

8-3100-7772-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Paul J. Scarseth,

Petitioner,

FINDINGS OF FACT,
CONCLUSIONS AND

V.
RECOMMENDATION

Independent School District No. 196,

Respondent.

The above-entitled matter came on for hearing before Administrative Law judge Jon L. Lunde commencing at 9:30 a.m. on June 7, 1993 at the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing was held pursuant to a Notice of Petition and Order for Hearing filed with the Office of Administrative Hearings on April 8, 1993.

James E. Knutson, Knutson, Flynn, Hetland, Deans & Olsen, P.A., Attorneys at Law, Suite 1900, Minnesota World Trade Center, 30 East 7th Street, St. Paul, Minnesota 55101, appeared on behalf of Independent School District No. 196 (District or Respondent). Paul J. Scarseth, 11 East 26th Street, Box 10, Hastings, Minnesota 55033, was present at the hearing, appearing on his own behalf. The record closed at the conclusion of the hearing on June 7, 1993.

This Report is a recommendation, not a final decision. The Commissioner of Veteran Affairs will make the final decision after a review of the record and 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,
20 West 12th Street, 2nd Floor, St. Paul, Minnesota 55155, to
ascertain the
procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this case are whether the Respondent failed
to comply with
the veterans preference provisions applicable to school
districts under Minn.
Stat. 197.455 and 43A.11 when it failed to grant
Petitioner any veterans
preference points or whether the positions Petitioner sought
were exempt
teaching positions.

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

FINDINGS OF FACT

1. The Petitioner, Paul Jay Scarseth, is a United States citizen and an honorably discharged veteran of the United States Army. He served on active duty for more than 181 consecutive days. His last significant stint of active duty was in support of Operation Desert Shield/Desert Storm.

2. Petitioner graduated from high school in June 1973. In the fall of 1974, he began post-secondary studies at Mankato State University. After approximately two years' study at Mankato State University, Petitioner transferred to the University of Minnesota. In 1979 he earned a Bachelor of Science Degree in Art Education from the University of Minnesota.

3. In 1982 or 1983, Petitioner entered the Reserve Officers Training Corps (ROTC) Program at the University of Minnesota. In December 1984, he was commissioned in the Minnesota National Guard and began active duty training in January 1985. In June 1985 he completed his active duty training and received an honorable discharge from the Minnesota National Guard. He was inactive ready reserve status between 1985 and 1987. Subsequently, between 1987 and 1991 he was in the at-my reserve. He served in the Desert Shield/Desert Storm Operation between January 2, 1991 and July 1, 1991. Thereafter, he completed 33 days of active duty. Between December 1989 and March 1992 Petitioner's only significant employment was in the military.

4. After being discharged from the Minnesota National Guard in 1985, Petitioner moved to Florida. At that time, he was licensed to teach art in grades K-12 in the state of Minnesota. Between August 1985 and June 1988, Petitioner was an art teacher employed by the Gadsden County School Board in

Quincy, Florida. While employed in that capacity, Petitioner was also working on a Master's Degree from Florida State University. In 1988 he was awarded a Master's Degree in Human Resource Development and Training by Florida State University. The following year, he received a Master of Science degree in Educational Systems from that University.

5. In 1992, Petitioner applied for three positions with the Respondent: art instructor, instructional technology specialist, and instructional technology coordinator. He was not hired for any of the three positions and was not given any veterans preference points by the District when its selection decisions were made. He received a letter notifying him of his rejection for the instructional technology specialist position, but received no communications regarding his rejection for the other two positions.

6. On June 2, 1992, the District posted notice of an opening for an instructional technology specialist to work at the District's central office. Ex. 8. Qualifications for the position were five years of classroom teaching experience, experience using instructional techniques, effective communications skills, and a current Minnesota teaching license. Id. The position called for employment effective July 20, 1992. id.

7. On or about June 11, 1992, Petitioner applied for the instructional technology specialist position. Ex. 1. At the time he filed his application, he was not a licensed teacher in Minnesota. His license to teach in Minnesota had expired on or about July 1, 1990, and had not yet been renewed. However, Respondent was licensable and had applied for relicensure at the time of his application. On September 21, 1992, the Minnesota Department of Education issued a license to Respondent authorizing him to teach in grades K-12. Ex. A. However, Petitioner did not have five years of classroom teaching experience when the application for instructional technology specialist was filed.

8. On April 27, 1992, Dr. J. Richard Dewey, the principal of Rosemount High School, notified the District's personnel coordinator, Richard Thomas, that the school had an "instructional" vacancy in the instructional technology coordinator position. On or about June 2, 1992, the District posted notice of the opening for an instructional technology coordinator at the school. Ex. 11. The announcement called for employment effective July 1, 1992. Id.

9. As an instructional technology coordinator, the individual selected was responsible for enhancing the instruction of computer operations and computer software systems for students. The incumbent would be required to provide faculty with in-service training and develop appropriate curriculum. The person holding the position was required to be a licensed or licensable teacher in Minnesota.

10. On or about June 4, 1992, Petitioner applied for the position of

instructional technology coordinator with Dr. Dewey. E x . E. Enclosed with his application were a copy of his resume, a transcript of his college course work, and a letter from the Dakota County Veterans Service Director, Michael J. Labovitch, stating that Petitioner qualified for veterans preferences under state statutes now in effect. E x . E. Petitioner never received notice from Dr. Dewey that his application for instructional technology coordinator had been rejected or the reasons for the rejection.

I I . In 1992, the District was seeking a variety of classroom teachers to fill upcoming vacancies. Among other things, it was seeking to employ a part-time art instructor. Some time prior to May 27, 1992, Petitioner applied for this position and h i s credentials were mailed to the District. He received an acknowledgement that the District had received his application, but he was never interviewed or hired. Furthermore, he received no written notification of the reasons for his rejection.

12. The D i s t r i c t considers individuals holding the instructional technology specialist and the instructional technology coordinator positions to be teachers and requires the individuals holding those positions to be licensed to teach in the state of Minnesota. The District includes these positions in preparing its teachers' salary budget and the persons hired for these positions are required to sign standard teaching contracts. Exs . 9, 12. Under those contracts, individual s holding the two positions have al 1 the continuing contract rights granted to teachers under Minn. Stat 125.12 (1992).

Based on 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 authority to consider the issues raised by the Petitioner's Petition under Minn. Stat. 197.481, 197.455, 43A.11 and 14.50 (1992).

2. The Department of Veterans Affairs has complied with all relevant, substantive and procedure requirements of statute and rule.

3. The Petitioner and the Respondent received timely and proper notice of the hearing.

4. The Petitioner is an honorably discharged veteran for purposes of Minn. Stat. 197.455 under Minn. Stat. 197.447 (1992).

5. The Respondent is a school district subject to the requirements of Minn. Stat. 197.455 and 43A.11 (1992).

6. The employment preferences granted to veterans in Minn. Stat. 197.455 and 43A.11 do not apply to teachers. Minn. Stat. 197.46 (1992).

7. For purposes of Minn. Stat. 197.46, a "teacher" has the same meaning as it has in Minn. Stat. 125.03, subd. 1.

8. The art teacher position as well as the instructional technology coordinator and instructional technology specialist positions the District filled in 1992 were teaching positions for purposes of Minn. Stat. 125.03, subd. 1 and are not, therefore, subject to the veterans preference provisions of Minn. Stat. 197.455.

9. The Petitioner, who did not have five years of classroom teaching experience, was not qualified for the District's instructional technology specialist position and would not be entitled to relief even if that were a nonteaching position.

10. The instructional technology specialist and the instructional technology coordinator positions vacant in 1992 were support staff positions

and supervisory positions for purposes of Minn. Stat. 125.03, subd. I and 4 (1992).

11. Under Minn. Rules, pt. 1400.7300, subp. 5 (1991) he Petitioner has the burden of proof to establish that he is an honorably discharged veteran and qualified for the positions he sought with the Respondent.

12. Under Minn. Stat. 197.46 (1992) the Respondent has the burden of proof to establish that the positions for which the Petitioner applied were teaching positions.

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

IT IS HEREBY RECOMMENDED: That the Commissioner of Veterans Affairs dismiss the Petition filed by Petitioner because none of the positions for which he applied with the Respondent in 1992 are subject to the provisions of Minn. Stat. 197.455 and 43A.11 (1992).

Dated this 7th day of July, 1993.

JON L. LUNDE
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, two tapes

MEMORANDUM

Under Minn. Stat. 197.455, a hiring preference is granted to veterans
The statute states:

The provisions of Minnesota Statutes, Section 43A.11 granting preference to veterans in the state civil service shall also govern the 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 rejections of a qualified veteran shall be filed with the appropriate local personnel officer

Although some school district employees are subject to the veterans preference provisions in Minn. Stat. 197.455, several positions are exempted from the scope of the statute. Minn. Stat. 197.46 contains some exceptions. It states, among other things:

. . . Nothing in 197.455 or this section shall be construed to apply to the position of private secretary, teacher, superintendent of schools, or one chief deputy of any elected official or head of a department, or to any person holding a strictly confidential relation to the appointing officer. The burden of establishing such relationship shall be upon the appointing officer in all proceedings and actions relating thereto.

Although the Veterans Preference Act does not contain a definition of the word "teacher" as used in Minn. Stat. 197.46, the Administrative Law Judge is persuaded that the definition in Minn. Stat. 125.03, subd. 1 should be used. It states:

The term "teachers" for the purpose of licensure, means all persons employed in a public school or education district or by an ECSU as members of the instructional, supervisory, and support staff including superintendents, principals, supervisors, secondary vocational and other classroom teachers, librarians, counselors, school psychologists, school nurses, school social workers, audio-visual directors and coordinators, recreational personnel, media generalists, media supervisors, and speech therapists.

For purposes of Minn. Stat. sec. 125.03, subd. 1, "supervisory personnel" are defined in subdivision 4, which states:

"Supervisory personnel" for the purposes of licensure means superintendents, principals, and professional employees who devote fifty percent or more of their time to administrative or supervisory duties over other personnel, and includes athletic coaches.

The half-time art teaching position the Petitioner applied for with the Respondent is a teaching position and is not governed by veterans preferences. Likewise, the instructional technology coordinator and instructional technology specialist positions are "teaching" positions for purposes of Minn. Stat. 197.46 because those individuals functioned in an instructional, supervisory or support staff role for purposes of Minn. Stat. 125.03, subd. 1. Although veterans preferences have existed since the early 1900's, no case in Minnesota has applied the veteran preferences to teaching

positions ;is defined in the teacher statutes. In Windberg v. University of Minnesota, 485 N.W.2d 325, 330 (Minn. Ct. App. 1992), reversed on other grounds -- N.W.2d (1993) the Court of Appeals, which concluded that the Veterans Preference Act applied to the University of Minnesota --a position the Minnesota Supreme Court reversed-- held that the act would not apply to "professors, faculty, instructors, administrators, or even teaching assistants." In this case, apart from the art position which was obviously a teaching position, the other two positions the Petitioner sought were both instructional and administrative (supportive) in nature. They involved the development of curriculum and the in-service training of classroom teachers. They are, in essence, teaching positions and are therefore exempt from the veterans preference provisions.

JLL