
 *
 ELOISE ANDERSON-ADDISON, *
 *
 Appellant, *
 *
 v. *
 *
 SECRETARY, Department of Health and *
 Social Services, *
 *
 Respondent. *
 *
 Case No. 77-208 *
 *

OFFICIAL

OPINION AND ORDER

Before: James R. Morgan and Calvin Hessert with Dana Warren abstaining.

NATURE OF THE CASE

This is an appeal from the decision of the Director to exclude appellant's name from the employment register.

FINDINGS OF FACTS

1. At the hearing the parties entered into the following stipulation of facts:

1. The position of Administrative Officer 1 - Confidential - Department Affirmative Action Officer was announced December 13, 1976.
2. Appellant submitted a timely application.
3. Appellant was found by respondents to meet the training and experience requirements for the position and was allowed to compete.
4. The examination (achievement history questionnaire) was mailed to appellant on or about May 18, 1977.
5. There was an attempt to deliver the examination material to 2412 Fontaine Circle, Madison, Wisconsin sometime between May 18 and June 9, 1977.
6. The examination materials were returned to sender (respondent) as unclaimed by addressee (appellant) on June 9, 1977.
7. The register for the position was created August 11, 1977.
8. The top three candidates (Sikora, Gooden and Roehmann) were certified on August 11, 1977.

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9. Sikora withdrew from further competition.
10. The fourth rank candidate (Smith) was certified on August 24, 1977.
11. On or before August 31, 1977 appellant called George Lewis, Personnel Specialist, Staffing Section, Bureau of Central Personnel (DHSS).
12. Appellant picked up the examination on August 31, 1977 from Abby Vogel.
13. Candidates Gooden and Smith were interviewed on September 2, 1977, candidate Roehmann on September 6, 1977.¹
14. As a result of the above interviews Smith was recommended for appointment.
15. Sikora was never interviewed for the position in question.
16. Appellant returned the examination on September 6, 1977.
17. Her examination was sent to a panel of three graders on September 6, 1977.
18. The grader individually graded and returned appellant's examination and it was scored by the Personnel Office on or about October 12, 1977.
19. Smith was interviewed a second time on October 31, 1977.
20. Smith was selected and an appointment letter signed by Donald Percy, Secretary of DHSS, was issued.
21. Appellant received the highest score of all those examined. Her score was 99.55.

2. Appellant is presently employed as a Municipal Management Consultant for the Department of Employment Relations and Local Affairs and Development.

3. Appellant's address before November, 1976 was 4 Canyon Drive, Madison, Wisconsin. Since November, 1976 her address has been 2412 Fontaine Circle, Madison, Wisconsin. Both the application and resume submitted by appellant for the position in question reflected the latter address.

4. Appellant called the Personnel Office in April or May, 1977 to make sure her application had been received since she had not heard anything further about the selection process. She was assured her application had been received.

1. Ralph Jefferson testified that Gooden and Roehmann were interviewed on September 2, 1977 and Smith on September 6, 1977.

5. In late August, 1977 appellant learned that the examinations had been distributed, returned and scored. Very shortly thereafter she called George Lewis who advised her on August 30, 1977 that she would be permitted to take the examination.

6. Appellant received a letter from Ralph Jefferson, Special Assistant to the Secretary, dated October 13, 1977 and confirming an invitation to interview for the position in question on October 18, 1977. A four person panel (one white female, two black males, one white male) interviewed appellant for the position on that date.

7. Sometime after the interview appellant was advised by Ken DePrey, who heads up the respondent's Personnel Task Force that she was no longer being considered because she had provided an incorrect address on her application. Subsequently she also received a letter dated October 21, 1977, from Jeanne Neesvig, Staffing Specialist, Bureau of Central Personnel, DHSS. This letter advised appellant she was no longer being considered for the position in question because a register had been created and certification made before she had been given the examination. The letter stated that DHSS personnel were in error in permitting appellant to complete the examination.

8. Appellant was out of town on business for a week when the examination materials were mailed certified mail to her Fontaine Circle address. She returned home Friday evening and she attempted to pick up the mail at the post office on Saturday morning but was advised it had been returned to the sender. Appellant did not attempt any further action to determine what mail had been returned or who the sender was.

9. Appellant appealed the decision to disallow her further competition for the position by letter dated and received by the Personnel Board November 2, 1977.

10. By letter dated October 19, 1977 Ralph Jefferson, Special Assistant to the Secretary, requested that Ms. Betty McGlynn [sic], a person listed by appellant as a reference, prepare a recommendation for appellant. She did submit a recommendation by letter dated October 31, 1977, after being advised by Mr. Jefferson that the position had not been filled yet.

11. Appellant's name was not placed on the register and she was not certified for the position in question. Appellant was never sent a notice of examination results.

12. After appellant's interview, the panel again agreed on its unanimous recommendation of Smith to the appointing authority for the position in question.

13. Mr. Jefferson was unaware at the time of appellant's interview and the subsequent panel recommendation to hire Smith, that appellant's examination results were voided or that the Director of the Bureau of Personnel had agreed to the decision not to allow appellant to compete further.

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction to hear this appeal under s. 16.05(1)(f), Wis. Stats. (1975).

2. The burden of proof is on the appellant to show that the decision to exclude her name from the employment register was illegal or an abuse of discretion. Reinke v. Personnel Board, 53 Wis. 2d 123 (1971); Lyons v. Wettengel, Case No. 73-36 (11/20/74); Greene v. Wettengel, Case No. 73-4 (6/2/75); Heiser v. Schmidt and Wettengel,

Case No. 566 (6/9/73); Miller v. Wettengel, Case No. 452 (6/11/73).

3. Appellant has failed to sustain her burden.
4. Respondents' action to exclude appellant's name from the register was not illegal nor an abuse of discretion.

OPINION

Section 16.20, Wis. Stats., states in pertinent part:

1. Appointing authorities shall give written notice to the Director of any vacancy to be filled in any position in the classified service; and the Director shall certify, pursuant to this subchapter and the rules of the Director, from the register of eligibles appropriate for the kind and type of employment, the grade and class in which the position is classified, the 3 names at the head thereof, which have not been certified 3 times.
2. Unless otherwise provided in this subchapter and rules pursuant thereto, appointment shall be made by appointing authorities to all positions in the classified service from among those certified to them in accordance with sub. (1). . . .

Section Pers. 11.01, W.A.C., sets forth the following on the establishment and maintenance of employment registers:

1. The Director shall establish and maintain employment registers to fill positions in the classified service.
2. Employment registers shall be established by class title, recruitment option or position.
3. Names may be integrated into employment registers when, in the judgment of the Director, the needs of the service will be benefited.

Appellant was advised by Ken DePrey in late October that she would not be considered further for the position in question because she had given incorrect information about her address on her application and the selection process was far advanced. The decision was made by Verne H. Knoll, Deputy Director of the

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Bureau of Personnel concurred in by David Riehle, Chief of the Staffing Section of the Bureau, based upon a recommendation by Mr. DePrey. The factual basis of this recommendation was incorrect.

It appears from the facts that while the above decision was being made, appellant was interviewed for the position. Apparently it was not known by the interviewing panel that appellant was no longer to be considered and compared with the other candidates. However, the panel's unanimous recommendation for the hiring of candidate Smith remained unchanged.

It is clear that appellant's name could have been added to the register for the position of Administrative Officer 1 - Confidential - Department Affirmative Action Officer. Sec. Pers. 11.01(3). We conclude that this action could be taken even after certification from the original register had been made. However, any such action is discretionary.

While the factual basis for the decision to exclude appellant from further competition was partially incorrect, we do not conclude that the decision itself was an abuse of discretion. Appellant filed her application in early January, 1977. Four or five months later she inquired as to whether her application had been received. Yet another three or four months lapsed before she made inquiry again. While we recognize that there are times that the selection processes for civil service positions are slow, it is not unreasonable to expect an applicant to make more frequent inquiries than appellant did considering the length of time involved.

Furthermore, there was an attempted delivery of the examination materials to her correct address. Unfortunately appellant was not home at the time and by the time she tried to pick up the mail, the materials had been returned to the sender.

She did not know who had sent the mail nor did she try to find out. We do not conclude that respondents have the responsibility of doing more than what was apparently done here. We are not holding, however, that additional steps could not have been taken especially since appellant resided in Madison and worked for the state and therefore, was presumably easily reachable. Our conclusion is only that respondents were not required to take any further steps.

Finally, by the time appellant had learned that the examination had been given and she returned hers completed, the register had been established, the top three candidates had been certified, the interviews of those candidates had been conducted and a decision on the hiring recommendation had been made by the interviewing panel. We conclude that the Deputy Director's decision was not necessarily an abuse of discretion.

Even assuming arguendo that the decision was an abuse of discretion, we conclude that appellant was fully considered for the position and, therefore, not prejudiced by the Deputy Director's decision except her name was not placed on the register. Appellant was clearly considered by the interviewing panel which determined that they would not change their recommendation.

We recognize that this examination process was poorly handled. A firm decision should have been made whether appellant would be allowed to compete before she was given an examination and before she was interviewed. Appellant was clearly a highly qualified candidate who would have been certified based upon her score if she had received and submitted her examination in a timely manner.

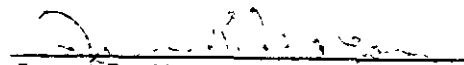
ORDER

IT IS HEREBY ORDERED that respondents action is affirmed and this appeal is dismissed.

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Dated: June 16, _____, 1978

STATE PERSONNEL BOARD



James R. Morgan, Chairperson