

his seniority, his status as a veteran or his status as a disabled veteran. The appellant and the two other applicants were certified as eligible for the position. All were interviewed by the District Chief, who as the three applicants' supervisor, was quite familiar with each individual's background and capabilities. Because he was still on sick leave, the appellant's interview was conducted by phone. He was not appointed to the position.

CONCLUSIONS OF LAW

The appellant contends that the examination and appointment process is invalid because he received no preference for his seniority, his veteran's status or his disabled veteran's status. We conclude that the failure to award and use such a preference was, at most, harmless error because the appellant was certified eligible and interviewed for the position despite the failure to award such a preference.

Section 16.12(7), Wis. Stats., directs the addition of five preference points to the examination scores of veterans. An additional five points are added to the scores of disabled veterans. Those scores are then used to rank applicants on an employment register for a position. Section 16.20, Wis. Stats., directs that the top three applicants on the employment register are to be certified and interviewed for the position. Selection of one of the certified applicants is not required to be made on the basis of the exam scores. If that were the case there would be no reason to certify more than the top ranked applicant. The purpose of certifying three names is to allow the appointing authority to exercise a certain amount of discretion in the appointment. See State ex rel. Buell v. Friar, 146 Wis. 291 (1911). Thus, veterans preference points come in to play only during the examination process, prior to the certification. In the present appeal, only three individuals applied, of whom all were certified.

The utilization of veterans points was not required.

As to preference for his seniority, the appellant has offered nothing to suggest that such a preference should be given. In fact, preference for seniority would appear to conflict with the requirements of s. 16.11, Wis. Stats., which requires appointments to be made "only according to merit and fitness." If appellant's contention is that his seniority reflects positively on his "merit and fitness" for the position, then the record indicates he received some credit for his seniority when the evaluation of his training and experience resulted in his certification for the position.

The appellant argues that, contrary to the provisions of s. 16.14, Wis. Stats., he was rejected for the position because of his handicap. We find nothing in this record to indicate discrimination because of the appellant's handicap. The appellant's supervisor who conducted the interviews testified that the appellant's handicap did not affect his present duties, would not affect his duties if appointed to the trainee position, and had not been a factor in the decision as to who would receive the appointment.

The appellant characterizes the appointment process as a "set-up" to give the position to Ms. Zastrow. This belief was fostered by a remark to that effect allegedly made by Mr. Hammer, the head of the section to which the trainee position was allocated. Mr. Hammer denied making the remark but conflicting testimony was offered by another District 2 employe. We find the remark to be of questionable or no importance in establishing a "set-up" because Mr. Hammer had no actual knowledge of the decisionmaking process for making the appointment. He did not help make the decision. He had no influence or input into the actual decision. Thus, the remark, if made, could only constitute a personal belief about an appointment process with which he had no actual contact.

The appellant objects to the reliability and validity of what he calls the oral examination because the respondent cannot accurately recall the questions used. This argument confuses his telephone interview with the examination. The actual examination was the screening of application materials for background training and experience. Such a screening examination is authorized by Pers. §6.05(2), Wis. Adm. Code:

"(2) The examination may include any technique or techniques which the director deems appropriate to evaluate applicants such as: . . . an evaluation of training, experience, and other biographic information; . . . "

The appellant's last objection is to the size of the recruitment base for the position. He insists that District 2 was insufficient under s. 16.10, Wis. Stats., which requires the broadest base possible. We conclude that the respondent used a sufficient recruitment base. Section 16.10, Wis. Stats., provides:

"Recruitment.

To attract the best qualified applicants to the classified service, recruitment prior to each examination shall be on the broadest base consistent with sound personnel management practice, with due consideration given to the provisions of s. 16.15."

Section 16.15, Wis. Stats., qualifies recruitment on the broadest base as follows:

"Promotion.

When, in the judgment of the director, the group of applicants best able to meet the requirements for vacancies in positions in the classified service are available within the classified service, such vacancies shall be filled by competition limited to persons in the classified who are not employed under s. 16.21."

Thus, with this promotional position, respondent could decide to limit recruitment to the classified service. Pers. §12.02, Wis. Adm. Code then requires that, unless reasons are given, competition be limited to the employing unit (here District 2 is the employing unit). Therefore under the Administrative Code and Wisconsin Statutes, Respondent's recruitment base was sufficient.

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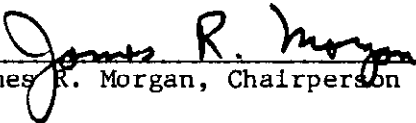
BURDEN OF PROOF

Some question exists as to which party bears the burden of proof in this appeal. The parties stipulated to reserve a ruling on this question until after the hearing. Since the case does not involve a technical question of exam validity or a disciplinary matter, it is concluded that the burden is on the appellant. See 73 C.J.S. Public Administrative Bodies and Procedure, §124; 2 Am. Jur. 2d Administrative Law §391. In any event, the result would be the same on the record regardless of who has the burden of proof.

ORDER

It is ordered that the respondent's action is affirmed and this appeal is dismissed.

Dated: 12-12, 1977. STATE PERSONNEL BOARD


James R. Morgan, Chairperson