

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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JOHN MARTIN,

Appellant,

v.

SECRETARY, Department of  
Transportation,

Respondent.

Case No. 75-69

\* \* \* \* \*

**OFFICIAL**

OPINION  
AND  
ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an appeal of a grievance pursuant to § 16.05(7), Wis. stats. The parties agreed to hold this matter in abeyance pending proceedings in a claim involving the same subject matter before the Equal Rights Division, DILHR. Following a final decision by that agency dismissing Mr. Martin's complaint, the respondent moved to dismiss this appeal. The Board has reviewed its entire file in this matter.

FINDINGS OF FACT

1. In his non-contractual grievance that was appealed to the Board the appellant alleged that the agency had denied him promotion from Engineering Technician II to Engineering Technician III on account of race discrimination in violation of §111.31-37, Wis. stats.

2. The appellant filed a complaint of discrimination with the Equal Rights Division also alleging that he had been denied promotion from Engineering Technician II to Engineering Technician III on the basis of race discrimination.

3. The Labor and Industry Review Commission on August 26, 1977, concluded that the appellant (complainant) failed to prove that he was denied a reclassification on the basis of race or that the respondent discriminated against him in conditions of employment on the basis of race in violation of the Wisconsin Fair Employment Law, and entered an order dismissing his complaint.

4. The Department of Transportation is and was the respondent in this appeal and the proceeding before Equal Rights Division.

#### CONCLUSIONS OF LAW

1. There is identity of parties between this appeal and the Equal Rights Division proceeding.

2. There is identity of issues or "cause of action" between this appeal and the Equal Rights Division proceeding.

3. The doctrine of res judicata or collateral estoppel is available in Personnel Board proceedings.

4. The requisite elements of the doctrine being present, this appeal is therefore barred.

#### OPINION

The doctrine of res judicata may be broadly stated as follows:

" . . . an existing final judgment rendered upon the merits is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." See 45 Am. Jur. 2d, Judgments § 394; Van Susteren v. Voigt, Wis. Pers. Bd. 73-126, 128 (12/11/75).

Under appropriate circumstances, this doctrine is applicable to administrative decisions. See 2 Am. Jur. 2d, Administrative Law § 502. While the Wisconsin supreme court has said that the doctrine of res judicata has no

application to the proceedings of an administrative agency, Fond du Lac v. DNR, 45 Wis. 2d. 620, 625, 173 N.W. 2d. 605 (1970), this was with respect to legislative-type determinations in the context of the continuing exercise of ongoing regulatory authority subject to continually changing facts and circumstances. Quasi-judicial or adjudicative administrative action presents different considerations. See Davis, Administrative Law Text (3d Edition), chapter 18, who points out that such proceedings usually involve decisions about past facts, not constantly-changing circumstances. There is a public interest in finality which is not served if a party to a controversy is permitted to relitigate if following an unfavorable decision.

The elements of res judicata or collateral estoppel are an identity between the parties and an identity between the "cause of action or the issues sued on," Leimert v. McCann, 79 Wis. 2d. 289, 294, 255, N.W. 2d. 526 (1977).

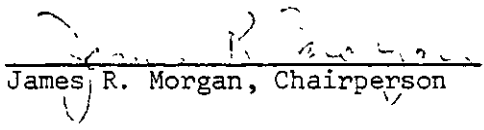
The parties to this appeal are identical to the parties to the Equal Rights Division proceeding. Furthermore, the allegations made in the grievance appealed to this Board are the same as those made in the Equal Rights complaint. In both cases the appellant alleges denial of a promotion on account of race. Under such circumstances it is the opinion of the Board that having obtained a final determination on this question in DILHR, the doctrine of res judicata should be applied to prevent the relitigation of exactly the same question in another forum.

ORDER

This appeal is dismissed on the ground that it is barred by the doctrine of res judicata.

Dated: April 11, 1978

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson