

# KENNETH SNYDER

Staff Sergeant, Kansas Air National Guard

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11 February 2011

Aeron C. Kelvington  
Veterans' Employment and Training Service  
U.S. Department of Labor  
Landon State Office Building  
\*\*\*\* \* , \*\*\*\*\* \*\*  
Topeka, KS \*\*\*\*\*\_\*\*\*\*

Dear Mr. Kelvington,

I want to thank you for your efforts on my part, although I do not agree on the outcome. While I have been waiting for your final letter on this matter (the No Merit Determination letter) I have taken the time to think about this entire incident and have some lingering questions -- please forgive me if these have been or will be answered in your upcoming correspondence:

1. In your letter to Mr. Wonnell (dated 8 November) you had several questions you asked regarding my case. Starting with the last paragraph on page one, and concluding where you mention "Moreover, the very issues that were cited as the reason(s) for being terminated are overall rated fair for the majority of his employment" on page two you asked for clarification on their position. In our meeting on 7 January I may have missed your explanation of how they answered the following:
  - a) First of all, how did they reconcile the questions I posed regarding the composition of the 21 June evaluation: no one but Eric Clark signs it, no initials on the additional comment sheet (so we really do not know who this sheet is attributed to), no date stamp by HR as to when they actually received it (again, no real evidence it was a part of my employee file prior to my disputing my termination), and several inaccuracies in it's composition?
  - b) Regarding the comment about the reasons for termination, just how did they explain the seemingly sudden change in my abilities?
  - c) What was their response when asked as to why I never saw or received a copy of this evaluation? After all, if it existed prior to 8 July why was it not presented to me at the hearing on that day to provide proof of my inferior performance?
  - d) It would be interesting to know BPU's official policy as to the maintenance of employee files and the conducting of employee discharges, and how these were (or were not) handled in my case.
  - e) You mention in your letter that Mr. Wonnell states I "refused to obey orders" -- this was news to me, and I would like specific information as to which "orders" I supposedly "refused to obey."

2. It is understood your interviews were with Mr. Dunn, Mr. Sisson, Ms. Castle, Mr. DeGraeve and Mr. Clark; possibly also with Mr. DeLeon and Mr. Johnson. While you and your associate were convinced they were not “coached” as to their responses I have been told by a source still working at BPU they were indeed directed as to what to say -- this makes sense of the “I will come back and explain what just happened” comment to Mr. DeGraeve by Mr. Clark I witnessed. I am curious as to the following:
  - a) If, in fact, I did not “volunteer to work with co-workers on calls during the day-to-day operations” how did they explain the items I listed at the locations where I said I had worked with my co-workers?
  - b) If, in fact, I was “unable to complete work on jobs and tasks required of the position” how did they explain the signal control cabinets I assembled, tested and documented during my time at BPU, and all the locations I listed as places I worked both on my own and with other signal technicians? Two of the control cabinets have been installed and are working without a problem, and three more are in their warehouse ready to install even now.
  - c) Regarding the incident on 28 May, did they mention that the controller in question was one the BPU regards as obsolete (they do not get these controllers with new control cabinets), that this was my first time programming one of these controllers on my own, and that I never got another chance to show I learned from my mistakes?
  - d) While Mr. Dunn was hired just prior to me, it has come to my attention he had prior experience as a Traffic Signal Technician in Iowa -- was this mentioned when you interviewed him or Mr. DeGraeve? If what I heard was true, Mr. Dunn had about as much experience before he was hired as I did when I was terminated.
3. The one theme that keeps running through this entire process is I was never told of specific shortcomings after the 27 April evaluation. To improve a person must be told he *needs* to improve. If an individual is told he is doing well (as I was on several occasions) and not told where he needs to improve it would appear difficult to justify terminating them based on poor performance. If there were concerns regarding I “would rather work at the school than at BPU” why was I not confronted about this? All of this sounds more like an after-the-fact justification than legitimate reason for termination.
4. Was any attempt made to review the various items I listed as evidence of my abilities? These would be concrete, undisputable evidence of the quality of my work.
5. The comment (you two shared with me) they made that “I could wire anything” was rather interesting: one of the primary duties a Traffic Signal Technician has is to insure good wiring; whether that be in the cabinet, the signal heads, the signal poles or underground. However, nothing is mentioned in my evaluations that “I could wire anything.”
6. My contention has been, and continues to be that I can show convincing evidence to the contrary regarding all the allegations on the 21 June evaluation. Since BPU is currently looking to hire two additional Traffic Signal Technicians (posted on their website) I have been able to view the requirements they list, and point out specific locations that I performed the nine “Duties and Responsibilities” they list as well as the “Position Requirements” and “Prerequisite Skills.” Their ongoing commentary regarding my alleged excessive personal phone calls is meaningless UNLESS they are willing to show that the other individuals had fewer personal phone calls -- this would require all parties involved submit their own cell phone records as I did, and I am confident that my records would be below average, and well below the numbers of the two long-time Signal Technicians. Therefore, what was the *real* reason for my termination? Given that we have record

of an evaluation *dated* right in the middle of my two-week absence for Air National Guard duty it's easy to place "proximity between the employee's military activity and the adverse employment action" (citation in numerous USERRA-related section 4312 and 4316 cases) and BPU has not, in my opinion, shown a strong enough defense -- and in fact your investigation has raised more questions regarding the integrity of their actions.

7. Given that BPU can be forced to show the evidence mentioned in #4 and I can prove my abilities with this evidence, the question has been raised regarding defamation of character by Mr. Clark -- by now we know Mr. Clark is the responsible party for the 21 June evaluation.

I would like to formally request at this time, once the case has been closed, a copy of the case file in accordance with the Freedom of Information Act and section 3.13 of the USERRA Operations Manual.

Sincerely,

SSgt Kenneth Snyder