

* * * * *

MANUEL J. JUAREZ,

Appellant,

v.

ATTORNEY GENERAL, Department of
Justice and DEPUTY DIRECTOR, Bureau
of Personnel,

Respondent.

Case No. 77-215

* * * * *

OFFICIAL

OPINION AND
ORDER

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

NATURE OF THE CASE

This is an appeal of an examination pursuant to § 16.05(1)(f), stats.

At the prehearing conference the following issue was established:

"Whether or not in denying appellant admission to the oral examination for Deputy Fire Marshal respondent erred in evaluating appellant's qualifications.

FINDINGS OF FACT

1. The position in question, Deputy Fire Marshal, is in the classified civil service in the Department of Justice, and the examination was conducted by the Department on a delegated basis pursuant to § 16.03(2), stats.

2. Sometime after the Department became aware of the impending vacancy, the Departmental Personnel Officer consulted with the Chief Deputy Fire Marshal to prepare a position description and to identify the high importance job content.

3. Based on this position analysis the Department determined that law enforcement background would be needed for this position.

4. Based on this determination, it further was determined to limit competition for the position on a departmental promotional basis.

5. Following the original announcement there was only one applicant certified.

6. A supplemental certification was requested and the agency then reannounced on an open competitive basis. Appellant's Exhibit 1.

7. The appellant then applied for and was admitted to the exam on the basis of possession of the necessary training and experience qualifications contained in appellant's exhibit 1.

8. The second stage of the examination process was the evaluation of an achievement history questionnaire.

9. This questionnaire was developed by the Department which related it to the high importance job content identified by the position analysis.

10. The questionnaire was then reviewed and approved by the Bureau of Personnel for content validity.

11. The questionnaires were reviewed by 2 raters recommended by the Division of Criminal Investigation, one a past Fire Marshal and another a Special Tax Agent of the Department of Revenue.

12. Each rater was sent instruction guidelines, respondents' exhibit 1, with the completed questionnaires.

13. The appellant failed to achieve a passing score (70) and was not permitted to proceed to the next stage of the process, an oral exam.

14. The appellant had no criminal investigative experience or experience in fire inspection, investigation, or suppression, but did have 4 years of experience as a Safety Specialist, as detailed on his achievement history questionnaire, appellant's exhibit 2.

15. Comparison of all the scores awarded by the raters resulted in a reliability coefficient of 0.81.

16. This reliability coefficient is relatively high and far exceeds the minimum standard utilized by the Bureau of Personnel.

17. There were 38 applicants for the position in the open competitive phase. The appellant was the only minority. There were no females. Thirty-one of the applicants, including appellant met the requisite training and experience. Of these 31, 4, including appellant, failed to achieve a passing score of 70 at the achievement history questionnaire stage of the exam process.

CONCLUSIONS OF LAW

1. Pursuant to § 16.12(4), stats., the examination in this case, the achievement history questionnaire, was "of such character as to determine the qualifications, fitness and ability of the persons examined."

2. Pursuant to § 16.12(5), stats., the respondents did not err in establishing a standard at one point in the selection process, the achievement history questionnaire, which contained more exacting requirements than contained in the training and experience stated in the announcement.

3. The respondents did not err in evaluating appellant's qualifications in denying him admission to the oral examination phase of the examination process for Deputy Fire Marshal.

OPINION

The Department's criteria for this position were relatively narrow and specialized in the area of criminal and arson investigation. This was reflected in the achievement history questionnaire and the instructions to the raters, as well as the testimony of the Departmental Personnel Manager. However, these

Juarez v. Dept. of Justice & Bur. of Pers.
Case No. 77-215
Page Four

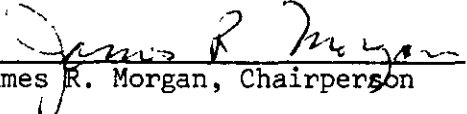
criteria were tied to the position analysis and are job related. The record does not support a determination that the raters erred in their evaluation of appellant's qualifications. Since the appellant was the only minority or female to apply for this position and to be evaluated by this questionnaire review, there is insufficient data to reach any conclusion on the question of whether this selection device had a disparate impact on women and minorities. In any event, as voted above, this facet of the examination was job related. Evidence relating to the recruitment base for the position and the Department's record in affirmative action hiring is not material to the issue of whether respondents erred in evaluating appellant's qualifications, which was the only issue established at the prehearing conference. Such evidence might be material to a broader-based allegation of discriminatory conduct, but not in the relatively narrow confines established by the appeal letter and the issue established at the prehearing conference, which in turn was the basis for statutory notice of hearing pursuant to § 227.07(2), stats. The respondent is entitled to reasonably specific notice of the matters asserted or issues prior to the hearing. Compare, Wisconsin Telephone Co. v. DILHR, 68 Wis. 2d 345, 228 N.W. 2d 649 (1975).

ORDER

The actions of the respondents are affirmed and this appeal is dismissed.

Dated: 2-20, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson