

**IN THE MATTER OF  
VETERANS PREFERENCE ACT HEARING BETWEEN**

_____	)	
<b>CHARLES PATTON,</b>	)	
	)	
<b>Veteran,</b>	)	
	)	
<b>and</b>	)	<b>DECISION AND ORDER</b>
	)	
<b>STATE OF MINNESOTA,</b>	)	
<b>DEPARTMENT OF MILITARY</b>	)	
<b>AFFAIRS,</b>	)	
	)	
<b>Employer</b>	)	<b>BMS Case No. 11-VP-0473</b>
_____	)	

Hearing Officer: Stephen F. Befort

Hearing date: January 11, 2012

Date Post-Hearing Briefs received: N/A

Date of decision: January 27, 2012

**APPEARANCES**

For the Veteran: Charles Patton, pro se

For the Employer: Paul Larson

## **INTRODUCTION**

Charles Patton was terminated on November 1, 2011 from his position as a painter with the Department of Military Affairs (Employer) assigned to support the Minnesota Air National Guard 133<sup>rd</sup> Airlift Wing at the St. Paul Airbase. Mr. Patton requested a hearing challenging his termination under the Veterans Preference Act, Minn. Stat. § 197.46 and selected to have his case heard before a single hearing officer. A Veterans Preference Act hearing was held on January 11, 2012 at which each party was given a full opportunity to present their case through the testimony of witnesses and the introduction of exhibits. The parties decided not to submit post-hearing briefs.

## **LEGAL STANDARD**

The Veterans Preference Act provides that a covered veteran may be discharged from public employment only for incompetence or misconduct. Minn. Stat. Sec. 197.46. The Minnesota Supreme Court has interpreted these grounds as the equivalent of a “just cause” standard for discharge. AFSCME Council 96 v. Arrowhead Regional Corrections Board, 356 N.W.2d 295, 297-98 (Minn. 1984). In Ekstedt v. Village of New Hope, 292 Minn. 152, 193 N.W.2d 821 (1972), the Court explained that:

. . . the cause [for discharge] must be one which specifically relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office.

193 N.W.2d at 828. The burden of establishing the statutory grounds for discharge lies with the public employer. Johnson v. Village of Cohasset, 263 Minn. 425, 116 N.W. 2d 692, 698 (1962).

The Minnesota Supreme Court also has clarified the responsibilities of the hearing officer in applying this standard. In Matter of Schrader, 394 N.W.2d 796 (Minn. 1986), the Court stated that:

“[in] conducting a veterans preference hearing the task of the hearing board is twofold: first, to determine whether the employer has acted reasonably; second, to determine whether extenuating circumstances exist justifying a modification in the disciplinary sanction”.

394 N.W.2d at 801- 02.

### **ISSUES**

1. Did the Employer act reasonably in deciding to terminate Charles Patton from his position as a painter with the Department of Military Affairs?
2. Even if the Employer did act reasonably, do extenuating circumstances warrant a modification of the termination penalty?

### **FACTUAL BACKGROUND**

Charles Patton is an honorably discharged veteran of this nation’s armed forces. For the past fifteen years he has worked as a painter in the Civil Engineering Squadron that maintains the facilities of the Minnesota Air National Guard 133<sup>rd</sup> Airlift Wing at the St. Paul Airbase. His supervisor, Florian Meier, testified that Patton performed his assigned duties with skill and diligence, but that he has some boundary issues.

The Minnesota Air National Guard 133<sup>rd</sup> Airlift Wing (Airlift Wing) operates as a unique federal–state partnership. The stated mission of the Airlift Wing exemplifies its dual role:

Utilizing the C-130 Hercules [aircraft], the 133<sup>rd</sup> Airlift Wing provides the U.S. Air Force with tactical airlift of troops, cargo, and medical patients anywhere in the world. Additionally, the Wing is prepared to directly support the state of Minnesota with Airmen, aircraft and equipment during times of need or crisis.

The Airlift Wing functions through a mix of federal and state employees.

Approximately 1200 Air National Guard members work and train on a part-time basis at the St. Paul airbase facility. Federal military personnel provide leadership augmented by the support of state employees of the Minnesota Department of Military Affairs. The 28 buildings on the airbase campus are maintained by the Civil Engineering Squadron, which includes 17 state employees, among them Mr. Patton.

The Employer's discharge decision in this case primarily arose from an incident that occurred on September 14, 2011. On that day, Trish Lindquist, a security guard, was assigned to work at the front gate entry point to the campus during her usual 6:00 a.m. to 2:00 p.m. shift. Ms. Lindquist's assignment required her to check the security badge or identification of all individuals entering the campus. Ms. Lindquist testified that Airlift Wing policy requires that all individuals seeking entry show proper identification, even if personally known to the security guard on duty, in order to ensure that the identification is not expired or counterfeit.

Ms. Lindquist testified that she observed Mr. Patton approach the gate in a compact pickup truck at approximately 1:35 p.m. As the truck pulled up to the gate, Ms. Lindquist greeted Mr. Patton, and they shook hands. Ms. Lindquist testified that she then asked Mr. Patton to show his security badge, but that Mr. Patton demurred, responding that it was unnecessary since the two employees were familiar with each other. Ms. Lindquist testified that she repeated her request, explaining that she needed to see his identification in any event. According to Ms. Lindquist, Mr. Patton began to remove the security badge attached to his jacket, but stopped before handing it to Ms. Lindquist. Ms. Lindquist testified that she then reached into the truck to take the badge, but that Mr. Patton responded by pulling her arm into the vehicle and rubbing it

against his chest and breast nipples. Ms. Lindquist testified that she then jumped back from the vehicle and again demanded to see his security badge. According to Ms. Lindquist, Mr. Patton unclipped the badge from his jacket and placed it between his legs near his crotch, stating “there you go.” Ms. Lindquist testified that she crossed her arms and more sternly requested to see Mr. Patton’s badge and that Mr. Patton eventually handed it to her. Ms. Lindquist testified that she proceeded to engage in some work-related small talk in order to defuse the situation, but that Mr. Patton told her that one day she was going to take him into the guard shack and have her way with him. Mr. Patton then drove off as another vehicle approached the gate.

When Ms. Lindquist turned in her equipment at the end of her shift, she approached fellow security guard Michael Gahler and told him about the incident with Mr. Patton. Mr. Gahler testified that Ms. Lindquist was distraught and crying. Although Ms. Lindquist was reluctant to do so, Mr. Gahler convinced her that they needed to discuss the matter with Security Supervisor Richard Brcka. Ms. Lindquist described the incident to Mr. Brcka, and Mr. Brcka asked her to fill out a written statement. The statement worked its way up the chain of command to Chief Master Sergeant David Speich, the facility manager of the Civil Engineering Squadron. Chief Speich met with Mr. Patton’s direct supervisor, Florian Meier, and they contacted Roxanne Kronick, the Employer’s Human Resources Manager, who issued a letter placing Mr. Patton on administrative leave pending investigation.

The Employer retained Scott Schraut of the Ratwik, Roszak, & Maloney law firm to investigate the September 14 incident. Schraut interviewed all of the individuals likely to have information concerning the incident and reviewed all of the pertinent documents.

Among those interviewed during the investigation was Mr. Patton. Mr. Patton provided a different version of events than did Ms. Lindquist. He stated that when Ms. Lindquist reached

into the vehicle for his security badge, Mr. Patton redirected her hand to his left shoulder where he gave it a friendly hug. He stated that he inadvertently dropped his security badge and handed it to Ms. Lindquist after picking it up from the seat of the vehicle. He described their subsequent conversation as long and friendly. He stated that Ms. Lindquist gave him a friendly wave as he passed through the gate.

At the hearing, Mr. Patton also testified that he believed that Ms. Lindquist was mad at him because he had told her that painting a white safety line on the pavement near the guard shack was not a priority task. Mr. Patton suggested that Ms. Lindquist's complaint about the September 14 incident was in retaliation for this issue.

At the hearing, the Employer played a video tape of the September 14 incident. The recording did not have audio capability. The tape showed that Ms. Lindquist jumped back from the vehicle after reaching in with her arm and that she stood aloof thereafter with her arms crossed. The tape also depicted a rather lengthy conversation between Ms. Lindquist and Mr. Patton following the badge exchange and Ms. Lindquist waving to Mr. Patton as he passed through the gate.

Mr. Schraut's investigation report included the following findings of fact:

- 1.0. Mr. Patton initiated inappropriate physical conduct with Ms. Lindquist,
- 2.0. Mr. Patton used inappropriate innuendo while speaking with Ms. Lindquist, and
- 3.0. Mr. Patton's actions made Ms. Lindquist very uncomfortable.

In reaching these conclusions, Mr. Schraut expressed the opinion that Ms. Lindquist's assertions were more credible than those of Mr. Patton. He expressed several reasons for this assessment including the following:

- 1) Ms. Lindquist communicated a very consistent story following the incident and throughout the investigation;
- 2) Ms. Lindquist has no incentive to fabricate a false version of events;
- 3) Ms. Lindquist's demeanor following the incident was consistent with someone who genuinely felt that she had been subjected to unacceptable behavior; and
- 4) The tape of the incident clearly shows that Ms. Lindquist reached into the vehicle further than Mr. Patton's shoulder and that she jumped back as if in reaction to some occurrence.

The Employer issued a discharge letter to Mr. Patton dated October 24, 2011. The letter explained, as a basis for the discharge decision, that the "Investigation Report substantiated that you engaged in inappropriate and offensive physical contact with another state employee." At the hearing, the Employer presented evidence showing that Mr. Patton's conduct violated the Employer's sexual harassment policy and that Mr. Patton had received training with respect to that policy.

The discharge letter also referenced two other recent disciplinary incidents. The first of these incidents involved a written reprimand issued to Mr. Patton on February 11, 2011 for the inappropriate touching of a vulnerable Opportunities Partner contract worker. The second involved a written reprimand issued to Mr. Patton on June 22, 2011 for the inappropriate and intimidating behavior directed at a female Air National Guard member. Both reprimands advised Mr. Patton that continued inappropriate behavior of this type may result in further discipline, up to and including discharge.

## DISCUSSION AND OPINION

### **A. Did the Employer act reasonably in terminating Mr. Patton from his position as a painter with the Department of Military Affairs?**

As noted above, the Employer bears the initial burden of establishing that it acted reasonably by discharging the veteran for just cause. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS* 948 (6<sup>th</sup> ed. 2003). Each of these steps is discussed below.

The Employer terminated Mr. Patton for engaging in sexually inappropriate behavior with a co-employee. Ms. Lindquist's testimony supports this conclusion, alleging unwanted physical contact accompanied by offensive sexual innuendo. Mr. Patton's testimony, on the other hand, contends that this interaction amounted to little more than friendly banter.

I agree with Investigator Schraut's assessment that Ms. Lindquist's testimony is the more credible of the two versions. She described the incident in a very consistent manner to several co-workers as well as to the investigator. This consistent story, coupled with her demeanor following the incident, provides strong evidence of veracity. In addition, the tape of the incident clearly shows that Ms. Lindquist reached into Ms. Patton's vehicle further than his shoulder and that she jumped back in reaction to some event.

In contrast, Mr. Patton's contention that Ms. Lindquist fabricated the incident because she was displeased with him for not making the painting of a white line near the guard shack a priority does not seem credible. This explanation appears to be inconsistent with Ms. Lindquist's

initial reluctance to report this incident, and the record contains no independent evidence showing that Ms. Lindquist felt strongly about this issue.

Mr. Patton's misconduct warrants the imposition of discipline. His physical and verbal actions constitute clear violations of the Employer's sexual harassment policy. This conduct demeaned Ms. Lindquist as an individual and is inconsistent with the mission of the Airlift Wing. Thus, the Employer has demonstrated a reasonable basis to sustain the discharge of Mr. Patton under the circumstances of this case.

**B. Do extenuating circumstances warrant a modification of the termination penalty?**

In spite of the Employer's proof of reasonableness, a hearing officer may modify a discharge decision in light of sufficiently compelling extenuating circumstances. Mr. Patton asserts the existence of two mitigating considerations. First, Mr. Patton points out that he has worked for the Employer for 15 years and asserts that termination should not be lightly imposed on such a long-term employee with a good record of job performance. Second, he maintains that he did not act with any intent to harass Ms. Lindquist and that his actions merely represented good natured, joking behavior.

While it is true that Mr. Patton is a long-term employee, and that his supervisor described him as a good and diligent worker, it is also true that Mr. Patton has exhibited significant difficulties in terms of his interactions with female workers. The Employer twice issued written reprimands to Mr. Patton in 2011 for inappropriate behavior of a sexual nature. One incident involved the groping of a vulnerable adult worker, while the other involved sexually intimidating conduct directed at an Air National Guard member. Added to the incident involving Ms. Lindquist, this series of incidents illustrates a disturbing pattern of inappropriate boundary behavior and a failure to grasp the inappropriateness of such behavior. In this regard, the

following conclusion to Investigator Schraut's report appears to be both accurate and noteworthy:

Mr. Patton was aware that he needs to maintain professional relationships and boundaries with his co-workers. He has been disciplined two times this year for inappropriate involving other people, one of which involved physical contact. After both incidents, he was told by supervisors that he needs to be mindful of his actions and interactions with others. These supervisors stated during their interviews that they thought Mr. Patton would understand by now that he needs to realize that his perception of behaviors as being funny or social is unacceptable in the workplace. However, Mr. Patton appears to have no sense that he acted inappropriately towards those people or Ms. Lindquist. He indicated no remorse or acknowledgment that this behavior was questionable in any way. . . .

Under these circumstances, the record establishes that the Employer had just cause to terminate Mr. Patton's employment, and that Mr. Patton failed to establish the existence of any extenuating circumstances that would warrant a modification of this result.

### **ORDER**

The decision of the Employer to terminate Charles Patton is sustained.

Dated: January 27, 2012

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Stephen F. Befort  
Hearing Officer