
KATHLEEN E. MARQUARDT, *

Appellant, *

v. *

SECRETARY, Department of Industry, *

Labor and Human Relations and *

DEPUTY DIRECTOR, Bureau of *

Personnel, *

Respondents. *

Case No. 77-214 *

OFFICIAL

INTERIM
OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal pursuant to §16.05(1)(f), stats. of the denial of appellant's admission to an examination by the respondents. At the prehearing conference the respondents took the position that this appeal is foreclosed because the parties already litigated the same dispute in another Personnel Board appeal, 77-101, which was decided September 15, 1977. The parties have submitted briefs on this question. This decision is based on the record to date and is limited to this question.

FINDINGS OF FACT

1. In case No. 77-101, the parties were the present appellant, the Chairperson, Department of Industry, Labor and Human Relations, and the Deputy Director.

2. In the instant case, the parties are the appellant, the Secretary, Department of Industry, Labor and Human Relations, and the Deputy Director, State Bureau of Personnel.

3. In 77-101, appellant had been denied admission to an examination for Job Service Supervisor 2.

4. In the instant case the appellant has been denied admission to an examination for Job Service Supervisor 1, Monetary Determination Section, Madison area.

4. In 77-101, the Board concluded that appellant failed to discharge her burden of proving that she had the requisite 3 years of professional training or experience for admission to the examination.

5. In the instant case the appellant has alleged in her appeal that she was denied entrance to the examination because of a lack of experience at pay range 12-01 or above and that this requirement blocks the advancement of female intake supervisors.

CONCLUSIONS OF LAW

1. There is identity of parties between this appeal and 77-101.
2. There is not identity of issues or "cause of action" between this appeal and No. 77-101.
3. The doctrine of res judicata or collateral estoppel is available in Personnel Board proceedings.
4. The requisite elements of the doctrine not being present, this appeal is not 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 46 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 it following an unfavorable decision.

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

In the two cases under consideration here, there is identity between the parties. However, although the respondents argue that both the appellant's rejections were based on failure to show required professional level experience, the fact is that the examinations are for positions with different classifications and the appellant has raised an issue of sex discrimination that was not present in the earlier case.

The appellant made an argument in her brief in the res judicata issue that the Board should not apply the doctrine here since the first hearing was "patently unfair" since the appellant was not then represented by counsel and there was little evidence presented to counter the respondents' case. The Board wishes to

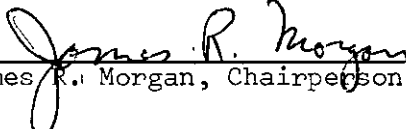
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make it clear that the doctrine of res judicata will be applied where appropriate and an appellant who appears without counsel is not entitled to a second hearing solely on the grounds of lack of representation at the first hearing.

ORDER

The doctrine of res judicata or collateral estoppel will not be applied to any part of this appeal, which shall be scheduled for hearing in due course.

Dated: April 11, 1978 STATE PERSONNEL BOARD


James R. Morgan, Chairperson