

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

Gloria M. Ambrose,)	
vs.)	
Norman Whitford, Director)	MEMORANDUM DECISION
Winnebago County Department)	
of Social Services,)	
Respondent.)	

This is an Appeal taken under the County Merit System Rules.

As we understand the process, the State Department of Health and Social Services sets up the specifications for the several positions that are under the County Merit System Rules. The State Bureau of Personnel announces competitive examinations for the respective positions, conducts the examination, creates a register of eligibles and, upon request, certifies the names of three eligibles for appointment to an opening.

The Appellant was on the eligible register for Clerk 1 in the Winnebago County Department of Social Services. There is no question but that Appellant met all of the requirements in the specifications for such position.

Along with two other names, she was certified for a Clerk 1 vacancy.

The Respondent Director was dissatisfied with the certification because he did not feel that any of the three certified would be suitable for the position that he had open.

The County Merit System Rules provide that for specific reasons set forth in the Rules that the State Bureau of Personnel can remove names from the eligible register.

Respondent Director requested the Bureau to remove the names of all three that had been certified to him from the said register. He did this to

have other eligibles certified to him from which to make a choice.

The Bureau upon his request did remove the name of the Appellant from the eligible register and we believe removed the name of one of the others who was certified.

Respondent Director's request to have Appellant's name removed from the register was that she had previously been employed in the Office of the Winnebago County Register of Deeds and had not passed probation for that position. His letter to the Bureau, Board's Exhibit 1, sets forth what he was informed were the reasons for Appellant's termination from the Register of Deeds job.

The Bureau in the notice to Appellant that her name had been removed from the eligible register stated that it was because "Your performance on the previous job was unsatisfactory and resulted from termination prior to completion of a probationary period". Board's Exhibit 2.

Removal of a name from the eligible register is not a judgment decision on the part of the Bureau. Removal may take place only for twelve reasons set forth in the County Merit System Rules. The specific bases for disqualification are these:

1. He is found to lack any of the preliminary requirements established for the examination for the class of the position.
2. He is so disabled as to be rendered unfit for the performance of the duties of the class.
3. He is addicted to the use of narcotics or the habitual use of intoxicating liquors to excess.

4. He has made a false statement of material fact in his application.
5. He has been dismissed for delinquency, misconduct or other similar cause.
6. He has used or attempted to use political pressure or bribery to secure an advantage in an examination or appointment.
7. He has directly or indirectly obtained information regarding examinations to which as an applicant he was not entitled to.
8. He has failed to submit his application correctly or within the prescribed time limits.
9. He has been convicted of any infamous crime or other crime involving moral turpitude.
10. He has taken part in the compilation, administration or correction of the examination.
11. He has been proven disloyal to the government of the United States of America.
12. He has otherwise violated provisions of these rules.

These twelve reasons for the disqualification of an ostensible eligible are reasons that go to the very essence of basic physical, mental and moral fitness to hold a civil service job. They are gauged to that purpose only and are not selection tools to eliminate qualified candidates that are basically acceptable. Because the reasons are so detailed they must be deemed to be exclusive. For the same reason they must be subject to a strict interpretation.

When the Board in advance of the hearing read the documentation in the file, particularly Board's Exhibits 1 and 2, we were concerned that the reasons given by the Respondent Director and the specification by the Bureau for the disqualification of the Appellant did not fit any of the twelve reasons for disqualification set forth in the Rules.

At the hearing at the insistence of the Board, Respondent Director stated that the reasons given were covered by No. 5 of the bases for disqualification, Record, page 9. No. 5 reads:

"He has been dismissed for delinquency, misconduct or other similar cause."

The Board permitted the Respondent Director to offer such evidence as he had as to Appellant's delinquency, misconduct, etc.

His evidence consisted of his own testimony that he knew that Appellant had been terminated from a position in the Office of the Register of Deeds before completion of probation and what he had heard from Viola Firnstahl, Register of Deeds, as to the reasons for the termination.

The only other evidence was an affidavit of the said Viola Firnstahl. Respondent's Exhibit 1.

What the Respondent learned from Firnstahl is inadmissible hearsay. Firnstahl affidavit is not competent evidence even in an administrative hearing. However, let us assume for the purposes of this discussion that all of that material is true.

The indictment of the Appellant was that she was "somewhat loud and brassy" and did not fit the image of a soft-spoken staff that Firnstahl preferred; that she allowed personal family affairs to occupy a great deal of her time; that when she finished an assignment she would wait until something else was handed her.

None of this in the Board's judgment amounts to delinquency or misconduct which in its ordinary meaning refers to a pattern of wrongdoing and the commission

of reprehensible acts. "Other similar cause" must be in the context of delinquency or misconduct. Appellant was not insubordinate, she did not do things that were unbecoming to the service; she did not have a bad record of attendance; she did not lie, cheat or misrepresent. The closest thing to misconduct was the alleged attention to personal affairs. There may be explanation for this in the fact that at the time she was in the Register of Deeds Office, Appellant's husband was in his terminal illness. Compassion is a necessary reaction to another's adversity. All of us sooner or later are brought to recognize it.

All of this is not to say that Firnstahl was not justified in terminating Appellant or that it would be wrong for the Respondent Director to consider the reaction of a previous employer in making his selection. The Board is saying that it was wrong to disqualify Appellant as an eligible.

Actually, the Board's conclusions as herein stated is based on the rationale that had Appellant been a permanent employe, the specifications against her would not support just cause for discipline of any sort.

At the hearing, there was a great deal of inter-tender of responsibility between the Respondent Director and the Bureau as to culpability if the Appellant's name had been wrongfully removed from the eligibility register.

As far as the Board is concerned, the removal of the name of an eligible from the register is the Bureau's act. Before it removes a name it should ascertain that the specifications fit one or more of the twelve reasons for disqualification set forth in the Rules. Having made that determination, the Bureau has to have more than a belief that the specification be true. It must have substantial evidence that the person subject to disqualification

actually did or not do what was specified. That probably would require some investigation.

The decision of this Board is that the removal of the name of the Appellant from the eligible register for Clerk 1 in the Winnebago County Department of Social Services was illegal.

Consequently, the appointment of any person to the vacant position who was certified for the position because of the disqualification of the Appellant or the illegal disqualification of anyone else on the eligible register is void.

Dated November ____, 1970.

STATE BOARD OF PERSONNEL

BY Gene H. Slechts
John D. Lerge
William Adams
Q. P. [Signature]

Member Slechts did not participate in this hearing.