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CRISTY BRANDSTEDTER,

Appellant,

v.

SECRETARY, Department of Health and Social Services and DEPUTY DIRECTOR, Bureau of Personnel,

Respondents.

Case No. 77-32

* * * * *

OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

This appeal--filed pursuant to s. 16.05(1)(f), Wis. Stats.--objects to the respondent's refusal to apply veterans points to the appellant's examination score in his competition for a state position. The decision in this case is based upon the record as submitted by the parties.

FINDINGS OF FACT

1. The appellant applied for a Disability Claims Adjudicator I (DCA I) position with the Department of Health and Social Services (DHSS).
2. This DCA 1 position was listed as a Wisconsin Career Candidate (WCC) position in the WCC bulletin.
3. In competing for the position, the appellant participated in an examination.
4. Veterans preference points were not applied to the appellant's examination score.

5. The appellant's examination score did not qualify him for an oral interview for the DCA 1 position.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to determine whether the respondent is required by state law to apply veterans points to the appellant's examination score. Section 16.05(1)(f), Wis. Stats.

2. The Board does not have jurisdiction to determine whether or not the respondent is required to apply the preference points either by federal guidelines and laws or by contracts between the respondent and the federal government.

3. The burden of proof is on the appellant to show to a reasonable certainty, by the greater weight of the credible evidence, that the respondent was incorrect in refusing to apply veterans points to the appellant's examination score.

Reinke v. Personnel Board, 53 Wis. 2d 123 (1971).

Ryczek v. Wettengel, 73-26, 7/2/74.

Lyons v. Wettengel, 73-36, 11/20/74.

4. The appellant has not met this burden. Therefore, the Director's action must be affirmed.

OPINION

The appellant has argued that the respondent's failure to apply veterans points to his examination score is in violation of state and federal laws, federal guidelines, and contracts between the state and the federal government. While the Board has jurisdiction to determine whether state law requires the respondent to apply veterans points in the present case, it does not have jurisdiction to determine whether this application of points is required by federal laws or guidelines.

Nor does the Board have jurisdiction to interpret contracts between the state and a federal agency to determine whether these agreements require the application of the points. The jurisdiction of the Board, as set forth in s. 16.05, Wis. Stats., does not encompass consideration of such matters of federal concern. Thus, the issue before the Board in this appeal is whether or not the respondent's action was incorrect because it was in violation of state law.

This issue of whether or not state law requires that veterans points be applied to applications for WCC positions has previously been before the Board. In resolving this issue in Davis v. Bechtel and Wettengel, 74-30, 11/25/75, the Board stated:

THE STATUTE RELATIVE TO
VETERANS POINTS DOES NOT APPLY TO THE
SELECTION PROCESS FOR CAREER
CANDIDATE POSITIONS

Section 16.12(7), Wis. Stats., provides: "A preference shall be given to any qualifying veteran. A preference means that whenever a veteran gains eligibility on any competitive employment register, 5 points shall be added to his grade"
Section 16.18 provides:

The director may establish by rule an entry professional class program for use in a wide range of entry professional positions.

(1) In connection with this program the director may:

* * *

(b) Provide that certification and appointments may be made from among any applicants who have attained eligibility or by a process of selective certification from among all eligibles. (Emphasis supplied.)

The latter provision provides the Director added discretion and the authority for not utilizing veterans' preference points.

Brandstedter v. DHSS & Bur. of Pers.
Case No. 77-32
Page Four

Applying the approach used in Davis to the facts of the present case, it must be concluded that the respondent was not incorrect in refusing to apply veterans points to the appellant's score in his competition for the career candidate DCA 1 position.

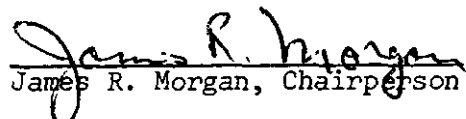
The appellant has also failed to support his assertions regarding the propriety of including the DCA 1 position in the WCC program and regarding the propriety of the examination score selected by the respondent as the "cut off figure" determining continued eligibility in the competitive process.

ORDER

IT IS HEREBY ORDERED that the decision of the respondent is affirmed and this appeal is dismissed.

Dated: June 16, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson