

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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TIFFANY L. KRIEGER, Appellant,	)	
	)	
and	)	CASE NO. 102243
	)	
STATE OF IOWA (DEPARTMENT OF TRANSPORTATION),	)	
Appellee.	)	

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**DECISION AND ORDER**

On March 6, 2020, we issued a Decision on Review in this state employee disciplinary action appeal, concluding the State failed to establish just cause within the meaning of Iowa Code section 8A.415(2) for its termination of Tiffany L. Krieger's employment. We ordered Krieger's reinstatement with back pay and benefits and any other actions necessary to restore her employment status to what it would have been had she not been discharged. We retained jurisdiction to specify precise terms of the remedy in the event the parties failed to agree upon the application of the order. Due to the COVID-19 virus, we delayed proceedings and ordered the parties to file their agreed-upon remedy for our approval on or before September 3, 2020. In the event the parties were unable to reach agreement, we scheduled an evidentiary hearing for September 17, 2020, and subsequently ordered the parties' exchange of exhibits and witness lists by September 15, 2020.

Pursuant to Iowa Code sections 20.2(d) and 20.6(4), we presided over a closed evidentiary hearing on September 17, 2020, to receive evidence and

arguments to determine the precise remedy due to Krieger. The State was represented by attorney Anthea Galbraith. Krieger's attorney Nate Boulton participated by telephone.

The parties agree on all components of the remedy. However, Krieger had not provided sufficient documentation of the health insurance premiums paid by Krieger for coverage on her spouse's insurance plan. The parties agree that the difference, between these premiums Krieger paid for this coverage and what she would have paid in premiums with the State, is an amount due to Krieger. The only dispute between the parties is the court reporting and transcript costs for this proceeding. Krieger resists the State's contention that the costs should be assessed equally between the parties.

**Facts and stipulations.**

It appears from the record, Krieger's reinstatement to her former position or a substantially equivalent position with the Iowa Department of Transportation is not at issue. The parties' stipulations reflect calculations from the time of her termination until April 2020 (presumably the time of her reinstatement).

For the monetary aspects of the remedy, there are three stipulations by the parties. First, the parties stipulated to the amount due Krieger of \$111,576.76, which includes, but is not limited to, net back pay, taxes and other withholdings, IPERS, and the State's share of health insurance premiums. (State Exh. 1 at 3). Second, the parties stipulated to the calculation of Krieger's out-of-pocket health insurance expenses due to

Krieger in the amount of \$1,735.34. (State Exh. 1 at 9). Third, the parties stipulated that Krieger is owed the difference between the premiums she paid for health insurance coverage on her spouse's plan and what Krieger would have paid in premiums had she not been terminated. The parties agreed this is a proper component of the remedy. Krieger must establish this amount by sufficient documentation yet to be provided to the State. Information provided by Krieger on the day of hearing was insufficient to make this calculation. (Krieger Exh. A).

**Discussion.**

This case is a disciplinary action appeal under Iowa Code section 8A.415(2)(b), which provides in part:

. . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. . . .

Iowa Code § 8A.415(2)(b).

In our Decision on Review, we concluded the State failed to establish just cause for its termination of Krieger and entered a general remedial order that provided in part:

The Department of Transportation shall reinstate Tiffany Krieger to her former position (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings; restore her benefit accounts to reflect accumulations she would have received but for her discharge; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to

the position she would have been in had she not been terminated on June 27, 2018.

We specifically noted the decision constituted final agency action only on the issue of whether the State established just cause for Krieger's termination. We retained jurisdiction to hold a hearing and resolve any disputes concerning the precise terms of the remedy should the parties fail to reach agreement on the specifics thereon.

In addressing the specifics of an appropriate remedial order, the guiding principle is to fashion a "make-whole" remedy. Based on established case law, we "attempt to place the grievant in the position he would have been in had no rule violations occurred, and to make the grievant whole for damages incurred." *Morrow & State of Iowa (Dep't of Transp.)*, 2013 MA 02 at 4 (quoting *Israni & State of Iowa (Dep't of Natural Res.)*, 1992 MA 23 at 17). Where the State fails to establish just cause for a termination in a section 8A.415(2) state employee disciplinary action appeal, reinstatement of employment with back pay and benefits is typically ordered as provided by the statute. *Harrison & State of Iowa (Dep't of Human Servs.)*, 2005 MA 04 at 6. In a discharge case, the employee is made whole, but without financial burden or penalty, or an economic windfall to either party. *Id.*

Based on the guiding principle of a properly structured remedy, we agree with the parties' three stipulations. In addition to reinstatement, the three stipulations represent appropriate components of a make whole remedy in an Iowa Code section 8A.415(2) state employee disciplinary action appeal. These stipulated components make Krieger whole without financial

burden or penalty or an economic windfall to either party. Additionally, as we ordered in our Decision on Review, the State shall make all appropriate adjustments to Krieger's personnel file.

While the parties agree on all aspects of what constitutes an appropriate remedy in this case, they dispute our assessment of court reporting and transcript costs. The State requests that we assess these costs equally against the parties. The State contends an evidentiary hearing could have been avoided if Krieger had timely provided information on the health insurance premiums Krieger paid. Krieger resists the equal assessment of costs and asserts all proceedings would be unnecessary but for Krieger's wrongful discharge.

Krieger is correct to the extent that the costs of the certified shorthand reporter and transcript costs for section 8A.415(2) proceedings are generally taxed against the non-prevailing party. However, pursuant to PERB subrule 11.9(2), we have discretion on the assessment and may apportion costs in another manner if appropriate under the circumstances. *See Iowa Admin. Code r. 621—11.9(2).*

The circumstances in this case warrant the equal assessment of court reporting and transcript costs against both parties. This case does not involve irregular or disputed aspects of a make whole remedy. Rather, the parties reached agreement and stipulated to components that reflect well established aspects of a properly structured remedy; they just failed to

timely exchange the information and there is still some yet to be provided by Krieger.

In our order on this case as with similar others, we provide an opportunity for the parties to reach agreement on an appropriate remedy and avoid an evidentiary hearing. It is incumbent upon both parties to perform due diligence on the information required to determine an appropriate remedy regardless of whether an agreement on all aspects can be reached. We are mindful that there may be justified delays in instances. We would take that into account had there been such evidence in this case. However, the circumstances here warrant the equal assessment of court reporter and transcript costs against both parties.

The Board finds that the parties' stipulations comport with the Board's directive contained in our Decision on Review and concludes that the provisions constitute an appropriate remedy within the meaning of Iowa Code section 8A.415(2). Accordingly, we enter the following:

#### **ORDER**

1. The State shall pay a sum of \$111,576.76 to Krieger for back pay with adjustments and other benefits as represented on State Exhibit 1 at 3.
2. The State shall pay \$1,735.34 to Krieger for out-of-pocket health insurance expenses as reflected on State Exhibit 1 at 9.
3. The State shall pay Krieger a sum representing the difference between the health insurance premiums Krieger paid for coverage on her

spouse's plan and the premiums she would have paid had she not been terminated. Krieger must establish the amount by documentation deemed sufficient by the State.

4. The State shall make appropriate adjustments to Krieger's state personnel file to reflect PERB's Decision on Review including, but not limited to, placing a copy of this order and a copy of the order from our decision on review in her file.

5. Pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9(8A,20), the costs of reporting and of the agency-requested transcript in the amount of \$85.00 are assessed equally against the parties: \$42.50 against the State of Iowa and \$42.50 against Krieger. Bills of costs will be issued to the Appellant and the Appellee in accordance with PERB subrule 11.9(3).

Pursuant to our Decision on Review, this order constitutes final agency action.

DATED at Des Moines, Iowa, this 13th day of October, 2020.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
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Mary T. Gannon, Board Member

  
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Erik M. Helland, Board Member

Original filed EDMS.