

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

In the Matter of Bradley C. Peterson,
Petitioner, v. Ramsey County,
Respondent.

RECOMMENDED ORDER
GRANTING MOTION FOR
SUMMARY DISPOSITION

-

The above-entitled matter came before Kathleen D. Sheehy, Administrative Law Judge,^[1] on Ramsey County's motion for summary disposition and the Petitioner's cross-motion for partial summary disposition. Ramsey County filed its Notice of Motion and Motion, Memorandum, and supporting affidavits on May 26, 1995; the record closed upon receipt of the Petitioner's Sur-Reply Memorandum on August 2, 1995.

Appearing on behalf of Petitioner Bradley C. Peterson was Michael J. McNamara, Henderson, Howard, Pawluk & McNamara, P.A., 6200 Shingle Creek Parkway, Suite 385, Brooklyn Center, MN 55430.

Appearing on behalf of Respondent Ramsey County was Kristine Legler Kaplan, Assistant Ramsey County Attorney, 50 West Kellogg Blvd., St. Paul, MN 55102.

This report is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make the final decision after review of the record and may adopt, reject, or modify the 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 each party adversely affected to file exceptions and to present argument to the Commissioner. The parties should contact the Department of Veterans Affairs to ascertain the procedure for filing exceptions and presenting argument.

NOW, THEREFORE, based upon all of the files, records, and proceedings herein, and for the reasons set forth in the Memorandum attached hereto,

IT IS HEREBY RECOMMENDED:

- (1) That Ramsey County's motion for summary disposition be GRANTED;
- (2) That Petitioner's cross-motion for partial summary disposition and attorney's fees be DENIED; and

(3) That the Department of Veterans Affairs dismiss the Petition of Bradley C. Peterson for relief under the Veterans Preference Act.

Dated this ___ day of October, 1995.

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department of Veterans Affairs is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Factual Background

The moving papers filed by the parties establish the following undisputed facts:

1. In July 1993 Ramsey County's Department of Data Processing sent the Personnel Department a Requisition for Certification of a list of eligible candidates for the position of EDP Computer Operator Trainee. Affidavit of Dennis Walter, Ex. A. There were two vacancies for the position.

2. On September 15, 1993, the EDP Computer Operator Trainee position was posted. Walter Aff. Ex. B. The job posting stated, with regard to the examination, that:

The examination will consist of the following sections with each section weighted as indicated.

1. Written Test Wt. 100

3. Petitioner Bradley Peterson met the minimum qualifications for the position and was eligible to take the examination; he was one of twelve applicants who took the examination. The parties have stipulated for purposes of this motion that petitioner is an honorably discharged veteran who is entitled to the protections of Minn. Stat. § 197.455.

4. Petitioner's score on the examination was 92.36, which was the top score of the eight passing applicants. Petitioner requested and received an additional five points for veterans preference, making his final score 97.36.

5. The Personnel Department prepared an eligible list ranking the top six applicants for the position. Petitioner was ranked first on the list of eligibles. Walter Aff. Ex. E.

6. Robert Porter of the Department of Data Processing interviewed all six applicants on the eligible list. The Department hired the applicants who were ranked fifth and sixth on the list, respectively.

7. The Department of Data Processing notified the Personnel Department in a memorandum dated January 24, 1994, "SUBJECT: VETERANS PREFERENCE," that it had not hired the petitioner because another candidate better met its selection criteria and qualification needs. The petitioner received a copy of this memorandum. Walter Aff. Ex. F.

8. The petitioner also received a letter from Robert Porter dated January 25, 1994, informing him that the position had been filled. The letter provided no reasons for the Department's decision not to hire the petitioner. Walter Aff. Ex. F.

9. By letter dated December 9, 1994, counsel for the petitioner petitioned the Commissioner of Veterans Affairs for an order directing Ramsey County to hire the petitioner for the position and provide him with back pay and other damages dating back to January 24, 1994.

10. The Commissioner issued the Notice of Petition and Order for Hearing on January 20, 1995.

11. In a letter to the petitioner dated March 14, 1995, James Kavaloski, the director of the Ramsey County Department of Information Services, informed petitioner that the two candidates hired for the EDP Computer Operator Trainee position had better oral communication skills and expressed more interest in and enthusiasm for the position than did any other candidates.

Motion for Summary Disposition

Summary disposition is the administrative equivalent of summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. The same standards apply. See Minn. R. 1400.5500 K (1991); Minn. R. Civ. P. 56.03. 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. Minn. R. Civ. P. 56.03. A material fact is one which is substantial and will affect the result or outcome of the proceeding depending on the determination of that fact. Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare, 356 N.W.2d 804 (Minn. App. 1984), rev. denied, (Minn. 1985). In considering a motion for summary disposition, the evidence must be

viewed in the light most favorable to the non-moving party. Grondahl v. Bulluck, 318 N.W.2d 240 (Minn. 1982); Nord v. Herreid, 305 N.W.2d 337 (Minn. 1981).

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. Thiele v. Stich, 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 Co. 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 Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). The non-moving party may not rely on general assertions; significant probative evidence must be offered. Minn. R. Civ. P. 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, however, need not be admissible trial evidence. Carlisle, 437 N.W.2d at 715 (citing Celotex, 477 U.S. at 324).

Legal Analysis

The law is well settled in Minnesota that political subdivisions, including Ramsey County, must afford a hiring preference to veterans. See Minn. Stat. § 197.455. The issue in this case is what the preference consists of: The county maintains that the preference is limited to five additional points on the petitioner's passing examination score, which he received; the petitioner maintains he is entitled to the job because he was ranked first on the list of eligibles.

Minn. Stat. § 43A.11, subd. 3, which governs hiring of nondisabled veterans, provides as follows:

There shall be added to the competitive open examination rating of a nondisabled veteran, who so elects, a credit of five points provided that the veteran obtained a passing rating on the examination without the addition of the credit points.

The statute further provides, in subdivision 9, that "[i]f the appointing authority rejects a certified eligible who has received veteran's preference, the appointing authority shall notify the eligible in writing of the reasons for the rejection." The Ramsey County Personnel Act incorporates the preference by providing, in Minn. Stat. § 383A.289, that in certifying lists of eligibles they shall be ranked according to their examination ratings and any veteran's preference required by law.

The plain language of the Veterans Preference Act addresses only the issue of a veteran's ranking on an eligibility list; it contains no guarantees of employment to a veteran, whatever his or her ranking, but rather expressly contemplates that a veteran who is placed on the list of certified eligibles may be rejected by the appointing

authority. See Minn.Stat. § 43A.11, subd. 9. In two cases the Minnesota Court of Appeals has so interpreted Minn. Stat. § 43A.11. In McAfee v. Department of Revenue, 514 N.W.2d 301 (Minn. App. 1994), the court held that the hiring preference does not apply to temporary unclassified positions in the Department of Revenue. The court noted, however, that:

[s]ection 43A.11 does not provide absolute preference for veterans; veteran's preference credit may increase the chance that a veteran will receive an interview, but the appointing authority may hire any certified applicant. Because the Department of Revenue granted [the petitioner] an interview, he was accorded the same rights he would have received had section 43A.11 applied to this position.

Id., 514 N.W.2d at 305. Similarly, in Grehl v. Minneapolis Public Schools, 484 N.W.2d 815 (Minn. App. 1992), the court held that once a veteran has been properly ranked on an eligible list, the veteran's preference laws contain no guarantees as to seniority. Accordingly, when a veteran has received the appropriate number of preference points and has been ranked correctly on an eligible list, the veteran has been "afforded all of the preference entitled to him by law." Id., 484 N.W.2d at 817.

The petitioner maintains that the job posting of September 15, 1993, which stated that the examination would be composed of one written test to be weighted 100%, amounts to a guarantee that the position would be filled based solely on the written examination results. The language of the document itself does not support the petitioner's argument. It states only that the written examination (as opposed to some other type of examination) would be weighted 100%. Additionally, the posting makes clear that an eligible list would be compiled based on the results of the examination; that appointment to a vacancy would be made by the department head from among the persons on the eligible list; and that veteran's preference points would be added to examination scores if the applicants applied for and met the eligibility requirements.

The county did not violate the Veterans Preference Act or its own hiring criteria in choosing not to hire the petitioner. There is no dispute that the petitioner was given the appropriate veterans preference credit and that he was properly ranked on the eligible list. As in McAfee and Grehl, the petitioner received all the preference afforded to him by the law.

Although both parties have moved for summary disposition based on the undisputed facts described above, the petitioner maintains that the county should not receive summary disposition because it has not provided timely or adequate discovery responses. For example, the petitioner sought in Interrogatory No. 2 the names of persons who could testify that the legal grounds supporting the county's position were discussed and relied upon at the time the decision not to hire the petitioner was made. Similarly, Interrogatory No. 3 seeks legal reasons or policies relied upon at the time for believing that others were more qualified than the petitioner. As noted above, it is not material whether county personnel discussed or relied upon any particular legal

rationale, or no particular legal rationale, in deciding not to hire the petitioner. The law permits the county to select from the eligible list the person or persons it believes are best qualified for the job.

Under the rules, a party may move "at any time" for summary disposition. Minn. R. Civ. P. 56.02. In this case, there is no dispute as to the material facts and the county has established that it is entitled to a decision as a matter of law.

The petitioner also maintains that he is entitled to summary judgment because the county failed to adequately notify him of the reasons for rejecting him, in violation of Minn. Stat. § 43A.11, subd. 9. The county sent three letters to the petitioner on this subject. In the first, dated January 24, 1994, the director of the Data Processing Department notified the director of the Personnel Department as follows:

[W]e have not selected Bradley Peterson from the EDP Computer Operator Trainee eligible list. After careful consideration of the qualifications and background of the candidates considered, we feel that another individual better met our selection criteria and qualification needs.

Petitioner received a copy of this memorandum. Although the county argues that this notice sufficiently describes the reasons for rejecting the petitioner, all it basically says is that the Data Processing Department believed that someone else was better qualified, without explaining why.

The second letter, dated January 25, 1994, informed the petitioner that position had been filled. Walter Aff., Ex. F. This letter provided no reasons for the petitioner's rejection.

The third letter, dated March 14, 1995, informed the petitioner of the reasons why oral communication skills were important in filling the position; stated that the individuals hired were more communicative and articulate in their interviews than other applicants; and further stated that these two applicants appeared to be enthusiastic and interested in the job.

The first two letters from the county may not have given clear reasons why the petitioner was rejected, but the letter of March 14, 1995 did. The petitioner does not agree with the reasons stated therein, characterizing them as "subjective," but the statute requires no more. Nor does the statute contain any specific time period within which the appointing authority must provide an adequate statement of the reasons for rejecting the veteran.

The petitioner maintains that he is entitled to damages and attorney's fees because the county's initial statement of reasons for not hiring the petitioner was deficient. There is no authority in the statutes, however, to support his position. The enforcement provision of the Veterans Preference Act, Minn. Stat. § 197.481, subd. 1, provides in relevant part that a veteran who has been denied rights under section

43A.11 may petition the Commissioner of Veterans Affairs for an order directing the agency to grant such relief as the Commissioner “finds justified by said statutes” (emphasis added). Section 43A.11 does not authorize either the recovery of damages or attorney’s fees here; the only remedy provided in the statute is an order from the Commissioner requiring an adequate written statement of the reasons for rejecting the veteran, which the petitioner has already received.

Finally, the petitioner seeks attorney’s fees and expenses under Minn. R. Civ. P. 11, Minn. R. Civ. P. 37, and Minn. Stat. § 549.21, arguing the county has proceeded in bad faith and for the purpose of harassing the petitioner. There is no evidence of bad faith or harassment, and the county’s legal position in bringing this motion is correct. There is no basis for an award of fees or expenses against the county.

K.D.S.

^[1] This motion was originally filed with Administrative Law Judge Bruce D. Campbell. Judge Campbell died after the briefs were filed, but before he could prepare a recommendation on the motions. Because no evidentiary hearing had been held, this matter was transferred to Administrative Law Judge Kathleen D. Sheehy for resolution.