



Mashantucket Pequot
Tribal Nation

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Final Claim Determination

For Claims under Title 33,
the Mashantucket Pequot Tribal and
Native American Preference Law

Case Name: Karen Colebut v. Mashantucket Pequot Tribal Nation	Case Number: 2019-33053
Date of Claim Filing: March 19, 2019	Date of Determination: May 20, 2019

Karen Colebut (“Claimant”) alleges in her Claim that she is the spouse of a member of the Mashantucket Pequot Tribal Nation who was denied hire for the position of Paralegal 1 in the Office of Legal Counsel about late July, 2018,¹ in violation of the Tribal and Native American Preference Law (“Preference Law”), 33 M.P.T.L. ch. 1 § 5(a).

All Tribal law and procedural prerequisites having been satisfied, the claim is properly before the MERO for hearing and decision.

A formal hearing was held on May 3, 2019, pursuant to Title 33 and Title 40, during which both parties had full opportunity to present witnesses and evidence. The Claimant was not represented by an attorney. The Claimant testified on her own behalf. The Respondent, represented by Jeffrey F. Buebendorf, Esq., called Joshua Charles, the recruiter who processed the Claimant’s application, and Marietta Anderson, Associate General Counsel. The parties waived post-hearing briefs. The record was closed on May 3, 2019.

I. Findings of Fact

After careful review and consideration of the record, as well as an assessment of the credibility of the witnesses, the below facts relevant to this determination are found.

A. The Paralegal 1 Position

Associate General Counsel Marietta Anderson testified that the Office of Legal Counsel (“OLC”) handles a variety of legal issues for the Tribal government, regulatory bodies, and businesses of the Tribe, including the Mashantucket Pequot Gaming Enterprise. T-74. As of the hearing, the OLC employed three (3) Paralegal 1’s, including the employee who was hired for the position for which the Claimant applied. T-75.

¹ All dates herein are in Calendar Year 2018 unless otherwise noted.

The Paralegal 1 position description synopsis provides, in part:

...the incumbent provides attorneys with administrative support and legal assistance including, but not limited to excellent computer skills...document management, and the ability to organize and prioritize numerous tasks and complete them under time constraints. In addition, incumbent has an understanding of legal terminology and has excellent legal research skills in areas including electronic research tools such as Lexis, Westlaw and Versus. Must have excellent verbal and written communication skills. Observes strict confidentiality of all office matters. An Associate's Degree plus paralegal certificate and a minimum of two years of related legal support experience in a law firm, corporate legal department, tribal government legal department or other governmental agency legal department. In the absence of an Associate's Degree and a paralegal Certificate, a high school Diploma plus a minimum of five years of Paralegal experience in a law firm, corporate legal department or governmental agency legal department would be considered equivalent. Notary Public Certificate or the ability to obtain one within 6 months of hire required. Must have a typing speed of 45 wpm...

M-3, pg. 8.

The 2018 Paralegal 1 position description synopsis is the same as the 2013 version, except for the addition of the General Counsel also providing direction, the opportunity to secure a Notary Public Certificate within 6 months rather than having a Certificate at the time of hire, and the specification of a typing speed requirement of 45 words per minute. Compare, R-4, pgs. 2 and 3. Ms. Anderson testified that a typing test was administered to Paralegal 1 applicants when the requirement was not specified in the job description. T-79. The applicant for the Paralegal 1 position that was filled in 2014 was required to take a typing test.² R-5, T-91.

Ms. Anderson estimated that a Paralegal 1 may spend about 75% of his/her time performing administrative tasks. T-77. Before adding a specific typing speed requirement to the job posting, Ms. Anderson conducted research regarding the requirements imposed for other paralegal positions and chose a minimum at the low end of the range, 45 words per minute. T-84-85. The Paralegal 1 applicants in 2018 were required to take a typing test. R-6

Differentiating a paralegal from a law clerk, Ms. Anderson described a paralegal as "interacting more with clients,...maintaining files; the legal files, the online files, the actual physical files, and organizing the files ...a lot of the initial drafting – drafting of memoranda, short memos, cover letters. Answering the phones. Providing the notary services...it's mostly administrative for at least a Paralegal 1 position." T-76. She described some specific substantive tasks as "having a form contract and editing it so that it fit a certain situation,...responding to interrogatories, doing initial drafts." T-77-78. Ms. Anderson testified affirmatively on cross examination that regardless of

² Respondent's Exhibit 5 also shows two part-time positions that were filled without requiring a typing test; however, these were both Paralegal 2, not Paralegal 1, positions.

whether the work is “classified as paralegal support or administrative support, typing, filing, work processing, Excel, report generating, answering phones is all administrative support.” T-102.

B. Claimant’s Application

The Claimant applied for the position of Paralegal 1 in the Office of Legal Counsel in the summer of 2018. T-10.³ The parties stipulated that the Claimant is the spouse of a Mashantucket Pequot Tribal member and is in good standing with the Mashantucket Pequot Tribal Nation. T-7-8. The Respondent admitted that the Claimant was the only applicant with preference. M-2, p. 2.

The Claimant completed her application after reviewing the minimum requirements for the Paralegal 1 position. T-22, 33 She had applied for positions previously, but did not review or update her previously submitted resume or other information when she submitted her application. T-22, 31-32. The Claimant testified that the system is “a very difficult system to maneuver through...it shuts down...[i]t says you don’t have access...” T-32

Mr. Charles characterized the application system as “pretty smooth,” citing the “only issue” reported was that, at times, applicants would have difficulty uploading a resume. T-47. In his position of recruiter, Mr. Charles was tasked with assisting Tribal members and spouses of Tribal members with their applications and if an applicant had difficulty uploading a resume, the applicant could email the resume to Mr. Charles.⁴ T-46-47. Mr. Charles did not recall a request for assistance from the Claimant. T-47.

The Claimant’s resume and application reflect the following education and experience:

- Juris Doctor – University of Pittsburgh.
- Notary Republic (sic), State of Connecticut – Commission Ends: 8/31/17.
- Judicial Law Clerk for the Tribal Court – 1 year.
- Administrative Assistant to the Office of the Mashantucket Pequot Tribal Council Vice Chair – 1 year, 7 months.
- Tribal Internal Audit – 7 months.
- Special Assistant to Tribal Council – 3 months.

C. Evaluation of Satisfaction of Minimum Qualifications

Mr. Charles initially evaluated whether the Claimant met the minimum requirements of the Paralegal 1 position by comparing the information on her application, resume and internal resume

³ Transcript pages are designated T-#; MERO exhibits are designated M-#; and Respondent exhibits are designated R-#.

⁴ Mr. Charles transitioned in July, 2018 from the position of Recruiter to the position of Assistant to the Senior Vice President of Human Resources. During the transition, he continued to perform his recruitment functions with respect to the Claimant’s application for the Paralegal 1 position. See T-45, R-2.

against the requirements in the job description synopsis, which reflects the minimum qualifications. T-48, 51. The resume Mr. Charles reviewed was in the Respondent's system. T-47-50. The resume is no older than August 2013. M-3, pg. 19; T-26. According to the Claimant, the resume was outdated and she believed she had sent an updated version to the Recruitment office. T-25-26, M-3, pg. 19.

Mr. Charles assessed the Claimant as meeting the educational requirements, finding her law degree to satisfy the Associate's Degree plus paralegal certificate requirement. T-52. It is undisputed that the Claimant met the requirement of having a Notary Public Certificate. M-2, pg. 2. Mr. Charles found the Claimant did not, however, meet the experience requirements of having two (2) years of related legal support experience. T-52. The assessment was conveyed to the Claimant by email dated July 6, with an attached memo dated July 10. M-3, pgs. 16-17; T-53-54.

Mr. Charles invited the Claimant to provide additional information and to be scheduled for testing. M-3, pg. 15. The Claimant submitted the following additional information via email:

With regards to the Paralegal 1 position, I was a Judicial Law Clerk for the Mashantucket Pequot Tribal Court (a Tribal Government agency. Second, I clerked at the US Attorney's Office for the Western District of PA from term from 9/89-12/89 and then worked as a Law Clerk at Reed Smith Shaw & McClay from 1/90-8/90. Finally, I worked at Westinghouse Legal Department from 9/91-9/93 as an independent contractor.

R-1, pg. 2 (errors in original)

The information in the Claimant's email had not been presented to Mr. Charles previously. T-56. Mr. Charles responded that with the additional information the Claimant provided, he agreed that the Claimant met the requirements. R-1, pg. 1, T-57.

The Claimant took a typing test on July 16 and scored 31 standard net words per minute. R-3 pg. 1, T-59-60. She re-took the typing test on July 24 and scored 38 standard net words per minute. R-3, pg. 2, T-59-60. With respect to both testing opportunities, the Claimant testified that there were a "bunch of other people around" and "HR employees were having very loud conversations." T-21-22.

Applicants receive only two opportunities to take the typing test. T-61. Mr. Charles testified that although there are two testing locations, applicants are not given a testing location option and are assigned to take the test behind the front desk, which can be loud; the quieter testing location is used only when needed. T-61-62, 68.

Mr. Charles was advised by his manager that a juris doctor degree is not the same as a paralegal certificate; therefore, the Claimant did not meet the qualifications of the position. T-58, 70. Mr. Charles explained to the Claimant that in the absence of a paralegal certificate, she needed to show five (5) years of relevant paralegal experience; therefore, she did not meet the qualifications. T-58, R-2. Mr. Charles also explained that the Claimant had not passed the typing test. T-58, R-2, pg. 1. A

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memo dated July 24 confirmed to the Claimant that she was found not to have met the minimum necessary qualifications because she did not possess a paralegal certificate or five (5) years of paralegal experience in a law firm, corporate legal department or government agency legal department. R-2, pg. 5; M-3, pg. 14

D. Interview and Final Determination

At the Claimant's request, she was permitted to interview with the OLC notwithstanding the assessment that she failed to meet the minimum requirements of the position. T-21. The Claimant testified that she brought an updated resume to the meeting, but did not provide a copy to Ms. Anderson, with whom she interviewed. T-40. Ms. Anderson questioned whether the Claimant was truly interested in the position given the significant focus on administrative functions. T-88. The Claimant was "taken aback" and did not respond. T-12. In the Claimant's view, she was "ushered out" of the interview "so quickly" that she did not have the opportunity to provide her resume or additional information to Ms. Anderson. T-40-41. The Claimant recalled the interview lasting about 10 minutes and being "verbally escorted out." T-12, 42. Ms. Anderson recalled the interview lasting about 30-45 minutes and that she was not rushed. T-87-88.

Ms. Anderson did not make an independent calculation of the number of years of paralegal experience for which the Claimant would be credited. T-104. Instead, she reviewed the Claimant's overall experience and concluded that the Claimant did not meet the minimum experience requirement. T-104. She weighted the paralegal experience and typing test results as equally important. T-108. The determination that the Claimant did not meet the minimum qualifications was conveyed to Employment. T-106.

E. ONAP Claim

The Claimant filed a claim with the Office of Native American Preference ("ONAP") alleging that the Respondent violated the Preference Law when it did not hire her for the Paralegal 1 position. M-3, pgs. 6-7. The Claimant testified that some of the work experience supporting her claim was not provided prior to her filing her claim with the ONAP. T-16

II. Claimant's Allegations of Non-Compliance

The Claimant alleges that she met the minimum necessary qualifications of the Paralegal 1 position; therefore, as the only preference eligible applicant, she should have been hired. M-1. The Claimant testified under oath that she does not claim that the qualifications set forth in the job description with respect to the education, experience or typing requirements were not legitimate minimum necessary qualifications. T-34, 36.

With respect to the educational requirements of the Paralegal 1 position, the Claimant asserts that she has a law degree, which should satisfy the paralegal certificate requirement. T-34. When asked on cross examination whether a "lawyer is necessarily qualified to be a paralegal," the Claimant testified, "Not necessarily." T-35. The Claimant testified, however, that she possesses more than

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five (5) years of paralegal experience. T-34-35. The Claimant explained that much of her relevant work experience was as a law clerk. T-16. During her testimony, the Claimant cited the following work she performed for employers in either a law clerk or paralegal role that she believes constitutes paralegal work: deposition digesting, redacting documents, legal research, attending legal proceedings, preparing litigation binders, cataloguing documents, summarizing documents, writing memos, preparing interrogatories, and cataloguing cases. T-15, 17, 18, 19, 36.

Regarding the typing test results, the Claimant testified that on both occasions when she took the typing test, the test “wasn’t administered in an environment conducive to focus” or “appropriate for conducting any type of exam.” T-21, 37.

III. Analysis and Conclusions of Law

Jurisdiction over the parties and with respect to the Claim is undisputed and asserted. The Claimant is a Tribal member spouse who is in good standing with the Tribe.

The Tribal Council has declared that a purpose of the Preference Law is “[t]o clearly set forth the requirements for all Employers within the jurisdiction of the Tribe to provide preference in Employment Opportunities for Tribal Members, Spouses, Adopted and Dependent Children of Tribal Members and Native Americans who meet the Minimum Necessary Qualifications of the job.” 33 M.P.T.L. ch. 1 § 3(a). In this case, it is undisputed that the Claimant was the only preference individual to apply for the Paralegal 1 position in the Office of Legal Counsel, so if she met the minimum necessary qualifications of the position, the Preference Law required that she be hired. See 33 M.P.T.L. ch. 1 § 5(a).

As she clarified in her sworn testimony, the Claimant does not challenge the reasonableness of the minimum requirements of the position as set forth in the position description. Rather, the Claimant asserts that the employer did not properly assess her education and experience to find that she met or exceeded the minimum qualifications of the Paralegal 1 position.⁵ She also asserts that the skills testing was not conducted in an atmosphere conducive to success.

Rarely would an employer have all the information it needs to assess the qualifications of an applicant without the applicant being forthcoming with information and advocating for herself. Only in circumstances where all of the applicant’s qualifications were established through her work for the employer might additional information not be required. It is incumbent on an applicant to fully engage in the application process and advance information necessary to demonstrate to an employer that the applicant meets the qualifications of the position sought.

Prior to applying for the position, the Claimant reviewed the Paralegal 1 job description. Although she realized that a lawyer is not necessarily qualified to be a paralegal, she made little effort to demonstrate that her law degree and experience combined qualified her for the position. By the

⁵ The only point of agreement between the parties was that the Claimant held a Notary Public Certificate.

Claimant's own account, she did not review or update her application and resume when she initially applied for the Paralegal 1 position. The Claimant asserted that the system was difficult to navigate, but there is no indication that she sought help from the recruiter or otherwise attempted to make certain the most up-to-date information was submitted. Although the Claimant may have believed that she had a more recent resume on file with the employer, after her first contact with the recruiter when she was invited to submit additional information, she should have recognized that the information on the system was outdated, yet she merely provided a brief summary of additional employment in an email rather than submitting a current, comprehensive resume.

After being advised that she needed to demonstrate five (5) years of relevant experience rather than two (2) years of relevant experience, the Claimant could have chosen to break down her work experience relative to the requirements of the position and detail how she believed she met the requirements, but she did not. Rather than attempt to make a compelling case that she met the requirements, the Claimant did not even submit an updated resume to Ms. Anderson. Her contention that she had no time to present her resume or any additional information is not persuasive. Even assuming the interview was conducted in the manner that the Claimant described, there was sufficient opportunity for her to submit a resume and present additional information. Furthermore, instead of viewing Ms. Anderson's questions about whether she was truly interested in a heavily administrative position as an opportunity to demonstrate that she was interested and qualified, the Claimant fell silent. The failure to present relevant information to the OLC for consideration is highlighted by the Claimant's testimony that certain information about her work experience was presented for the first time when she filed a claim against the OLC with the ONAP, well after a final decision was made with respect to her application.

Understandably, the Claimant was frustrated with first being advised that she met the minimum requirements, then being told that her law degree would not meet the Associate's Degree and Paralegal Certificate requirements. No explanation was provided to the Claimant regarding the analysis applied by the employer to support the change in its determination. The Record contains no evidence as to how the educational requirements for a Paralegal Certificate relate to the educational requirements for a law degree. For the Claimant, the change in the employer's position meant the bar for establishing that she met the minimum necessary qualifications had been raised from demonstrating two (2) to five (5) years of relevant experience. While she was informed she did not meet the experience threshold, what the Respondent considered to be paralegal experience and the amount of paralegal experience for which the Claimant was ultimately credited remains unclear.

Nevertheless, whether the Claimant's education and experience were properly evaluated relative to the education and experience requirements of the position need not be decided, because as the Claimant recognized in her sworn testimony, the typing speed requirement was a reasonable

minimum qualification and she did not satisfy the requirement.⁶ Although the Claimant described a loud, disruptive testing environment, the Record contains no evidence that she was treated less favorably with respect to the testing location than any other applicants. To the contrary, Mr. Charles testified credibly that an alternative testing location is utilized only when required. The Claimant was provided two opportunities to pass just like any other applicant, and was unsuccessful. Other applicants, including the successful candidate, met the typing speed requirement. Under these circumstances where the Claimant testified that she did not satisfy a qualification that she correctly understood to be a reasonable minimum requirement, with no Record evidence to the contrary, there is no basis from which to conclude that the Respondent's denial of hire constituted a violation of the Preference Law.

IV. Disposition

For all the foregoing reasons, Respondent is not in violation of the Preference Law as alleged in the Claim. The Claim is hereby dismissed in its entirety.

V. Appeal Rights

The parties are directed to the enclosed Notice of Appeal Rights. If no timely appeal is filed with the Tribal Court, this Final Claim Determination is final and binding upon the parties.

VI. Notice of Publication

This Final Claim Determination is available to the public through the MERO and subject to formal revision and publication by the MERO. Readers are encouraged to advise the MERO of any typographical or other formal errors so that corrections can be included in the published opinion.

Dated this 20th day of May, 2019



Ursula L. Haerter
MERO Director

⁶ The reasonableness of the typing speed minimum requirement was supported in the Record by the significant amount of administrative functions associated with the position, the historical typing test requirement for Paralegal 1 positions and Ms. Anderson's comparative research to establish the specific speed requirement.

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