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BILLY JOE DEMENT,

Appellant,

v.

C. K. WETTENGEL, Director,  
State Bureau of Personnel, and  
JOHN C. WEAVER, President,  
University of Wisconsin, and  
LEONARD J. SKODINSKI,

Respondents.

Case No. 73-1

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# OFFICIAL

OPINION  
AND  
ORDER

Before JULIAN, Vice-Chairman, SERPE and STEININGER.

### Background Facts

On February 16, 1953, the Appellant received a Bad Conduct Discharge from the United States Air Force under other than honorable conditions for being absent without leave.

On July 8, 1960, Appellant commenced his employment at the University of Wisconsin-Milwaukee. In 1969, Appellant competed in an examination for the position of Building Maintenance Helper 3. As part of the examination process, he claimed and received five (5) veterans preference points as an honorably discharged veteran of the Armed Forces of the United States. The Appellant contended that he believed he was entitled to veterans preference points because at the time of his separation from the military he was told that his discharge entitled him to all benefits that other veterans received. Sometime on or about April 24, 1969, the Appellant was sent a notice of the examination results indicating that his score included five veterans preference points. At the same time, a copy of the notice was sent to the University Personnel Office, but it did not come to the attention of George A. Berry, the Director of the University's physical plant. Shortly thereafter, Appellant

was appointed to the position and, then, in July, 1969, he told Mr. Berry that he had a Bad Conduct Discharge. Mr. Berry did not at the time regard the disclosure as relevant to Appellant's work and did not attach any importance to the matter. Mr. Berry had no knowledge that the Appellant had claimed veterans preference points on the examination that lead up to his promotional appointment.

On August 28, 1972, Appellant applied for the position of Superintendent of Building and Grounds 2 and later prepared a statement in connection with his application claiming veterans preference points. A selection committee composed of the supervisory staff in the physical plant, including Mr. Berry, interviewed the top three candidates for the position, one of whom was the Appellant. The Appellant advised the committee regarding his Bad Conduct Discharge. One of the committee raised a question concerning the Appellant's having been credited with veterans points in view of the character of his discharge. This information was transmitted by Mr. Berry to Respondent Wettengel, who caused veterans preference points to be removed from the Appellant's score. Appellant's adjusted rank did not permit him to be selected for the position. Respondent Skodinski replaced the Appellant as one of the three certified candidates, and was selected for the position.

We find the foregoing to be the material facts in the matter.

Appellant Did Not Serve "Under Honorable  
Conditions in the U.S. Armed Forces."

In order to receive a veterans preference, a veteran must serve under honorable conditions in the U.S. armed forces. Section 16.12(7), Wis. Stats., 1971, provides that, "'Veteran,' as used in this subsection means any person who served on active duty under honorable conditions in the U.S. armed forces" during certain periods of time or in certain military campaigns. In the instant case, Appellant received a Bad Conduct Discharge from the Air Force under other than honorable conditions. This fact means that Appellant did not serve in the military "under honorable conditions."

Appellant's argument concerning his entitlement to veterans preference points rests on a Veterans Administration decision which was made after the examination. On March 2, 1973, the regional office of the United States Veterans Administration issued an administrative decision holding that Appellant's Bad Conduct Discharge would in the future be considered to have been issued under other than dishonorable conditions for United States Veterans Administration purposes. Such prospective interpretation of the discharge by the Veterans Administration for purposes of according certain veterans benefit programs it administers does not affect Appellant's entitlement to veterans points on a civil service examination during the preceding year. Moreover, a question might remain, which we need not resolve, as to whether a discharge that is under other than dishonorable conditions is necessarily under honorable conditions. Similarly, a question would exist as to whether the State law intended that the character of a veteran's service was established by the type of discharge he received at separation, whether honorable, or otherwise, and that subsequent decisions of the Veterans Administration would not be deemed to conclusively change the character of the service. While such interpretation by a federal agency would seem to be quite persuasive so far as the Appellant's future eligibility for veterans preference, by its terms it is not applicable to his entitlement before the date of the Veterans Administration decision. We conclude that Appellant was not entitled to veterans preference in the examination for Superintendent of Buildings and Grounds here at issue.

The State Is Not Equitably Estopped From  
Denying Appellant Veterans Points

Appellant contends that since the State had awarded him veterans points on earlier examinations they are barred from denying them to him on this one. The critical difference is that only on the examination here involved was any subordinate of either Respondent Wettengel or Respondent Weaver aware of the fact that the Appellant had a Bad Conduct Discharge and that he had applied for and received veterans preference.

In 1969, when the Appellant applied for the Building Maintenance Helper 3 position, Mr. Berry did not personally know that the Appellant had claimed veterans points and only shortly later learned that he had a Bad Conduct Discharge. The Respondent Wettengel knew that the Appellant had claimed veterans points, but did not know he had a Bad Conduct Discharge since the Bureau of Personnel examination procedures do not provide for the documentation or verification of claims for veteran's preference. Only when information came to Mr. Berry's attention that the Appellant was claiming veterans preference points and had a bad conduct discharge, did Mr. Berry advise Respondent Wettengel who denied Appellant the preference. The action of the Respondents in earlier granting Appellant veterans preference was based on a lack of actual knowledge concerning his claim and the character of his military service. The Respondents did not grant Appellant a veterans preference knowing that he did not serve under honorable conditions. The doctrine of equitable estoppel requires (1) action or inaction which induces (2) reliance by another (3) to his detriment. Gabriel v. Gabriel, 57 Wis. 2d 424 (1973). Here we conclude the action by the State was unknowing of the true state of the facts and, therefore, not the kind of action upon which the Appellant might reasonably rely. The doctrine, as the name equitable estoppel implies, means that a party who makes a representation, cannot subsequently repudiate it, if another party has relied on the representation to his detriment. The reason is that it would be unfair to the relying party. At the same time the representation must be a knowing representation or with an intent that it be acted upon. Mortgage Discount Co. v. Praefke, 213 Wis. 97 (1933). Here, the State did not knowingly represent that Appellant was entitled to veterans preference even though his military service was under other than honorable conditions, nor did it intend that he should regard his earlier examination experience to be a representation to that affect that he should act upon. We conclude that the State was not equitably estopped from denying the Appellant veterans points on the examination in question.

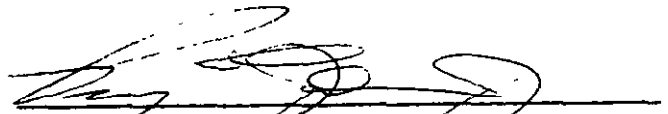
ORDER

IT IS HEREBY ORDERED that the action of the Respondent Wettengel is affirmed.

Dated November 22, 1974

STATE PERSONNEL BOARD

BY

  
Percy L. Julian, Jr., Vice Chairman