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JEAN OLSON,

Appellant,

vs.

STANLEY C. DuROSE, JR., COMMISSIONER  
OFFICE OF THE COMMISSIONER OF  
INSURANCE, and C. K. WETTENGEL, DIRECTOR  
STATE BUREAU OF PERSONNEL,

Respondents.  
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#567

**OFFICIAL**

OPINION

and

ORDER

Before: AHRENS, Chairman; JULIAN and STEININGER,  
Board Members.

STEININGER, Board Member, for herself, AHRENS and JULIAN.

This is an appeal, pursuant to section 16.03, Wis. Stats., of the Rating by a Promotional Potential Examination which was held for the position of Insurance Examiner 4 (SR 1-15) in November, 1972. The main questions the appellant raises are (1) does the examination by Promotional Potential properly meet the definition of a competitive promotional examination as required by law and (2) was she rated in a fair and impartial manner.

As this is an examination appeal rather than a disciplinary one, the burden of proof in this case is upon the appellant who must prove by a preponderance of the evidence to a reasonable certainty that the examination was improper and/or that she was improperly rated, and that the examination should be declared invalid.<sup>1/</sup>

For the reasons stated under the heading "Opinion," the charges of the appellant are dismissed and the results of the examination are upheld. Under the heading "Facts,"<sup>2</sup> we find the facts as we are required to do by section 227.13, Wis. Stats.

FACTS

1. The appellant, Jean Olson, is and was at the time of this examination a permanent classified state employe in the Office of the Commissioner

<sup>1/</sup>  
Civil Burden of Proof.

of Insurance, State of Wisconsin, with the position classification and title of Insurance Examiner 3 (SR 1-14).

2. A new position of Insurance Examiner 4 (SR 1-15) was created in the Office of the Commissioner of Insurance prior to October, 1972, and that position was supervisory and was to be charged with the planning and supervision of field examinations by Insurance Examiners of Insurers as required by the Office of the Commissioner of Insurance.

3. The Office of the Commissioner submitted a certification request to the Bureau of Personnel in order that they might fill that vacancy.

4. The respondent, C. K. Wettengel, upon receipt of the certification request, determined pursuant to the authority of section 16.15, Wis. Stats., that this vacancy should be filled by competition limited to qualified permanent state employees in the classified service. Since he determined that the only such persons who also possessed the training and experience needed to perform this job were in the Office of the Commissioner of Insurance, he further decided to limit competition to departmental employees.

5. In October, 1972, a promotional announcement requiring these qualifications was prepared by the Bureau of Personnel and was circulated throughout the Office of the Commissioner of Insurance. The announcement requested that applications be submitted on or before October 23, 1972. The announcement further stated that the Bureau of Personnel would conduct the initial review of the applications in order to determine if applicants met the minimum stated qualifications; and that an examination would be held which would consist of one or more of the following: a written examination, a performance test, an oral examination, a rating of promotional potential, or an evaluation of state seniority.

6. Five applications for this position were submitted to the Bureau of Personnel on or before October 23; all applicants were found to meet the minimum qualifications.

7. The appellant, Jean Olson, submitted her application for this position on October 22 and was one of these applicants.

8. The respondent, C. K. Wettengel, determined that the most appropriate method of determining the relative qualifications, fitness and abilities of the applicants would be by the use of a Promotional Potential Rating examination with the rating factor of seniority as authorized by Pers. 6.05 Rules of the Director.

9. In accordance with Bureau procedures as outlined in the Administrative Practices Manual, the Promotional Potential Rating Forms and instructions for their use were forwarded to the Office of the Commissioner of Insurance for completion.

10. The three raters selected and approved by the Bureau of Personnel were Stanley C. DuRose, Jr., Commissioner, Martin F. Raynoha, Chief of the Examining Division, and Robert H. Walker, Assistant Chief of the Examining Division, Office of the Commissioner of Insurance. These individuals were familiar with the operations of the department and capable of making an objective rating of the promotional potential of each of the applicants.

11. Martin F. Raynoha and Robert H. Walker independently completed Promotional Potential Rating Forms for each of the five applicants and submitted them to the respondent, Stanley C. DuRose, who then reviewed their forms and prepared a consolidated rating form for each applicant, which was a synthesis of his ratings and those of Misters Raynoha and Walker. He then met with Misters Raynoha and Walker on November 6, 1972, and each of these three persons attached their signatures to the composite rating forms, indicating their concurrence with the final composite rating of each of the five applicants.

12. The completed composite rating form for each of the five applicants was forwarded to the respondent, C. K. Wettengel, for numerical scoring.

13. In accordance with a pre-existing key, numerical values were affixed to these rating forms and a total numerical grade was determined for each applicant in accordance with the point value assigned to each rating. The total grade on this form was then weighted 90 percent of the applicant's final score.

14. The appellant, Jean Olson, received a total score of 69.40; with a rating of 67.00 on the Promotional Potential Rating Form (weighted 90% = 60.30), and Seniority rated at 91.00 (weighted 10% = 9.10).

15. Since the passing score for Bureau examinations is 70.00, the appellant was scored as "failed" and she was therefore excluded from further consideration for this position. She received notification of the examination results on or about November 13, 1972.

16. On November 21, 1972, the appellant filed an appeal of her examination results with the Personnel Board.

#### OPINION

Jurisdiction is present. Sections 16.05(1)(e) and 16.05(2), Wis. Stats.

We dismiss the charges of the appellant that the Rating of Promotional Potential does not properly meet the definition of a competitive promotional examination as required by law and that she was not rated in a fair and impartial manner because she has not proved these allegations to be true as is required by law.

The respondent, C. K. Wettengel, in selecting the Promotional Potential Rating examination format, exercised a proper use of his discretion. This discretion is statutorily assigned to him in sections 16.10, 16.11(1), 16.12(4)(5), and 16.15, Wis. Stats.

All procedures and guidelines provided by the Bureau were followed in the completion and rating of the examination of the appellant. The alleged personality and professional conflicts are not proved by the record and therefore no showing has been made that these alleged conflicts rendered any of the three raters unable to make a fair and impartial rating of the appellant.

While the Promotional Potential Rating examination may be no more subject to bias than other forms of examinations, members of the Personnel Board who participated in this case strongly recommend the adoption of a procedure whereby, if it is determined that a Promotional Potential Rating examination will be used as the selection instrument for a particular position, candidates will be so advised prior to the administration of the examination. This procedure will provide administrative safeguards of challenge where impropriety or adverse effect can be shown.

All participating Members of the State Personnel Board conclude that the appellant has failed to show that her allegations are valid.

CONCLUSIONS OF LAW

We, therefore, conclude as required by 227.13, Wis. Stats., that:

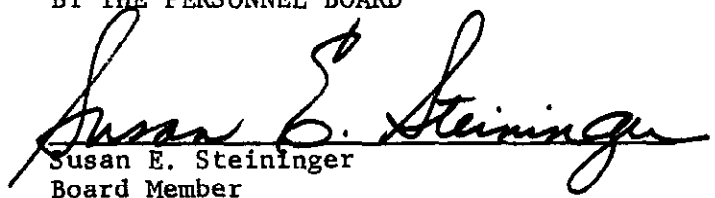
1. We have jurisdiction to hear this appeal.
2. The appellant has failed to show that her allegations are valid.
3. The examination is upheld as proper.

ORDER

For the reasons stated above and upon the entire record of this case, IT IS ORDERED that the appellant's appeal from this action of the respondent be dismissed on its merits.

Entered this 9th day of June, 1973.

BY THE PERSONNEL BOARD

  
Susan E. Steininger  
Board Member