

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA STATE COLLEGES AND UNIVERSITIES
AND
ST. CLOUD STATE UNIVERSITY

In the Matter of Kathleen Sweet,
Employee,

FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION

vs.

St. Cloud State University, and
Minnesota State Colleges and
Universities,

Employer

The above-entitled matter came on for hearing on August 4, 2003, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota.

Appearing on behalf of St. Cloud State University and Minnesota State Colleges and Universities was David W. Merchant, Assistant Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101-2128.

There was no appearance by or on behalf of Dr. Kathleen Sweet, 1998 Prescott Lakes Parkway, Apartment 129, Prescott, AZ 86301.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the final decision of the President of St. Cloud State University 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 President. Exceptions to this report, if any, shall be filed with Dr. Roy Saigo, President, St. Cloud State University, 720 Fourth Street, St. Cloud, MN 56301.

STATEMENT OF ISSUE

Whether it is appropriate to setoff any earnings or severance pay due to Professor Sweet, or any other future payments payable to Professor Sweet, in the amount of \$3,527.11, to collect an overpayment of wages to her.

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

FINDINGS OF FACT

1. On June 5, 2003, a Notice of and Order for Hearing was served upon Dr. Kathleen Sweet by depositing it in the United States Mail addressed to her at addresses in Ramsey, MN and Prescott, AZ. The Notice of and Order for Hearing announced a hearing to be held in Minneapolis on July 1, 2003. The notice advised Dr. Sweet to return a Notice of Appearance form to the Administrative Law Judge and Assistant Attorney General David Merchant within 20 days of service. The Notice also included the following language:

The employee's failure to appear at the hearing can result in a finding that the employee is in default and SCSU's right to setoff should be upheld.

2. Dr. Sweet did not return a Notice of Appearance form to either the Administrative Law Judge or Assistant Attorney General. Dr. Sweet did not appear at the hearing on July 1, 2003. At that hearing, the Assistant Attorney General moved for a default order upholding the proposed setoff.

3. On July 1, the Administrative Law Judge determined that the Notice had not been provided to Dr. Sweet early enough to provide her with the 30-day preparation time required by Minn. Rule pt. 1400.5600. He ruled that the Motion would be held in abeyance pending further proceedings with adequate notice.

4. On July 1, 2003, the Administrative Law Judge sent a letter to Dr. Sweet indicating that the hearing had been continued to August 4, 2003 to allow her the necessary 30-day time to prepare. This letter was accompanied by the original notice and exhibits, and was sent to the addresses in Ramsey, Minnesota and Prescott, Arizona previously referenced, as well as to an additional university address in Prescott, Arizona which was provided on July 1 by the Assistant Attorney General. The letter explained that if Dr. Sweet failed to appear at the August 4 hearing, the University's Motion for Default Judgment would be granted.

5. On July 7, 2003, the Administrative Law Judge received a letter from Dr. Sweet, indicating that she was not currently in the United States, and would be employed in Iraq until January, 2004. She confirmed that one of the Prescott, AZ addresses could be used to contact her.

6. By failing to appear at the August 4, 2003 hearing, Dr. Sweet is in default in this matter.

7. The allegations contained in the Notice of and Order for Hearing are hereby adopted as Findings of Fact.

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

CONCLUSIONS

1. The Administrative Law Judge and St. Cloud State University and Minnesota State Colleges and Universities have jurisdiction in this matter pursuant to Minn. Stat. § § 16D.16 and 14.50.

2. St. Cloud State University and Minnesota State Colleges and Universities gave proper notice of the August 4, 2003 hearing, and all relevant substantive and procedural requirements have been fulfilled.

3. Dr. Kathleen Sweet has been overpaid in the amount of \$3,527.11 by payroll checks issued to her on January 24, 2003, and February 7, 2003. Because of that overpayment, Dr. Sweet is a "debtor" to St. Cloud State University in that amount within the meaning of Minn. Stat. § 16D.16. There is no statutory or other legal bar to prevent the university from collecting the debt by the setoff process prescribed in that statute.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the overpayment of \$3,527.11 made by St. Cloud State University to Dr. Kathleen Sweet be setoff against any amounts currently owed to her, or which may be owed to her in the future.

Dated this 29th day of August 2003.

S/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

Reported: Tape-recorded.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the University is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.