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 LESLIE W. DAVIS, III,

 Appellant,

 v.

 WILLIAM BECHTEL, Secretary,
 Department of Local Affairs and Development,
 and C. K. WETTENGEL, Director, State Bureau
 of Personnel,

 Respondents.

 Case No. 74-30
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OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER, and WILSON, Board Members.

NATURE OF THE CASE

This is an appeal of an action of the Director of the Bureau of Personnel with regard to a selection process for the position of Research Analyst 1, Department of Local Affairs and Development, Division of State-Local Affairs, Bureau of Program and Policy Support. Respondents screened out Appellant before the final state of the selection process because of their negative evaluation of his experience. At the beginning of the hearing on the merits the Appellant indicated that he no longer was interested in receiving an appointment to this position. The Respondents moved to dismiss because of mootness. The hearing officer reserved a ruling on this motion to hear the case on the merits subject to the objection. The parties had previously stipulated that the following issues were presented by this appeal:

1. Was the Appellant improperly denied an interview for the Research Analyst I position?

2. Do the statutes relative to veterans points apply to the selection process for career candidate positions? If veterans points do apply to the selection process for career candidates, then were veterans points properly applied in this case to the filling of the Research Analyst 1 position?

3. Can the Board issue a stay against the State filling positions when an appeal is taken?

FINDINGS OF FACT

The position for which Appellant applied was Research Analyst I, Department of Local Affairs and Development, Division of State-Local Affairs, Bureau of Program and Policy Support. General duties and responsibilities included engaging in reference and research work on governmental problems, primarily those relating to local units of government compiling data and making recommendations to the bureau director, assisting in the evaluation of new division programs which impact upon local units of government, preparing written reports, correspondence and memoranda, and responding to written and telephone inquiries from local government sources. More specifically, the work involved land use planning, environmental protection and transportation. The agency needed a person for this position who would be able to begin to function at near capacity from the beginning of his or her employment with very little training or on the job education required. Such a person would have to be knowledgeable about the functions of local government in Wisconsin and how government carries out those functions, including related fiscal and economic matters and statutory requirements.

The agency determined after a review of the Appellant's application materials that he did not have this experience and he was notified that he would not receive further consideration for the position. Appellant had previously passed the first step of the screening process, which consisted of an examination of his educational credentials. The next steps of the process, from which Appellant was excluded, consisted of a further screening of the written application materials followed by oral interviews.

The Appellant's experience, as summarized in "a brief essay statement indicating why [he was] especially qualified," which was requested by the job announcement, is as follows:

As an Army officer for three years I conducted investigations of problems, made recommendations, carried out programs, prepared reports and carried out correspondence and coordination with other agencies. As a VISTA Volunteer during 1965-1966 I worked with various local agencies in a city in Florida and conducted a program evaluation of the community action agency I was assigned to.

The Appellant is a veteran and would have been eligible for a veteran's preference pursuant to S. 16.12 (7), Wis. Stats., if this provision had been utilized.

Since filing this appeal, the Appellant has taken another job and is not interested in the position in question.

CONCLUSIONS OF LAW
RESPONDENTS' MOTION TO
DISMISS ON THE GROUNDS THAT
THE APPEAL IS MOOT

The Respondents moved to dismiss this appeal on mootness grounds inasmuch as Appellant is no longer interested in the position in question. The Appellants expressed an interest in having the case heard and the issues determined for the benefit of the civil service system and to vindicate at least symbolically his perception of injustice in the handling of his application.

We are reluctant to entertain proceedings involving matters that have been mooted by changes in circumstance. However, we note that this matter has been on our docket for approximately a year and a half, that the Appellant despite his change in circumstances, has pursued the matter through a hearing, and that a full hearing on the merits has been held. Section 16.05 (4), Wis. Stats., gives the Board discretionary authority to "make investigations and hold hearings on its own motion or at the request of interested persons and issue recommendations concerning all matters touching the enforcement and effect of this subchapter and rules prescribed thereunder." Under the facts and circumstances of this case we will construe Appellant's appeal letter as a request for investigation, treat this matter as an investigation in accordance with S. 16.05 (4), and deny Respondent's motion to dismiss.

THE APPELLANT WAS NOT IMPROPERLY
DENIED AN INTERVIEW FOR THE RESEARCH
ANALYST I POSITION

We conclude that the agency properly determined that Appellant should not be interviewed. His experience was not the kind the agency wanted for this position. The type of experience required by the agency clearly was related directly to the duties and responsibilities of the position.

THE STATUTE RELATIVE TO
VETERANS POINTS DOES NOT APPLY TO THE
SELECTION PROCESS FOR CAREER
CANDIDATE POSITIONS

Section 16.12 (7), Wis. Stats., provides: "A preference shall be given to any qualifying veteran. A preference means that whenever a veteran gains

eligibility on any competitive employment register, 5 points shall be added to his grade" Section 16.18 provides:

The director may establish by rule an entry professional class program for use in a wide range of entry professional positions.

(1) In connection with this program the director may:

* * *

(b) Provide that certification and appointments may be made from among any applicants who have attained eligibility or by a process of selective certification from among all eligibles.
(Emphasis supplied.)

The latter provision provides the Director added discretion and the authority for not utilizing veterans' preference points.

BOARD'S POWER TO ISSUE
STAY AGAINST FILLING
POSITIONS PENDING APPEAL

We decline to reach any decision or make any recommendations or issue any order on this issue. The Personnel Board is a creature of statute and as such its power is limited to that which is granted by the legislature. At the same time, it does have the implied power necessary to effectuate its express powers:

As a general rule, however, in addition to the powers expressly conferred on them by organic or legislative enactment, such officials and bodies, in the absence of restricting limitations of public policy or express provision as to the manner of exercise of the powers given, have such implied powers, and only such implied powers, as are necessarily inferred or implied from, or incident to, or reasonably necessary and fairly appropriate to make effective, the express powers granted to, or duties imposed on, them. 73 C.J.S. Public Administrative Bodies and Procedure, S. 50, pp. 373-374.

See also 46 Opinion Atty. Gen. 280, 281 (1957).

It may be that the Personnel Board has the implied power to enter an interim order staying the filling of the position pending an appeal. However, in this case by the time a hearing was held the matter had been mooted. The record does not contain specific facts concerning the nature of the parties' respective positions at the time an interim order might have been effective. We decline to reach any decision or make any recommendations or issue any order on this issue in the abstract, since we believe the question of whether the entry of such an interim order is reasonably necessary to effectuate the express powers granted by the legislature depends to an extent on the particular facts of the case where the entry of such an order is sought.

Page 5

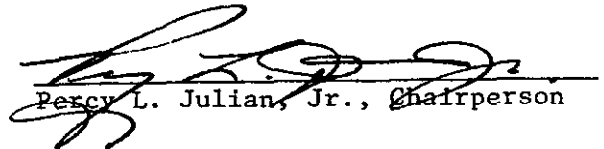
Davis v. Bechtel and Wettengel - 74-30

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed and that the foregoing Opinion represents the recommendations of the Board pursuant to S. 16.05 (4), Wis. Stats.

Dated November 25, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson