

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**PETER BEGLEY**

Grievor

and

**TREASURY BOARD**  
**(Public Works and Government Services Canada)**

Employer

***Before:*** [Rosemary Vondette Simpson, Board Member](#)

***For the Grievor:*** Himself

***For the Employer:*** Roger Lafrenière, Counsel

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Heard at Ottawa, Ontario,  
December 19 and 20, 1995  
and January 23 to 26, 1996.

## DECISION

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By letter of May 16, 1994, signed by the Deputy Minister, R.A. Quail, the grievor, Mr. Peter Begley, was terminated for cause effective May 18, 1994 pursuant to section 11(2)(g) of the *Financial Administration Act*.

The letter of termination (Exhibit E-1, Tab 2) sets out the employer's reasons for termination as follows:

...  
*Since the appointment to your current position in 1989, you have worked the equivalent of fifteen days. Medical assessments have concluded that you suffered from stress and are unable to work in a computerized or deadline-sensitive production environment. No position at the CR-4, or equivalent, level has been identified given the highly automated work environment of the department. Prior to recommending your termination, management explored alternative solutions and identified a number of lower-level positions which you have refused.*

*In view of these facts and your failure to cooperate with our efforts to obtain an accurate health assessment, your employment is being terminated effective May 18, 1994...*

Mr. Begley grieved the termination as follows:

*On May 18, 1994 I received a letter dated May 16, 1994 in which I was advised that my services were to be terminated on May 18, 1994. I grieve that this is unjust.*

*Corrective Action Requested:*

*That this letter terminating my services be rescinded and all documents including the letter related to this matter be removed from my personal file and destroyed.*

Two witnesses, Karen Munro and John Bremner, were called by the employer to give evidence. As well as giving evidence as to the sequence of events in the dealings by the Department with Mr. Begley, they submitted, identified and explained the 89 documents contained in Exhibit E-1.

The witnesses made the following identification of documents of Exhibit E-1:

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Tab 1	Background information	
Tab 2	Termination letter	May 16, 1994
Tab 3	Recommendation letters for release	
Tab 4	Letter from Peter Begley to Yvon Gravel responding to Mr. Gravel's request for medical certificates	May 3, 1994
Tab 5	Letter from P. Begley to Karen Munro advising her he forwarded a medical certificate to SunLife and will not be returning to work	April 25, 1994
Tab 6	Bernie Bartley's recommendation to G.J. Matthieu to terminate employment	April 19, 1994
Tab 7	Benefit calculations should employee be released	April 18, 1994
Tab 8	Letter from Y. Gravel to P. Begley requesting medical certificates	March 18, 1994
Tab 9	Letter from SunLife advising P. Begley requested information relating to a rehabilitation program	February 4, 1994
Tab 10	Letter from K. Munro to P. Begley requesting medical certificates	January 24, 1994
Tab 11	Letter from P. Begley to Y. Gravel advising his studies will terminate soon	January 17, 1994
Tab 12	Medical certificate	January 26, 1994
Tab 13	Letter from P. Begley to K. Munro informing her he has changed his phone number and will not give it to anyone	January 11, 1994
Tab 14	Letter from K. Munro to P. Begley requesting medical certificates	January 7, 1994
Tab 15	Letter from K. Munro to P. Begley requesting medical certificates	December 23, 1993
Tab 16	Letter from Dr. Mohanna to K. Munro advising P. Begley did not keep his appointment	December 17, 1993

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Tab 17	Letter from P. Begley to K. Munro advising he would not be able to attend his appointment	December 10, 1993
Tab 18	Confirmation P. Begley received letter	December 3, 1993
Tab 19	Memorandum from K. Munro to Y. Gravel advising invoice due	December 1, 1993
Tab 20	Letter from Dr. Lloyd-Jones to K. Munro advising an appointment has been scheduled for P. Begley	November 25, 1993
Tab 21	Letter from K. Munro advising P. Begley missed his appointment	November 24, 1993
Tab 22	Invoice for missed appointment	November 10, 1993
Tab 23	Letter from Dr. Mohanna to Ann Condon advising P. Begley did not attend his scheduled appointment	November 4, 1993
Tab 24	Letter from Dr. Lloyd-Jones to P. Begley advising him of his scheduled appointment	October 8, 1993
Tab 25	Letter from Dr. Lloyd-Jones to A. Condon advising P. Begley has been scheduled for an assessment	October 8, 1993
Tab 26	Letter from Dr. Mohanna to A. Condon advising P. Begley did not keep his appointment	September 21, 1993
Tab 27	Letter from K. Munro to P. Begley requesting medical certificates	August 20, 1993
Tab 28	Letter from Dr. Mohanna to A. Condon advising P. Begley has been scheduled for a medical assessment	August 12, 1993
Tab 29	Letter from K. Munro to P. Begley confirming his appointment	August 11, 1993
Tab 30	Letter from P. Begley to Bernie McLean requesting to participate in a career planning service	July 13, 1993
Tab 31	Letter from A. Condon to Dr. Lloyd-Jones requesting a follow-up assessment of P. Begley	June 23, 1993

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Tab 32	Letter from A. Condon to P. Begley advising him the Department does not have a copy of the policy for Career Development Leave with Pay, rather the Department applies Section M-23.05 of the Master Collective Agreement (Career Development Leave With Pay)	June 4, 1993
Tab 33	Letter from P. Begley to A. Condon requesting a copy of the departmental leave policy and 4th level reply from Ruth Hubbard	May 25, 1993
Tab 34	E-mail from John Bremner to A. Condon requesting an up-date concerning attempts to find a position with an equal rate of pay for P. Begley	May 14, 1993
Tab 35	E-mail from J. Bremner to A. Condon advising P. Begley will be able to return to full duties at the end of six months	May 13, 1993
Tab 36	Letter from P. Begley to Y. Gravel requesting a copy of the Departmental Policy on Education Leave Without Pay and Career Development Leave With Pay	May 12, 1993
Tab 37	Letter from Dr. Lloyd-Jones to J. Bremner advising P. Begley is "unfit for work"	May 11, 1993
Tab 38	Benefit calculations should employee be released	May 4, 1993
Tab 39	Letter from Chuck McMullen to K. Kudo of SunLife advising on the leave status of P. Begley	March 31, 1993
Tab 40	Letter from Y. Gravel to P. Begley advising him of his scheduled appointment with Health and Welfare	March 29, 1993
Tab 41	Letter from Dr. Mohana to Y. Gravel advising an appointment for P. Begley has been scheduled	March 23, 1993
Tab 42	Memorandum from M. Josée Posen to Ruth Hubbard advising her a final level grievance has been scheduled	March 3, 1993
Tab 43	Letter from Y. Gravel to Dr. Quevillon	February 26, 1993

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	requesting a medical assessment of P. Begley	
Tab 44	Letter from B. McLean advising P. Begley a medical assessment will be requested	February 25, 1993
Tab 45	Benefit calculations should employee be released	February 5, 1993
Tab 46	Letter from K. Kudo from SunLife requesting a note that P. Begley could not return to the office July 6, 1992	January 25, 1993
Tab 47	Letter from Jill Stern to P. Begley grievance denied	January 19, 1993
Tab 48	Briefing notes from third level hearing	January 18, 1993
Tab 49	Letter from Y. Gravel to P. Begley ordering him to return to work	January 6, 1993
Tab 50	Letter from P. Begley to Y. Gravel requesting a meeting to discuss the possibility of D.I.	December 30, 1992
Tab 51	Letter from Y. Gravel to P. Begley advising him he is on unauthorized leave and requesting the required leave forms	December 21, 1992
Tab 52	Memorandum from C. McMullen to P. Begley confirming employment status	December 17, 1992
Tab 53	Letter from P. Begley enclosing an updated resume	December 11, 1992
(Tab 54	Moved to Tab 33)	
Tab 55	Letter from Richard Lefebvre to A. Condon advising he agrees to the time of the third level grievance hearing	December 9, 1992
Tab 56	Letter from Y. Gravel to P. Begley advising grievance denied at second level	November 13, 1992
Tab 57	Briefing notes from second level hearing	November 10, 1992

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Tab 58	Letter from Y. Gravel to P. Begley requesting leave forms	November 9, 1992
Tab 59	Grievance form	October 22, 1992
Tab 60	Memorandum from A. Condon to Personnel Managers seeking a term position for P. Begley	October 20, 1992
Tab 61	Letter from P. Begley to Y. Gravel advising he will not consider a voluntary demotion	October 9, 1992
Tab 62	Letter from Y. Gravel to P. Begley requesting leave forms	October 7, 1992
Tab 63	Letter of offer to P. Begley (refused)	October 7, 1992
Tab 64	Letter from P. Begley to C. McMullen requesting 13 files be sent to him according to the Privacy Act	October 2, 1992
Tab 65	Letter from P. Begley to Louise Hubert advising he does not know when he will return to work	September 18, 1992
Tab 66	Letter from L. Hubert advising him as he did not report for work September 1 it could be construed as abandonment	September 8, 1992
Tab 67	Memorandum from A. Condon to Personnel seeking a position for P. Begley	September 2, 1992
Tab 68	Letter from P. Begley to Marcel Bujold advising he will accept volunteer demotion but will appeal	August 24, 1992
Tab 69	Note from C. McMullen to P. Begley advising he has been entered into the departmental transfer inventory	August 18, 1992
Tab 70	Letter of offer accepted by P. Begley and advising he will report to work September 1, 1992	August 7, 1992
Tab 71	Letter from Dr. Carre to Y. Gravel advising P. Begley is fit for work	July 28, 1992
Tab 72	Letter from Y. Gravel to Dr. Lloyd-Jones requesting a medical assessment	July 6, 1992

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	of P. Begley	
Tab 73	Letter from Y. Gravel to P. Begley advising the work available is “systems work”	July 6, 1992
Tab 74	Letter from P. Begley to C. McMullen advising the CR-3 position offered to him is not acceptable	June 17, 1992
Tab 75	Letter from Dr. Carrière to Claude Riberdy advising P. Begley is not fit for work	May 22, 1992
Tab 76	Letter of offer to P. Begley	April 28, 1992
Tab 77	Letter from C. Riberdy to Dr. Lloyd-Jones requesting assessment results	April 16, 1992
Tab 78	Letter from C. Riberdy outlining his conditions of employment	February 27, 1992
Tab 79	Letter from C. Riberdy to P. Begley outlining his conditions of employment	February 6, 1992
Tab 80	Letter from Dr. Lloyd-Jones to C. Riberdy advising P. Begley he could return to work on a part-time basis	January 21, 1992
Tab 81	Letter from Marlene Gaudet of SunLife	January 10, 1992
Tab 82	Letter from Dr. Mohanna to C. Riberdy advising P. Begley is scheduled for a medical assessment	January 8, 1992
Tab 83	Letter from C. Riberdy to Health and Welfare requesting a medical assessment of P. Begley	December 27, 1991
Tab 84	Letter from C. Riberdy to P. Begley advising Peter of his appointment	December 2, 1991
Tab 85	Letter from P. Begley to Larry Osborne	August 8, 1991
Tab 86	Letter of offer	May 3, 1989
Tab 87	Letter from G.M. Lafrenière to P. Begley advising him his request for sick leave without pay from April 3, 1989 to April 7, 1989 is granted	March 23, 1989



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Tab 88	Leave records from 1984 to 1990	
Tab 89	Confirmation Taken on Strength	January 4, 1983

### FACTS

These facts were submitted in the employer's case. They were not disputed by Mr. Begley. Mr. Begley also stated that it was his decision not to call any evidence.

At the end of the employer's case, counsel for the employer submitted that I should rely on the summary of evidence (excluding any opinions expressed) contained in a letter from Mr. Don Pease, Research Officer, Public Service Alliance of Canada (Exhibit E-3). This was an accurate summary of the evidence as presented by the employer's witnesses and their exhibits. It was also certified as correct by Mr. Begley.

Mr. Pease's letter provides the following convenient summary which was accepted as factual by both parties:

*...prior to his termination on May 18, 1994, the grievor had been away from his CR-04 substantive position for about 4 1/2 years. During at least a good portion of the time since his initial absence in 1989, Mr. Begley has received Disability Insurance payments for some portion of his income. He appears to have been fully covered by DI since at least April of 1993 and I understand that he continues to receive DI. Sun Life also covered a 45-week training course which was scheduled to run from October 1993 to November 1994 (apparently not completed due to illness).*

*Following his initial period of sick leave, the Health & Welfare doctor to whom Mr. Begley was referred for re-assessment wrote to the employer on July 28, 1992 declaring him fit to return to work with the proviso that:*

*"In order to prevent recurrence of the factors leading to his past disability, it is mandatory that work load related to Computer work and deadline, be kept to a maximum of 10 to 15 percent."*

*Prior to this medical assessment, Mr. Begley had, in April 1992, been offered a CR-3 position in the Cheque Enquiry Unit which he refused.*

*Subsequent to this assessment, the employer stated that, given the automated and deadline-oriented nature of its work, it was unable to locate a CR-4 position with such limitations.*

*However, on August 7, 1992, the employer offered Mr. Begley a CR-2 Mail Clerk position with the warning that if he did not either accept the CR-2 position or return to his substantive CR-4 position, he might be released for incapacity. Mr. Begley declined return to his substantive CR-4 position as it would involve too much stress, but accepted the CR-2 offer under protest, stating in a letter of August 24, 1992 that he did so solely because of the possibility of release for incapacity.*

*This job was to start on September 1, 1992, but the grievor did not show up for work nor did he call to explain his absence. On October 7, 1992, the employer reiterated its offer of the CR-2 position and requested a clear-cut reply. Mr. Begley declined this offer and on October 21, 1992 filed a grievance against the employer's failure to provide him with "an equivalent rate of pay job with SSC" and requesting the same as redress.*

*On January 6, 1993, the employer wrote Mr. Begley stating that he was considered to have been on unauthorized leave since June 30, 1992 and ordering him to report for work on January 13, 1993 in one of four jobs:*

- his substantive CR-4 position;*
- the previously offered CR-3 Cheque Inquiry Unit position;*
- the previously offered CR-2 Mail Clerk position; or*
- a new offered GS-ST-3 General Services clerk position.*

*The employer stated that failure to answer this letter would result in termination due to abandonment.*

*The grievor declined to accept any of the four positions offered (i.e. three alternatives to his clearly too stressful substantive position), but arrangements were subsequently made for retroactive granting of leave of various types (personal needs, special & so-called sick leave w/o pay) for the period March 26, 1992 until such time as a new NHW medical was completed.*

*On May 11, 1993, NHW informed the employer that its new assessment found the grievor unfit for work, but anticipated*

that treatment would allow him to return to work. A follow-up medical assessment was said to be scheduled for six months later.

....

The matters which finally brought about the termination at issue here are documented in correspondence from September 1993 through May 1994.

Much of this correspondence concerns a series of NHW medical appointments which were missed by the grievor during this period (written records of employer telephone calls to SSU of September 22 and October 5, 1993 and employer letters to the grievor of December 23, 1993 and January 7, 1994). Reference is also made in this correspondence to a medical certificate estimating Mr. Begley's return to duty on December 22, 1993 (this was not provided to the employer until February 18, 1994). In addition, Mr. Begley informed the employer in a letter dated January 17, 1994 that his DI-paid course (which began October 13, 1993) would not end until November 1994 and that:

*"if between now and then the department is not able to obtain for me a position at an equivalent level, I assure you that I will let you know the exact date of my return with reasonable notice."  
(our translation)*

From this communication it is clear that even though he had apparently obtained medical approval for return to work on December 22, 1993, Mr. Begley was refusing to do so unless the department provided him with a position equivalent to his substantive CR-4 position.

The employer's letters of January 7, 1994 and March 18, 1994 contain warnings that a continued failure to cooperate in attending medical assessments and providing other medical information would result in termination of employment. The employer's letter of March 18, 1994 sets a deadline of April 8, 1994 for provision of the three items of medical information requested therein.

Despite this deadline, Mr. Begley did not reply until May 3, 1994, nearly a month after the deadline. His response provided only one of the three items of medical information requested. He then explained that he had suffered a recurrence of his incapacity (our translation):

*“I was not able to continue my course because my health does not permit me to continue and I will be submitting to Sun Life a new medical certificate as soon as possible.”*

*The employer’s letter of termination dated May 16, 1994 followed.*

*....*

Mr. Begley argued that his termination was unjustified. The employer had no knowledge that he might not be well enough someday to return to his job. In addition, the employer did not adequately accommodate his illness.

Counsel for the employer argued that despite reasonable efforts to accommodate the grievor, Mr. Begley was uncooperative in assisting in his rehabilitation and ultimate reintegration.

#### REASONS FOR DECISION

The employer made reasonable efforts to accommodate the grievor’s illness. The statement of facts set out in the body of my decision and acknowledged as accurate by both parties amply indicates this.

Mr. Begley himself was less than cooperative in assisting his employer to assess his medical condition on a number of occasions throughout the period of his illness. He did little to keep his employer fully informed of his condition or even to facilitate the medical appointments which the employer had arranged. Although the employer may be said to have a duty to accommodate the employee in cases such as the present one, the employee also bears a duty.

As Justice Sopinka stated in Central Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970, beginning at p. 994:.

*The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation.*

*...*

*To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in*

*determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.*

Mr. Begley is correct in stating that the employer had no knowledge that he might not be well enough *someday* to return to his job. Nevertheless, the employer need not be certain of an employee's state in such circumstances. It is well established in arbitral jurisprudence that all that is required is that the information on hand lead to the conclusion that the employee will not be able to report to work in the *foreseeable future*: see for example City of Sudbury and C.U.P.E., Local 207 (1981), 2 L.A.C. (3d) 161 and Canada Post Corporation and C.U.P.W. (Potosky), 6 L.A.C. (3d) 385.

While I sympathize with the position Mr. Begley finds himself in, I can find no grounds for interfering in the employer's decision to terminate Mr. Begley's employment.

The grievance is denied.

**Rosemary Vondette Simpson,  
Board Member**

OTTAWA, May 22, 1996.