

1 UNITED STATES OF AMERICA
2 MERIT SYSTEMS PROTECTION BOARD
3 CHICAGO REGIONAL OFFICE

4 LEROY J. PLETTEN,

5 Appellant,

6 vs.

7 DEPARTMENT OF THE ARMY,

8 Agency.
9

10 _____ /
11 Transcript of the Deposition of WILLIAM D.
12 O'CONNOR taken in the above-entitled cause, before TAMARA A.
13 O'CONNOR, Notary Public in and for the County of Oakland and
14 State of Michigan, at 3000 Town Center, Suite 1105,
15 Southfield, Michigan, on Wednesday, April 28, 1982,
16 commencing at or about 11:30 a.m.

17 APPEARANCES:

18 COHEN & COOPER, 3000 Town Center, Suite 1105, Southfield,
19 Michigan 48075, Appearing on Behalf of the Appellant.
BY: STEVEN Z. COHEN, ESQ.

20 DEPARTMENT OF THE ARMY, U. S. ARMY, TACOM, DRSTA-LA, Warren,
21 Michigan 48090, Appearing on Behalf of the Agency.
BY: EMILY SEVALD BACON, ESQ.
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I N D E X

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WITNESS:

PAGE

WILLIAM D. O'CONNOR

Examination by Ms. Bacon

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Examination by Mr. Cohen

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EXHIBITS:

MARKED

None

PENGAD CO., BATONNE, N.J. 07002 FORM SEL 2547

1 Southfield, Michigan

2 Wednesday, April 28, 1982

3 11:30 a.m.

4 P R O C E E D I N G S

5 W I L L I A M D. O' C O N N O R

6 having been first duly sworn, was examined and
7 testified on his oath as follows:

8 EXAMINATION

9 BY MS. BACON:

10 Q Mr. O'Connor, would you state your name for the
11 record, please?

12 A William D. O'Connor.

13 Q What is your position?

14 A Deputy Civilian Personnel Officer at TACOM.

15 Q How long have you held that position?

16 A Since July of 1980.

17 Q What are your duties in that position?

18 A I am the alter ego of the Civilian Personnel Officer,
19 and as a result perform many of the duties that he
20 does in his absence. I have responsibilities for
21 providing advice and guidance and direction to the
22 staff of the Personnel Office and accomplishing the
23 Personnel Office mission.

24 Q I refer you to tab eight of the Agency's response, and
25 ask you if you can identify that.

1 A Yes. It is a document that I am familiar with.

2 Q Can you tell us on the record what the document is?

3 A It is a document to Mr. Leroy Pletten which indicates
4 that a request for disability retirement has been
5 disapproved, and in addition we ask if he has any
6 additional information relative to his medical status
7 that he provide it to the Command.

8 Q Why did you send out this letter?

9 A Essentially we sent it out because when we get the
10 OPM's notification that the disability retirement
11 was not going to be approved, we have several options.
12 One option is to bring the individual back to work, and
13 the other option is to pursue the move for medical
14 disqualification, and this here would help clarify
15 that issue if there would be any change in his physical
16 or medical status relative to his ability to work.

17 Q Would Mr. Hoover normally sign one like this?

18 A Mr. Hoover would normally sign this particular letter
19 since he had been handling this particular case.

20 Q So was the reason that you signed it because he wasn't
21 there to sign it?

22 A That is correct. He normally would have reviewed this
23 particular action.

24 Q So you signed the letter in his absence?

25 A Right.

1 MS. BACON: I have no further questions.

2 EXAMINATION

3 BY MR. COHEN:

4 Q Mr. O'Connor, do you happen to be familiar with Mr.
5 Pletten's case other than signing of this letter?

6 A Limited familiarity because Mr. Hoover has handled the
7 case with Ms. Averheart and Ms. Evelyn Bertram since
8 its inception at the various stages.

9 Q To your knowledge, what communication has Mr. Hoover
10 had with Ms. Averheart and Ms. Bertram in this regard?

11 A On this particular letter?

12 Q In this case generally? Do they meet on this case?

13 A I am certain that he has talked with them throughout the
14 case.

15 Q Has he provided guidance to them?

16 A It would be normal that he discuss the situation. Ms.
17 Bertram who is our advisor on that case would be
18 advising Averheart of her actions or consequence of
19 her actions and not actions. Then they would be taking
20 the particular courses of action that were appropriate
21 and providing it to Mr. Hoover and seeing if Mr.
22 Hoover's signature was necessary at that time. I am
23 sure Mr. Hoover has talked with Ms. Averheart about
24 the case.

25 Q Would it be necessary for Mr. Hoover to okay the adverse

1 action?

2 A Normally the proposal of the adverse action is made by
3 the supervisor of the individual. Then it goes up to
4 the next level above, either the Director or Division
5 Chief to sign the action.

6 Q That would be General Stallings who would sign it?

7 A In this particular case here, we switched gears here.
8 We talked proposal versus the actual decision. The
9 decision is made by General Stallings. The proposal
10 is made by the first line supervisor.

11 Q But does Mr. Hoover or did Mr. Hoover have any
12 direction? Was he able to direct what happened here?

13 A It would be very unusual if he had not discussed the
14 case with Ms. Averheart.

15 Q Are his recommendations and your recommendations for
16 that matter generally accepted by the people you deal
17 with?

18 A Yes.

19 Q In other words, if you say to do something, unless there
20 is a rare circumstance, they usually follow your
21 directives?

22 A You are referring to the people below us?

23 Q Yes.

24 A Normally that would be the case.

25 Q And Ms. Averheart would be below Mr. Hoover?

1 A That is correct.

2 Q Is it normal for somebody below Mr. Hoover, for
3 example a first line supervisor, to initiate removal
4 without consultation with the Civilian Personnel Office?

5 A It would be very unusual for that type of thing.

6 Q In other words, Carm Averheart wouldn't have done it
7 on her own?

8 A It is part of the requirement that you do talk with
9 your supervisor on that type of a situation. I am
10 referring that Mr. Hoover would talk with Ms. Averheart.
11 Any second line supervisor would discuss the case with
12 the first line supervisor.

13 Q How come the Command didn't ask for an updated physician
14 statement from Mr. Pletten's doctors? Why did you have
15 Mr. Pletten do it?

16 A It seems like Mr. Pletten would be the most involved
17 person and would have the contact with his doctor
18 directly rather than us.

19 Q It seems like there are a lot of doctors' reports
20 here, and I know Mr. Hoover testified that he had
21 recommended and it was later adopted that a fitness for
22 duty examination was performed psychiatrically?

23 A Yes.

24 Q That being the case, why didn't a recommendation come
25 forth from the CPO's office for a fitness for duty on

1 the basis of his smoke related concerns?

2 A Why don't you restate that question.

3 Q The CPO recommended to Dr. Holt that there be a fitness
4 for duty as to psychiatric matters.

5 A Okay.

6 Q That was accepted and indeed Mr. Pletten was directed
7 to go to a doctor, which he did.

8 A Yes.

9 Q In this case, if you needed more medical information
10 and the question was whether he was medically
11 disqualified which seems to be the ultimate thing we
12 are dealing with here, how come they didn't send him
13 for a fitness for duty?

14 A We had on the record, I believe, two letters from his
15 doctors in the March timeframe which indicated his
16 physical condition. What we had asked for was that he
17 update it if his condition had changed so that he was
18 able to come back to work.

19 Q Are you also familiar with a January letter indicating
20 that he was able to go back to work?

21 A I really don't have knowledge of that.

22 Q Let me inform you rather than plow through the record
23 and show you, there are two letters from Dr. Dubin.
24 One is in March and one in January. The January
25 letter seemingly contradicts the March letter. The

1 January letter says he can go back to work in an
2 atmosphere reasonably free of contamination. The
3 other letter depending on how you read it may infer
4 that he would need a smoke-free environment, which is
5 different from reasonably free.

6 A Yes.

7 Q That being the conflict, would you have recommended
8 that a fitness for duty examination be performed?

9 A I think that decision which you are talking about is a
10 very technical decision which would be made by the
11 doctor, Dr. Holt, who is our medical officer. He is
12 the one who would advise us on whether he had sufficient
13 medical information. He would also deal with our
14 safety officer relative to conditions, whether the
15 air was clean enough or not or whether the air was
16 appropriate.

17 Q By this letter it seems you wouldn't have enough or you
18 would have requested an update version?

19 A We asked him if there had been a change and it was
20 giving him an opportunity if there was a change to
21 provide us that information.

22 Q It wasn't much of an opportunity. You wrote the letter
23 on November 2 and told him he had until November 10th.
24 That is a short time, isn't it?

25 A He could ask for an extension and there would be no

1 problem. We would certainly grant him one and I
2 believe that he probably did.

3 Q I mean, it didn't say you could ask for an extension
4 in the letter, did it?

5 A No, not in my letter.

6 Q Why not? I am not inviting a ninety day delay, but
7 wouldn't it have been reasonable to say if you need
8 extra time, please feel free to contact me?

9 A That could have been in there.

10 Q But it was not?

11 A It was not.

12 Q Did you have any contact with Mr. Pletten? Did he
13 contact you?

14 A He called me on the phone one morning when I was busy.
15 The secretary wasn't there. I asked him to call me
16 back and he didn't call me back.

17 Q Not that you knew of? You didn't talk to him, in other
18 words?

19 A No, not to any extent. I had some people around the
20 table. We were discussing a matter.

21 Q Is it possible he did call you back and you didn't get
22 a message?

23 A The secretary didn't advise me of any message.

24 Q You don't know that he did or not? You just know that
25 you didn't speak to him?

1 A Yes.

2 Q You put a conclusion here that says:

3 "It should be understood that the working
4 conditions of this Command continue to meet
5 OSHA and Army environmental standards."

6 How did you come to that conclusion?

7 A The preparer of the letter, Evelyn Bertram, had told
8 me and I believe there was a report from somebody in
9 our safety area that the air was clean.

10 Q So Ms. Bertram prepared this?

11 A Ms. Bertram is the action officer who prepared the
12 letter. I signed it to take responsibility for what
13 was contained.

14 Q Would you be surprised to learn that Mr. Braun has
15 testified when there were times that Building 230 does
16 not meet Army regulations?

17 MS. BACON: I object to the testimony couched
18 in those terms. Mr. Braun's testimony will speak for
19 itself.

20 MR. COHEN: Noted.

21 BY MR. COHEN:

22 Q I so inform you that Mr. Braun's testimony has indicated
23 that Building 230 does not always comply with AR 1-8.
24 Are you familiar with that?

25 A I am not familiar with his testimony, no.

1 Q Did you ask Mr. Braun whether the building complied
2 with 1-8?

3 A No, I did not.

4 Q In other words, you relied totally on Ms. Bertram's
5 categorization of the evidence?

6 A There was an air flow report that was in that from
7 somebody who was responsible for telling us whether the
8 air was clean enough. That individual had indicated
9 that.

10 Q That individual specifically had said the building
11 meets air requirements for the Army?

12 A I would have to review the enclosure on that particular
13 one.

14 Q Can you identify the November 2, 1981 memorandum from
15 Mr. Peters?

16 A Yes I can.

17 Q Is that the one that was included?

18 A I believe it is.

19 Q It indicates here, only I might note, the results
20 indicate:

21 "No hazardous concentration of contaminants
22 sample for area surveyed."

23 What are the requirements under AR 1-8?

24 A I don't really know the air flow or the percent of
25 contaminants that are allowed permissible in the air

1 and I would refer you to the Safety Specialist or
2 Dr. Holt in that matter.

3 Q The Safety Specialists said there is no hazardous
4 concentration of contaminants at the AR, and I will
5 inform you that Agency Exhibit No. 18 is the 1-8
6 regulation that we are talking about. It indicates
7 there must be ten cubic feet per minute per person
8 in air flow. This was not an air flow study, was it?

9 A No.

10 Q So you don't know whether the air flow met the
11 requirements, except for what Ms. Bertram told you?

12 A Relative to the air flow, I am just not that
13 knowledgeable.

14 Q So at the time you wrote it you didn't know?

15 A At the time I wrote this, I provided this information
16 which is all that I had available to me at the time
17 and I based my decision on that.

18 Q But your comment in the letter that this Command continues
19 to meet OSHA and Army environmental standards is based
20 only on what Ms. Bertram gave you and on the Safety
21 Specialist?

22 A That is correct.

23 Q But you could not tell me at the time or now whether or
24 not the air flow meets the requirements of AR 1-8?

25 A No, I cannot.

1 Q And if I suggest to you that the air flow does not
2 meet those requirements and if it was later proved by
3 me that they did not meet those requirements, then
4 this letter would be an error, would it not? At
5 least the portions that refer to it?

6 A I would have to look at it. If, and I assume you are
7 correct that there is an air flow requirement in OSHA
8 and the Army environmental standard, it would appear
9 that we have only done the one for the contaminants,
10 the review for the contaminants, and did not at this
11 time.

12 Whether Ms. Bertram had such a study made,
13 I do not know.

14 MR. COHEN: Nothing further.

15 (Deposition concluded.)

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1 STATE OF MICHIGAN)
) ss.:
2 COUNTY OF OAKLAND)

3 I, TAMARA A. O'CONNOR, Notary Public in
4 and for the above county and state, do hereby certify that
5 the foregoing deposition was taken before me at the time and
6 place hereinbefore set forth; that the witness was duly sworn
7 to testify to the truth, the whole truth and nothing but the
8 truth; that thereupon the foregoing questions were asked and
9 foregoing answers made by the witness which were duly
10 recorded by me, by Stenomask, and later reduced to typewriting
11 under my supervision; and I do further certify that this is
12 a true and correct transcription of my said Stenomask notes
13 so taken.

14 I further certify that I am not of
15 counsel to either party nor interested in the outcome of this
16 cause.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand and affixed my notarial seal at West Bloomfield,
19 Michigan, County of Oakland and State of Michigan, this 7th
20 day of May, 1982.

21 *Tamara A. O'Connor*
22 TAMARA A. O'CONNOR, CSMR-2656
23 Notary Public and Court Reporter
24 Oakland County, Michigan
25 My Commission Expires: 7-2-84

PLHOB Co., BAYVILLE, N.J. Phone 201-261-2557