Ex. 3).
6. Mr. Hotvedt filed a copy of his DD214 form with the City of Apple Valley in connection with his application and claimed preference as a disabled veteran for the position of meter reader. (Ex. 4).
7. One hundred nine people took the test on June 20, 1991. Seventeen people, including Mr. Hotvedt, had a perfect score on the written test. A perfect score consisted of answering all 51 questions correctly. Veterans preference points (5 points for a veteran and 10 points for a disabled veteran) were then added to the written test scores to produce a ranking. Mr. Hotvedt was awarded 10 points as a disabled veteran and finished with the highest point total. (Ex. 5).
8. The City then interviewed the top 23 names on the ranking of test scores and veterans preference points. The interviews were conducted on July 2, 1991 and

lasted approximately 10 minutes apiece. Each applicant was interviewed by a three-person committee consisting of two utilities foremen and the personnel director. Each committee member asked a prepared question of an applicant and the committee came to a consensus after the interview on a score for each candidate based upon a point range of zero to 100.

9. Mr. Hotvedt was awarded a raw score of 50 points out of a possible 100, based upon the oral interview. (Ex. 6). Six people had higher interview scores than Mr. Hotvedt with three of them being veterans. Six people had the same score as Mr. Hotvedt and nine people had a lower score. (Ex. 8). Mr. Hotvedt's final point total for the hiring procedure was 75 points. He received the maximum points for veterans preference, the maximum points for the written test, but only one-half of the available points for the screening interview. A maximum of 50 points was awarded for the screening interview, 40 points for the written test and 10 points for veterans preference. (Ex. 7).

10. The top seven final scores were 88, 85, 83, 83, 75, 75, and 75. (Ex. 8). The City decided to invite the people with the top four scores back for a final interview. One of these people was a veteran. Mr. Hotvedt, with a score of 75, was not invited back for a second interview.

11. The City sent Mr. Hotvedt a letter which was mistakenly dated June 27, 1991 advising him that he was not selected for a second interview and stating that it was concentrating on a limited number of candidates whose backgrounds appeared to be the best match with the City's needs at the moment. (Ex. A). The letter did not advise Mr. Hotvedt of the score he had received during the hiring procedure.

12. Mr. Hotvedt then contacted the City to inquire about why he had not been hired. The City, in a letter dated July 19, 1991, advised him that it had found other candidates to possess qualifications and experience that more closely matched requirements of the position and apologized for the mixup on the date on the previous letter. (Ex. 10).

13. The three-member committee interviewed the four finalists a second time and their references were checked. The committee decided to hire the person who had scored 85 during the hiring process. That person was Linda Mullen, a nonveteran.

14. Ms. Mullen's work experience included employment as a client processor for a payment system corporation and experience as a bartender/waitress and cook which included opening and closing responsibilities for the restaurants where she worked. She is a high school graduate, has a technical college degree as a secretary, and has taken some college courses. (Ex. 12; Ex. 14).

15. Mr. Hotvedt's prior working experience included employment with Minnegasco, installing and repairing gas appliances and doing some meter reading. He also worked for an explosives company loading transporting and detonating explosives.

He has driven a dump truck and operated heavy equipment including the installation and repair of sewer and water lines. He has also been self-employed as a heavy equipment operator. (Ex. 13). Mr. Hotvedt is a volunteer firefighter with the City of Lakeville and has been for 13 years. He has CPR training and is a state-certified first responder.

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

CONCLUSIONS

1. That the Commissioner of Veterans Affairs and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 197.481.
2. That the Department of Veterans Affairs has given proper notice of the hearing in this matter and all substantive and procedural requirements of law or rule have been met.
3. That the Petitioner, Darryll D. Hotvedt, is an honorably discharged veteran within the meaning of Minn. Stat. § 197.447.
4. That the City of Apple Valley is a political subdivision of the State of Minnesota within the meaning of Minn. Stat. § 197.46.
5. Minn. Stat. § 43A. 11, subs. 3 and 4, grant to honorably discharged veterans a preference in governmental hiring through the addition of points to the individual veteran's open examination rating.
6. Minn. Stat. § 197.455 provides in part that:

The provisions of section 43A.11 granting preference to veterans in the state civil service shall also govern preference of a veteran under the civil service laws, charter provisions, ordinances, rules or regulations of a county, city, town, school district, or other municipality or political subdivision of this state, except that a notice of rejection stating the reasons for rejection of a qualified veteran shall be filed with the appropriate local personnel officer. Any provision in a law, charter, ordinance, rule or regulation contrary to the applicable provisions of section 43A.11 is void to the extent of such inconsistency.
7. That the burden of proof in this proceeding is upon the Petitioner to establish that the hiring procedure of the City of Apple Valley for its meter reader position was contrary to the veterans preference law.
8. That the Petitioner failed to show by a preponderance of the evidence that the City of Apple Valley violated his veterans preference rights in the course of its hiring for the meter reader position.

9. That the above Conclusions are arrived at for the reasons set forth in the Memorandum which follows.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: That the Commissioner of Veterans Affairs issue an Order dismissing the Petition filed by Darryll D. Hotvedt.

Dated this 11th day of December, 1991.

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

NOTICE

Pursuant to 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.

Reported: Taped - No Transcript Prepared.

MEMORANDUM

Minn. Stat. 43A. 11 grants to honorably discharged veterans a preference in hiring by governmental bodies through the addition of points to the individual veteran's rating. Nondisabled veterans are entitled to five additional points and disabled veterans are entitled to ten additional points. This preference is made applicable to hiring by cities by Minn. Stat. § 197.455. The issue presented in this case is whether the hiring procedure of the City of Apple Valley for its meter reader position denied the Petitioner the veterans preference rights set out in Minn. Stat. § 43A.11 and the Veterans Preference Act.

The leading case in Minnesota on the application of the veterans preference law in hiring is Hall v. City of Champlin, 463 N.W.2d 502 (Minn. 1990). In that case the City did not provide the petitioner any veterans preference points because none of the applicants were ranked by way of a numerical score. The Minnesota Supreme Court held that a 100 point based rating system is implicit in the veterans preference law because it is necessary to the uniform application and intended effect of the law. The Supreme Court directed cities to adapt their hiring procedures to a system that enables allocation of veterans preference points. 463 N.W.2d at 505-06. The record in this case indicates the City did employ a 100 point based system in its hiring procedure. The point

system did provide for the awarding of five additional points for a veteran and ten additional points for a disabled veteran. Only a disabled veteran was capable of achieving the maximum 100 point score. The hiring system therefore appears to comply with the Hall v. Champlin case.

Cases decided by the Commissioner of Veterans Affairs subsequent to Hall v. Champlin have gone one step further. For example, in Erickson v. City of St. Paul, decided June 13, 1991, held that the veterans preference points had to be awarded at some point in the hiring procedure and that a veteran cannot be excluded from the process before veterans preference points were awarded. Likewise, in Lehto v. St. Louis County Civil Service Commission, decided January 20, 1989, the Commissioner held that a public employer cannot defer awarding veterans preference points until the second part of an examination where veterans are excluded on the first part of the examination. In this case, however, the record indicates that the veterans preference points were awarded after the first part of the examination, namely the written test, and that after that was accomplished the Petitioner was the highest ranked candidate. He then proceeded to the first oral interview along with 22 other candidates. It therefore appears that the City of Apple Valley awarded the veterans preference points at an appropriate point in the hiring process in accordance with the Commissioner's decisions. The Petitioner had the advantage of veterans preference points in a meaningful way, that is, they did help him to rank first on the list after the written examination and secured an oral interview for him.

At the hearing the Petitioner argued that the City had not complied with the Veterans Preference Act in that it had not advised him of the final examination ratings as required by the statute. However, the intent of the provision in question (Minn. Stat. § 43A.11, subd. 8) seems to be to enable the veteran to elect his or her use of veterans preference to augment the ratings. In this case the Petitioner had notified the City that he wished to claim veterans preference and was not prejudiced by any failure to notify him of the final examination ratings. He was not prejudiced by any failure on the part of the City in this regard. The City did notify the Petitioner in writing of the reasons for his rejection as required by Minn. Stat. § 43A.11, subd. 9.

Petitioner's main argument at the hearing and the thrust of his testimony was that he was the best qualified candidate and was clearly more qualified than the nonveteran who was hired. It seems clear that the Petitioner's job experience was more extensive and perhaps more directly related to the job duties of meter reader. Additionally, his experience more closely matched some of the possible backup duties of the position set out in the vacancy announcement such as snow plowing, water main break repairs, and other emergency situations. The City pointed out however, that heavy mechanical skills were not necessary for this position. Essentially, the meter reader spends approximately 40 hours per week walking from home to home and entering water meter readings on a hand-held computer. The other duties appear to be incidental.

However, even assuming that the Petitioner is better qualified, there is no authority in the veterans preference law which would allow the Commissioner to

redetermine who is the best qualified applicant in a hiring procedure by a municipal subdivision, at least absent bad faith. There is no indication based upon this record that the hiring by the City was in other than good faith. It appears that the four finalists did much better in the oral interview than the Petitioner, based upon the City's subjective judgment. The successful candidate obviously had a more favorable interview than the Petitioner. Good interpersonal skills would be a proper criteria for a position which requires an employee to go door to door. Additionally, the Petitioner acknowledged at the hearing that he was over qualified for the position and this may have been a factor in the decision by the City.

The Petitioner has failed to carry his burden to demonstrate that the City has failed to properly award him his veterans preference points in its hiring of the meter reader. He has not shown that the City's hiring procedure improperly denied him the rights guaranteed him by law. Nothing indicates any action by the City to negate the effect of the veterans preference accorded to the Petitioner.

G.A.B.