

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
BRUCE D. DUBIN, D.O., taken before Margaret D. Lewis, Notary
Public in and for the County of Wayne. State of Michigan,
at 1385 East 12 Mile Road, Madison Heights, Michigan 48071,
on Thursday, May 20, 1982, commencing at or about 10:30
o'clock in the forenoon.

APPEARANCES:

COOPER & COHEN, 3000 Town Center, Suite 1104, Southfield,
Michigan 48075, appearing on behalf of Appellant.
BY: RONALD S. SIEGEL, ESQ.

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 2738
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I N D E X

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Madison Heights, Michigan

Thursday, May 20, 1982

10:30 o'clock a.m.

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B R U C E D . D U B I N , D . O . ,

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. SIEGEL:

Q Doctor, could you state your name?

A Bruce Don Dubin.

Q And your occupation?

A Physician.

Q Where are your business offices?

A 1385 East 12 Mile Road, Madison Heights, and the Milford,
Michigan address is at the Pontiac Osteopathic Hospital
Health Center.

Q Doctor, do you specialize in any particular branch of
medicine?

A I'm a specialist in internal medicine with a sub-
specialty in allergy, clinical immunology and obstruc-
tive lung diseases.

Q Doctor, are you familiar with Leroy Pletten?

A Yes, I am.

Q Under what circumstances did you come to know Mr. Pletten?

A He's a patient of mine.

Q When did you first see Mr. Pletten?

A I don't have his chart in front of me. I would estimate approximately one and a half to two years ago.

Q What did he come to you for?

A A case of reversible obstructive airway disease.

Q Can you just explain to us what that means?

A Mr. Pletten is a gentleman who has what laymen would term asthma. By definition that means he has hyper-reactive airways, extra-sensitive lungs, and coming in contact with the correct type of trigger could cause two types of reaction to occur: tightening of the bronchial tubes, creating wheezing and increased mucus production.

Q Is it your medical opinion, after examining Mr. Pletten, that he should not work in a smoke-filled environment?

A Yes, it is.

Q Let me put that another way: Is it your opinion that he should work in a smoke-free environment?

A Yes, it is.

Q Is it your opinion, Doctor, that under ideal circumstances, whatever those might be, that any person and every person should work in a smoke-free environment?

Q Is that a letter that you issued relative to Mr. Pletten?

A Yes, it is.

MS. BACON: I'd move for its admission into the record at this time as Agency Exhibit 22.

(Letter dated October 22, 1980, marked for identification as Agency Exhibit 22.)

Q (By Ms. Bacon): Doctor, in this letter you again state -- and I refer you to the third paragraph -- that "The repeated advice since January 7th, 1980, has been to provide a smoke-free environment to Mr. Pletten . . ." Your statement today has been that that is also your advice as of today, to provide him with such an environment?

A That's correct.

Q Now, we've had several witnesses testifying to the fact that at one point Mr. Pletten was offered a room that would be away from the general work force, which would have outside ventilation -- in fact, an air conditioner was offered to be put in it -- and then Mr. Pletten would be put in this room, and witnesses have stated that Mr. Pletten called that a discriminatory matter of segregation. Now, I note in one of

the doctor reports that counsel just referred you to, this March 24th, 1980 letter of yours, you do refer to isolation and segregation as being, I guess, against your advice. Could you explain to me what you mean by that?

A Well, an individual who is treated abnormally, isolated because of a medical impairment can receive detrimental psychologic handicaps because of that. I would consider taking an individual and separating him from the rest of the work force because of a physical impairment as having a potential to do great psychological harm to a disease that can already have a good deal of psychological impairment with it.

Q Well, is it your opinion that it would be improper for the agency, upon being presented with your notes to provide this man with a smoke-free work environment, to try to provide him a room like this where smoking would not be allowed?

A As long as it met with Mr. Pletten's satisfaction to the point where he didn't feel he was being segregated, that could potentially be okay. You know, you're painting a picture but I need to see reality. Are you talking about a four-by-two cubicle that is entirely closed off from the rest of the working staff, where he has no contact with his peers, or are you talking

about an office that is of sufficient size where an individual doesn't feel that four walls are closing in; where he is not entirely placed away from the rest of the work force so that he doesn't feel that he is indeed being segregated. You have to be really more specific than saying: We'll give you a room.

Q I understand that.

Now, I refer you again to your January 7, 1981 letter in which you state there's no reason why he can't work in an environment that is reasonably free from contaminants. That statement would seem to be different than "must have a smoke-free work environment." Now, were you ever contacted by anybody from the agency relative to this inconsistency?

A No, I don't believe I was; not off of the top of my memory, anyway.

Q Let me ask if you can identify this.

A This is apparently a letter from Dr. Holt addressed to me.

Q You have no independent memory, though, of having seen it or having responded to it?

A Not off the top of my head, I don't recall seeing this at all.

Q I would refer you to the agency response, Tab 2 again. This is a letter from you dated March 5th to Dr. Holt

making reference to that particular letter.

A Then you've answered your own question, counselor.

Q Do you remember preparing the March 5th response?

A No, I don't. I really don't remember things back from 1980, 1981, in terms of correspondence.

Q No, I wouldn't expect that you would.

Did you in fact write that letter?

A If it has my signature on it, I indeed did.

MS. BACON: At this time I would move for the submission of the letter directed to Dr. Dubin from Dr. Holt, subject to Dr. Holt's verification of it, as Agency Exhibit 23.

(Letter stamped 25 February 1981, with attachments, marked for identification as Agency Exhibit 23.)

Q (By Ms. Bacon): Now, Doctor, this letter was sent to you in February. You responded to it in March. It asked you, there at the bottom of the letter, whether in your opinion Mr. Pletten could return to the work environment that we have. Let me pull from it directly:

"We need to know whether

Mr. Pletten's medically determined requirement for a smoke-free work environment precludes him from being able to

work at this installation or whether Mr. Pletten is able to work in the work environment as it is provided here."

Your letter of March 5th, 1981 describes, as you were asked, what your definition of a smoke-free environment would be, but it does not state whether or not you felt Mr. Pletten could return to the environment as it was. Now, did you have a reason for not answering that particular question?

A No, I didn't.

In response to that particular question, Mr. Pletten is able to work as long as the environment has no cigarette smoke in there.

Q So he can work in an environment as long as it doesn't have any cigarette smoke?

A That's correct.

Q He stated yesterday that he considers an environment that has cigarette smoke in it to be hazardous. Now, do you consider such an environment to be hazardous?

A I would say that both myself and the Attorney General of the United States consider the presence of cigarette smoke in the environment to be hazardous to anyone.

Q So that you consider his statement to be a legitimate one?

A Yes, I do.

Q Were you aware that Mr. Pletten was being treated by other physicians relative to this problem?

A I was aware that he was seeing an Army physician, I guess, and this Dr. Hölt, and I was also aware that he was seeing a Dr. Salomon, I believe.

Q Did you ever have any interaction with Dr. Salomon at all?

A No.

MS. BACON: Okay; I have no further questions.

MR. SIEGEL: I just have a couple.

RE-CROSS-EXAMINATION

BY MR. SIEGEL:

Q Doctor, this might seem somewhat redundant, but it's just a very short question. Is it your professional opinion, sir, that it is absolutely necessary, in terms of Mr. Pletten's asthma, that he be provided a segregated smoke-free area in which to work? That that is a pre-condition of his returning to work?

A It is my professional opinion that the only way Mr. Pletten can work is in a smoke-free environment.

Q When you say "smoke-free," do you mean reasonably smoke-free or totally smoke-free?

A There is no such thing as "reasonably smoke-free." Either cigarette smoke is present or it is not.

The only way Mr. Plettencan work is in a smoke-free environment.

Q All right, fine.

One last question: In reference to your March 5th, 1981 letter that counsel just referred to, from you to Dr. Holt, in the last paragraph of the letter you state as follows:

"If I can give you further information or can be of any further help to you, please do not hesitate to call on me. Please understand that the best way I can give you any recommendation regarding the ability of your area to achieve a smoke-free environment would be an on-site inspection. If you request this, I will be happy to assist you in any way possible.

"Sincerely yours."

Did Dr. Holt ever contact you regarding an on-site inspection?

A No.

Q Did you ever conduct an on-site inspection?

A No.

MR. SIEGEL: I have no further questions.

MS BACON: I don't either.

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