

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF VETERANS AFFAIRS

Tyris Anderson,
Petitioner,

v.

Hennepin County,
Respondent.

ORDER RECOMMENDING
THAT RESPONDENT'S
MOTION FOR SUMMARY
DISPOSITION BE GRANTED

A motion for summary disposition was filed by Hennepin County on February 22, 1995, in the above-entitled matter. Martin C. Munic, Assistant County Attorney, 2000 Government Center, Minneapolis, Minnesota 55487, filed the motion on behalf of the Respondent, Hennepin County. Jesse Gant, III, Attorney at Law, 400 South Fourth Street, Suite 915, Minneapolis, Minnesota 55415, filed a brief on behalf of Petitioner in opposition to Respondent's motion.

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 ten 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 Bernie Melter, Commissioner, Department of Veterans Affairs, Veterans Service Building, 20 West Twelfth Street, St. Paul, Minnesota 55155-2079, telephone number (612) 297-5828.

STATEMENT OF ISSUE

Whether Petitioner's resignation from his position with Hennepin County occurred under conditions that violated Petitioner's rights under Minn. Stat. § 197.46 (the Veterans Preference Act).

Based upon all of the records, files, and argument herein, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

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

Petitioner's claim under the Veterans Preference Act be DISMISSED.

Dated: March 1, 1995

/s/
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

On June 10, 1985, Petitioner was hired by Hennepin County as a Financial Worker in the Department of Economic Assistance. A memorandum dated January 7, 1986, from Bob Smutka, an employee in the Personnel Department of Hennepin County states:

Tyris Anderson has passed probation as a Financial Worker by default. He was not terminated within the 1040 hour probation period. Therefore, he is due a one step increase which is effective 12/23/85.

Please note that E.A. Management is in the process of terminating Mr. Anderson. His performance evaluation and termination paper work will be sent to you shortly.

Respondent's Exhibit A-4.

A meeting was held on January 17, 1986, among Petitioner, a union representative, the AFDC program manager, and the Economic Assistance Division Director. Petitioner was informed at this meeting that he was suspended with pay pending his termination. Petitioner asserted at this meeting that his work situation arose out of harassment by coworkers and supervisors.

On January 27, 1986, Petitioner signed a Stipulation for Settlement. Respondent's Exhibit A-1. The stipulation called for the payment of \$5,184.00 to the Petitioner for four months of severance pay. In addition, \$799.22 would be paid to Petitioner for vacation and sick time, both accrued and projected over the four months following the end of Petitioner's employment. Hennepin County also agreed not to oppose any claim of unemployment compensation made by Petitioner.

The Stipulation for Settlement contains four provisions relating to the Petitioner's rights. These provisions (articles V, VII, VIII and X in the Stipulation) state:

V

It is the intention of the Employee and Employer through this Stipulation to fully, finally, and completely settle any and all claims the Employee may have against Hennepin County arising out of his employment as a Financial Worker with the Hennepin County Department of Economic Assistance.

The Employee understands that this Stipulation for Settlement is a full, final, and complete settlement of the above claims and that he is waiving his right to make any further claim of any nature against Hennepin County or its Department of Economic Assistance arising out of his former employment with Hennepin County including specifically any claim for illegal discrimination under the Constitution and laws of the United States and the State of Minnesota or under any local laws, past medical expenses, any claim under a collective bargaining agreement, or any other claim whatever.

* * *

VII

That the Employee agrees to waive and hereby does waive his rights to further appeal his dismissal from employment with Hennepin County, whether those rights arise under the Hennepin County Personnel Rules, any collective bargaining agreement, the Minnesota Veteran's Preference Act, M.S. 197.46, as amended, any other provisions of the Constitutions and laws of the United States and of the State of Minnesota, or under any provisions of local laws.

VIII

That the Employee hereby voluntarily resigns from his position as a Financial Worker with the Hennepin County Department of Economic Assistance effective Friday, January 24, 1986, the last day for which he will be paid a salary or wages.

* * *

X

That the Employee herein recognizes that in return for receiving a lump sum payment in settlement of his appeal from his dismissal from Hennepin County Department of Economic Assistance employment as a Financial Worker as described herein, and in settlement of any and all claims of any nature against Hennepin County arising out of such employment as described in Paragraphs V and VII above, he is electing to receive the lump sum of \$5,983.22, as a full, final, and complete settlement of his claims against Hennepin County Department of Economic Assistance, that he is voluntarily resigning from that position, that he is specifically electing to give up any right to make any claims as described in Paragraphs V and VII above, and that he has done so knowingly and with the advice of AFSCME Council 14 and its representative stated herein; and with knowledge that he is entitled to representation from AFSCME Council #14.

Respondent's Exhibit A-1.

In a letter dated January 27, 1986, Petitioner resigned his employment with Hennepin County, effective January 24, 1986. A check in the amount of \$5,983.22 was given to Petitioner from Hennepin County on January 27, 1986. In a performance review dated January 28, 1986,

Petitioner's performance was rated "unsatisfactory" in seven of sixteen categories. Petitioner's overall performance was rated "unsatisfactory." A seven-page description of Petitioner's performance was included in the evaluation. The description detailed problems experienced by Petitioner in complying with the requirements of his position. A note on the performance review states that the document was not signed by the employee due to his resignation.

In 1994, Petitioner sought employment with Hennepin County. Hennepin County advised Petitioner that the circumstances of his resignation in January, 1986, rendered him ineligible for employment with Hennepin County. In a letter dated November 8, 1994, Petitioner disputed the circumstances of his resignation stating:

1. I resigned from Hennepin County on January 27, 1986. At the time of my [resignation], Hennepin County had not started paperwork to terminate my employment. This ... information is validated by the enclosed memo dated January 7, 1986. Also, there is no documentation contained in my permanent personnel file showing that termination proceeding was ever started. If documentation does exist concerning this [stipulation], I would appreciate a copy sent to me.
2. It is implied in your department's letter, "I was allowed to resign", this is incorrect **I chose to resign**. I found out from diverse sources, that I failed my final probationary performance review (Aug. 5 -- Dec. 21, 1985). After making several inquiries to find out available alternative options ... I then decided to resign from my position as Financial Worker. There is a notation on the performance review which states "I had resigned my employment on January 27, 1986." This performance review is dated, January 28, 1986 and has the signatures or stamps of Jan Smaby and Diane Holmes.

Respondent's Exhibit A-4 (emphasis in original).

The foregoing facts are not disputed. A letter, dated January 17, 1986, was in a file maintained by Hennepin County's Labor Relations Unit (not Petitioner's personnel file). This letter was addressed to Petitioner and gave notice that Hennepin County intended to discharge Petitioner, listed the reasons for the discharge, detailed the corrective actions taken, gave notice of Petitioner's rights under the Veterans Preference Act, and detailed the appeal process available. The letter was not signed. Petitioner maintains that he never received the letter.

Petitioner maintains that his signature on the Stipulation for Settlement was not made knowingly or voluntarily. He asserts that he did not read the document he signed and that the person who had the document held onto it while Petitioner signed it. Petitioner alleges that he was told that his signature was needed only to release his severance pay.

Summary disposition is the administrative equivalent to summary judgment and the same standards apply. Minn. Rule 1400.5500(K). On a motion for summary disposition, any factual dispute must be taken in the best light to the nonmoving party. Sauter v. Sauter. 70 N.W.2d 351,

353 (Minn. 1955). To defend against such a motion, a petitioner must demonstrate that all the elements of the case are present and that genuine issues of material fact remain for hearing. Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn.App. 1989)(citing Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2552-53 (1986)). The nonmoving party cannot rely upon assertions, but must show “significantly probative, not merely colorable” evidence supporting those issues. Albert v. Paper Calmenson & Co., 515 N.W.2d 59, 64 (Minn.App. 1994)(citing Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986) and Carlisle v. City of Minneapolis).

Under the Veterans Preference Act, a veteran must be notified of the right to a hearing when a public employer removes the veteran. However, a veteran may waive that right if informed of it and a written waiver of the right constitutes notice of the right. See Piccolo v. Benton County, OAH Docket No. 69-3100-8641-2 (Recommendation issued May 25, 1994), aff’d (Commissioner’s Order issued July 20, 1994). In this matter, Petitioner voluntarily signed a Stipulation and received nearly as much in the settlement as he had earned in his entire period of employment with Hennepin County. Petitioner has alleged that he was told he had to sign the document as a “receipt” for his severance pay. However, there is no evidence in the record that Petitioner was entitled to four months of severance pay as part of his AFSCME contract. Rather, the substantial sum given to Petitioner is what it appears to be, a settlement of all claims Petitioner might have had against Hennepin County, including his right to a veterans preference hearing.

Petitioner has cited Lucius Johnson v. County of Anoka, OAH Docket No. 69-3100-8501-2 (Recommendation issued April 28, 1994), in support of his position that he was terminated without notice of his right to a hearing under the Veterans Preference Act. In Johnson, the veteran was given the unconditional choice of resigning or being fired. At the time of that ultimatum, Johnson was not advised of his right to a hearing under the Veterans Preference Act. Petitioner was informed on January 17, 1986, that action would be taken against him. No choice was offered. Petitioner advanced arguments that he should not be terminated at the meeting held on that date. Between that date and January 27, 1986, Petitioner came to an agreement with Hennepin County that allowed Petitioner to resign in exchange for almost \$6,000 and the promise to not contest a claim for unemployment benefits. As part of the agreement, Petitioner signed a stipulation waiving any veterans preference rights he might have.

Petitioner’s situation more closely resembles the circumstances in Piccolo, supra. There, the veteran negotiated a stipulation that allowed the veteran to resign in exchange for the employer not contesting any unemployment benefits claim. That stipulation, as here, contained express waivers of any veterans preference rights.

In this case, the only allegation that could rise to the level of a genuine issue of material fact is that of fraud in inducing Petitioner to sign the Stipulation of Settlement. The only evidence of fraud is in Petitioner’s statement that he was told the document was a receipt. Petitioner’s mere allegations are not sufficient to overcome the clear and repeated waivers in the document he signed. Assuming that Petitioner’s allegations of what the personnel officer said are true, the issue of fraud is still not established. Petitioner did need to sign the Stipulation and resignation letter to obtain the lump sum payment he bargained for. Petitioner signed both

documents and received the money, he cannot back out of his agreement now. There was no fraud.

Finally, Petitioner has made statements subsequent to the filing of the Petition in this matter which contradict the entire basis of his veterans preference claim that he was discharged. On November 8, 1994, Petitioner wrote to Hennepin County indicating that he was not pressured to leave employment, that Petitioner chose to leave, and that, as far as Petitioner was concerned, no termination proceeding had been initiated by Hennepin County at the time Petitioner left. Petitioner confirmed that he meant those statements in Respondent's Request for Admissions. Respondent's Exhibit B, Admissions 19-24. Since this is what Petitioner subjectively believed at the time he left his position with Hennepin County, Petitioner was not removed from his position. Even if Petitioner had been told that the Stipulation was merely a receipt, it does not change the conclusion that he was not removed from his position within the meaning of the Veterans Preference Act. Petitioner has not advanced significant, probative evidence that a genuine issue remains for hearing. Summary disposition in favor of Respondent is appropriate in this matter.

S.M.M.