

MDL/obr

TACOM HEARING

APPEAL FROM MERIT SYSTEM

PROTECTION BOARD

In the Matter of:)
)
LEROY J. PLETTEN,)
)
Appellant,)
)
-vs-)
)
DEPARTMENT OF THE ARMY,)
)
Appellee.)

Transcript of the Deposition of
 DR. DAVID SCHWARTZ, taken before Margaret D. Lewis, Notary
 Public in and for the County of Wayne State of Michigan,
 at 27600 Hoover Road, Warren, Michigan, on Friday, May 21,
 1982, commencing at or about 4:45 o'clock in the afternoon.

APPEARANCES:

COOPER & COHEN, 3000 Town Center, Suite 1104, Southfield,
 Michigan 48075, appearing on behalf of Appellant.

BY: STEVEN Z. COHEN, ESQ. (P29344)

EMILY SEVALD BACON, ESQ. (P30243), United States Army Tank
 Automotive Command, Detroit Arsenal, Warren, Michigan 48090,
 appearing on behalf of Appellee.

REPORTED BY: MARGARET D. LEWIS, CSR 2733
 540 Buhl Building
 Detroit, Michigan 48226
 961-9395 and 883-1500

I N D E X

Witness:

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DR. DAVID SCHWARTZ

Cross-Examination by Mr. Cohen

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Cross-Examination by Ms. Bacon

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Warren, Michigan

Friday, May 21, 1982

4:45 o'clock p.m.

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MR. COHEN: Let the record reflect that this is the continued hearing in the matter of Leroy Pletten before the Merit System's Protection Board. This is the deposition de bene esse of Dr. David Schwartz.

Counsel, as Dr. Schwartz was a treating physician pursuant to a notice from the United States Army for fitness for duty examination, I would ask that the Army stipulate as to his credentials.

MS. BACON: The Army stipulates as to his credentials.

D R . D A V I D S C H W A R T Z ,
having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified upon his oath as follows:

CROSS-EXAMINATION

BY MR. COHEN:

Q Doctor, state your name and business address for the record, please.

A David Schwartz I'm a physician, M. D. My address is 27600 Hoover Road Warren, Michigan 48093.

Q Dr. Schwartz, did you have occasion to see Leroy Pletten professionally?

A I did.

Q What were the circumstances surrounding that visit?

A Mr. Pletten was in this office one time to see me, on one occasion: May 27th of 1980. He was referred to me by the Troubled Employees Program; one of the people who help run the program at the Tank Command in Warren. I saw him for a psychiatric examination on 5-27-80.

Q Did you find him to be suffering from a psychological or psychiatric deficiencies or deficits?

A He had no serious psychiatric diagnosis or illness at the time that I saw him, and I stated such in a letter.

MR. COHEN: All right.

Could we go off the record for a second?

(Discussion off the record.)

MR. COHEN: We'll go back on the record.

Q (By Mr. Cohen): Doctor, I am informed by Ms. Bacon, for the Tank Command, that that letter is indeed in the case file. If it is not, I have a copy of it in my office, and I'll enter it into the record.

What was your understanding of

Mr. Pletten's problems with the Army at the time?

A Mr. Leroy Pletten had been seeing an allergy physician, Dr. Bruce Dubin, and had apparently been suffering from breathing difficulties. Mr. Pletten complained that he had difficulty working in an environment in which there was smoke. Cigarette smoke is what he meant. Mr. Pletten was sent to me to evaluate him psychiatrically and report that to Dr. Holt, the physician in charge of the Tank Command, and I did such.

Q Is it normal for somebody to suspect a person's psychiatric standing because they don't like cigarette smoke?

A That wouldn't make sense; if that answers the question. I'm trying to answer your question in the way you asked it. No, it is not normal to make a case of someone who doesn't like smoke.

Q All right. As a physician, you're trained generally in other matters aside from psychiatry?

A Certainly.

Q Do you have general knowledge of pulmonary function and lungs and the smoke involvement with patients in general?

A Cigarette smoke is injurious and harmful to the lungs of human beings.

Q Although not an expert in the pulmonary field -- we recognize that -- if Mr Pletten were to be offered an environment in which there was cigarette smoke, would he be able to work, in your professional opinion?

A I would have to ask you something to clarify your question.

Q All right.

A Are you asking me would he be bothered in an environment in which there was smoking going on, whatever he was doing, including work? Is that what you're asking?

Q Well, all right, I'll ask that.

A I think Mr. Pletten was sincere that he would be bothered. He indicated that he was bothered at all times when there was cigarette smoke in his vicinity. The "bothered" meant his nose would get stuffy, irritable, he would sneeze and cough and sometimes have respiratory wheezing or tightness of breathing when he was exposed to smoke.

Q Let's assume, for argument's sake, or hypothetically, that the Army cannot ban smoking in the command due to the rights or the question of the rights of others to smoke. Would he be medically disabled from working, assuming the Army can't ban smoking?

MS. BACON: I would object to that question as phrased. Dr. Schwartz has already stated

that he is not an expert in the area of pulmonary functions, and, indeed, has not ever stated that he examined Mr. Pletten regarding pulmonary functions.

MR. COHEN: I think Dr. Schwartz is a qualified physician and practitioner and has general knowledge of medicine and is licensed by the State and can treat in a general fashion as well as under his specific expertise.

Q (By Mr. Cohen): You may answer the question.

A In the way you have phrased the question, the only way that I could answer yes would be if I were to examine him, were he to come immediately from a smoke environment and have breathing difficulties, nasal or pulmonary. Otherwise I couldn't answer the question.

If you ask me hypothetically to answer whether he would have physical problems and be able to work, it would appear to me from his history -- which is so much of what we go on in psychiatry generally -- that he would have a great deal of difficulty working in a smoke-filled environment.

Q But on the issue of medical disqualification, without examining him, you can't form a conclusion?

A I cannot.

MR. COHEN: Okay. Nothing further.

CROSS-EXAMINATION

BY MS. BACON:

Q Doctor, just one question: When Mr. Pletten was referred to you for a psychiatric evaluation, were you given any information by the Army at that time about Mr. Pletten?

A I will have to answer your question with Part A and Part B. I was given, in the broadest sense, information by the Army, and I'm holding what came in a yellow manila envelope. But I have a rule when I see people: In order to be fair, I never open the material until I have seen them first. So the second part of the question is yes, I opened it after I made my notes and drew my conclusions.

Q And you've said -- and somewhere in the record is your conclusion-- that he was psychiatrically fit for duty, and you said that to Dr. Holt?

A I found no psychiatric illness that needed treatment. I told Mr. Pletten that. That I thought it only fair to tell him. And I stated to him what I would put in the letter, and I found no psychiatric disorder for which I would recommend psychiatric treatment or for which I recommended another opinion psychiatrically.

Q To your knowledge, did the Army accept your report?

A I have no idea what they did with the information.

I have had no feedback regarding the man. I certainly would have appreciated hearing something, but I guess that's not in the cards.

MS. BACON: Okay. I don't have anything further.

MR. COHEN: That's it. Thank you, Doctor.

MS. BACON: Thank you, Doctor.

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C E R T I F I C A T E

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2 STATE OF MICHIGAN)
3) SS.:
4 COUNTY OF WAYNE)

5 I, MARGARET D. LEWIS, Notary Public in
6 and for the above county and state, do hereby certify that
7 the attached deposition was taken before me at the time
8 and place hereinbefore set forth; that the witness was
9 duly sworn to testify to the truth, the whole truth and
10 nothing but the truth; that thereupon the foregoing
11 questions were asked and foregoing answers made by the
12 witness, which were duly recorded by me, stenographically,
13 and later reduced to typewriting under my supervision; and
14 I do further certify that this is a full and accurate
15 transcription of my said stenograph notes so taken.

16
17 I FURTHER CERTIFY that the signature of
18 the witness to the deposition was waived by counsel for
19 the respective parties; and that I am not of counsel to
20 either party nor interested in the event of this cause.

21 IN WITNESS WHEREOF I have hereunto set my
22 seal this 26th day of May 1952.

23
24 Margaret D. Lewis
MARGARET D. LEWIS, CSR2728
Notary Public, Wayne County, Michigan

25 My Commission expires: 6-6-53