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SPENCER STEWART,

Appellant,

v.

Secretary, DEPARTMENT OF
REVENUE,

Respondent.

Case No. 92-0003-PC

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DECISION
AND
ORDER

This matter is before the Commission on appeal pursuant to §230.44(1)(d), Wis. Stats., alleging respondent's decision not to select appellant for a Management Information Specialist 2 (MIS 2) position on two separate occasions in 1991 was unlawful or an abuse of discretion. The hearing was held before Commissioner Donald R. Murphy, and post-hearing briefing was completed on November 15, 1993.

FINDINGS OF FACT

1. On May 17, appellant answered respondent's recruitment announcement for a MIS 2, Mini-Computer System Administrator, position with the Bureau of Information Systems.
2. As described in the announcement, duties of this position included installing and maintaining systems in a Wang VS, Data General, and microcomputers used for word processing, office automation, and data processing in an organization with over three hundred work stations; installing operating systems, software and utilities, installing and maintaining hardware, maintaining system operation, identifying and resolving problems with users and vendor support personnel, and consulting with and training users.
3. The announcement, in darker print, made clear that well-qualified candidates would have a two-year associate degree or four-year degree in data processing or equivalent. Also the announcement provided information regarding the basic knowledge required for the position and special requirements of the position, such as the need for non-standard work hours, a valid Wisconsin driver's license and the ability to lift 50 pounds.

4. Appellant completed the application materials, was placed on the certification list and invited to an interview in June 1991.

5. Respondent's interview panel was composed of Raynold Anderson, Technical Services Manager and direct supervisor of the positions; Sharon Mylrea, Information Systems Planner; and Stan Fosdal, Data Center Manager.

6. The candidates for the June 1991 interview were asked to arrive 10 minutes early. Upon their arrival, each candidate was given a packet of materials, including a written description of the department, an organizational chart, and a position description of the MIS 2 position to review prior to the interview.

7. After being called before the interview panel, each candidate was given a written copy of the interview questions, so they could read along as the interviewer asked the question. All the candidates were asked the same questions.

8. After the interviews were completed, the panel concluded that Beverly Freitag had given the best response to the question, and she was selected for the position.

9. By letter dated July 3, 1991, appellant was notified that he had not been selected for the position.

10. Beverly Freitag received a B.S. degree in Elementary Education from UW-Madison, 1972; a M.S. degree in Curriculum and Instruction from UW-Madison, 1980; and a B.S. degree in Management Computer Science from UW-Whitewater, 1983.

11. At the time of the interview, Freitag was working as a project appointee at UW-Madison, using the same system and software employed by respondent and providing technical support and solving problems similar to the responsibilities of the position at issue. Also Freitag had worked as a third-grade teacher, Madison Public Schools from 1973-1981, a word processor, Wisconsin Power and Light, part-time, 1982-1983; a Systems Analyst/Programmer, Oscar Mayers, 1984-1985; an Information Coordinator, Person to Person Video, 1985-1987; and a Software Support position, UNISYS Corp., 1987-1988.

12. Appellant had attended the University of Wisconsin-Madison and Madison Area Technical College, taking courses in Business Administration and Accounting but had no degrees in those fields or data processing.

Appellant was granted a Personal Computer Specialist Diploma from School of Computer Training, ICS, a division of National Education Corporation, in 1991. At the time of the interview, appellant was a Program Assistant at the Division of Vocational Rehabilitation, Department of Health and Social Services, functioning as an assistant to users of personal computers.

13. In November 1991, the same MIS 2 position became vacant again when Freitag accepted a position in computer application development at the University of Wisconsin - Madison.

14. The November 1991 interview process for the vacated MIS 2 position was substantially the same as used in June: Ray Anderson and Stan Fosdal made up the interview panel. The same questions were asked. Candidates interviewed the previous June could elect to skip the first two questions.

15. Ten candidates, including appellant, were placed in the certification list for the position. Two candidates did not accept the invitation for interview.

16. Both appellant and the successful candidate had been previously interviewed for this position in June and elected to refer the panel to their prior answers to questions one and two.

17. After the interviews, which were conducted on November 19, 1991, were completed, Fosdal and Anderson decided that James Jameson and Robin Cole, a MIS 4 transfer applicant, were their first two choices. Jameson was offered and accepted the position.

18. Jameson's background included a Madison Area Technical College Associate degree in Data Processing; work experience as a programmer, Office Automation Specialist, Madison, Wisconsin; and his current MIS 1 position with respondent since September 1991.

CONCLUSIONS OF LAW

1. This matter is before the Commission pursuant to §230.44(1)(d), Wis. Stats.
2. The appellant has the burden to show respondent's failure to select him for the MIS position at issue was illegal or an abuse of discretion.
3. The appellant has failed to sustain this burden.
4. Respondent's decision not to select appellant for the position at issue was not illegal or an abuse of discretion.

OPINION

The issue in this case is:

Whether respondent's decisions not to select appellant for two vacant Management Information Specialist 2 positions in 1991 were illegal or an abuse of discretion.

Regarding appellant's arguments, in his brief he writes:

This brief will show that Mr. Anderson and interview staff, did violate employment hiring act in hiring Beverly Freitaag [sic] and James Jameson, and has unduly harassed me in his initial hiring and call back interview.

The unduly harassment takes the forms of (1) No position description be available until time of interview June 25, 1991 (2) changed position description at the second interview date 10-14-91 (3) Predetermined hiring decision before re-interview applicant and referencing old or prior decisions during interview (exhibit J. Question 1 & 2 Disregarding the fair employment act.

Unduly harassment by call me and tell it was the same position as June, 1992, where in fact the position changed from a Management Information Specialist 2 Minicomputer System Administrator to (Exhibit A) Wang System Administrator dated 10-14-91.

Anderson recruited for the position of Management Information Specialist Minicomputer System Administrator and Hired a Wang System Administrator therefore in violation of the Wisconsin Personnel Hiring policy and Fair Employment Act. The following are exhibits use [sic] for the September 2, 1993 and L the missed dated resume.

Mr. Anderson and Mr. Fosdal stated under oath September 2, 1993 that they had disqualified me for the position during June Hiring and had no intention to hire me yet they called me back for the second interview November, 1992 which is unduly harassment in his hiring practices. Mr. Anderson made it clear during his testimony September 2, 1993 that if Mr. Jameson had not taken the job he would have offered the position to another. Anderson action is that of unduly harassment.

Appellant testified that he "believed" the persons hired for the MIS 2 in June and November 1991, lacked the required knowledge for the position and that he was the best qualified. Appellant presented no other witnesses or documentation in support of this position. However, in his brief, appellant points to the "Knowledge Required" section of the MIS 2 position announcement (Respondent's Exhibit A) and based on his analysis of Freitag's and

Jameson's resumes states their knowledge was limited, and therefore neither should have been hired for the position. Continuing with this argument, appellant states:

Mr. Anderson hired Ms. Freitag and Mr. Jameson based on their degrees. Degree is not a requirement for this position nor is education and/or experience which are desirable attributes.

The MIS 2 job announcement clearly states "well qualified candidates will have a two-year associate degree or four-year degree in data processing or equivalent." The record shows that Freitag held a B.S. degree in Management Computer Science, and Jameson held an associate degree in data processing. Interview panelist Anderson, the direct supervisor of the MIS 2 position, B.A. degree, UW-Eau Claire, major area of study as information systems management, testified that Freitag was the best qualified for the position of those candidates interviewed. Anderson testified that Freitag's answers to the interview questions were well organized, tying her work experience to the duties and responsibilities for the position. About appellant's responses during the interview, Anderson testified that appellant was not well organized and he failed to link his background with the duties of the position. Anderson described the position as requiring technical skills in computer hardware and software, analytical and service skills, consultation skills, and the ability to teach and be well organized.

James Jameson, like appellant, had been an unsuccessful candidate for the MIS 2 position in June 1991. The record shows that Jameson as a result of his position with respondent as an MIS 1 in September 1991, gained work experience with the Wang system there. Appellant had no work experience with minicomputers, and no work experience with the Wang minicomputer. Appellant was not considered among the top candidates for the position.

Appellant's assertions of harassment, improper recruitment and appointment to the MIS 2 position in November 1991, and prior disqualification for same are not supported by the record. The appellant presented no evidence other than his uncorroborated statements. The record shows that respondent provided position descriptions to all candidates interviewed 10 minutes before the interview and that appellant acknowledged in his "thank you" letter dated June 25, 1991 (Respondent's Exhibit L), the interview was for "the Wang System Administrator, Management Information Specialist 2

position," contrary to his claim that it was otherwise described in the job announcement.

Appellant's statement that Anderson and Fosdal testified that they had disqualified him for the position during the June hiring mischaracterizes their testimony. Anderson testified that after the interviews in November, he and Fosdal narrowed their choice for the position to James Jameson and Robin Cole. Jameson was their first choice.

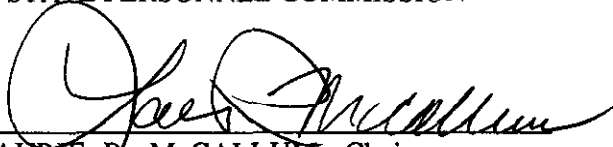
Consistent with the Commission's opinion in Jorgensen v. DOT, Case No. 90-0298-PC (6/12/91), the question before the Commission is not whether it agrees or disagrees with the appointing authority's decision, but rather whether the evidence presented establishes an illegal act or a decision "clearly against reason and evidence." The appellant has failed to establish his assertions of illegality and abuse of discretion in respondent's June and November 1991, appointments to the MIS 2 position.

ORDER

Respondent's action of failing or refusing to select appellant for its MIS 2 position in June and November 1991, is affirmed, and this appeal is dismissed.

Dated: August 18, 1994

STATE PERSONNEL COMMISSION


LAURIE E. McCALLUM, Chairperson

DRM:rcr


JUDY M. ROGERS, Commissioner

Parties:

Spencer Stewart
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Mark Bugher
Secretary, DOR
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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)