

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 MARILYN K. PITTZ, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF HEALTH, *
 AND SOCIAL SERVICES AND *
 DIVISION OF PERSONNEL *
 *
 Respondent. *
 *
 Case No. 79-116-PC *
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OFFICIAL

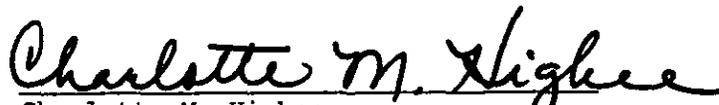
ORDER

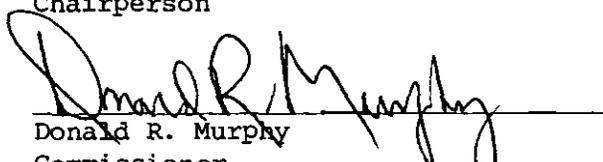
This matter is before the Commission for consideration of a proposed decision by the hearing examiner. Having considered the arguments and objections of the appellant, and having consulted with the hearing examiner, the Commission adopts the proposed decision and order, a copy of which is attached hereto and incorporated by reference as if fully set forth, except for the amendments and changes as set forth below, as its final decision of this matter:

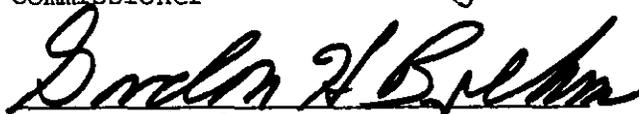
1. Conclusion of Law #4 is amended by adding: The procedure was not required to be in conformance with Sec. 230.16(4) Stats., since it was used in a post-certification situation.
2. On page 6, the following paragraph is added in response to appellant's objection that the hearing examiner failed to consider the testing guidelines of the American Psychological Association (APA):

Appellant requested that the hearing examiner take official notice of the Standards for Educational and Psychological Tests published by the APA (App. Exh. 9). These standards were received in evidence by the examiner subject to respondent's objections as to relevancy. The examiner found that the procedure used in evaluating Food Service Worker 2's (FSW 2) for possible reclassification as Food Service Worker 3's (FSW 3) was job-related and predictable of actual job performance. However, since the procedure was not an examination per se but rather a post-certification evaluation of the employe's ability to perform at the higher level, the provisions of Sec. 230.16(4) Stats. are not applicable and the standards are deemed irrelevant. All references to validity in the decision are not made within the scientific meaning of the term.

Dated: January 13, 1981. STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Chairperson


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner

GHB/CMH/lkr

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PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of the denial of appellant's request for reclassification from Food Service Worker 2 (FSW 2) to Food Service Worker 3 (FSW 3). In addition to the general issue as to whether respondent erred in denying appellant's reclassification, four sub-issues were raised:

1. Did the respondent err in requiring that the appellant take a performance test at CWC when she had passed the civil service exam and was on the register for Food Service Worker 3?
 2. Was the Food Service Worker evaluation test administered at CWC an adequate test of performance for the purpose of reclassification to Food Service Worker 3?
 3. Did the respondent err in requiring that the appellant have one year experience in her position as a pre-requisite to Food Service Worker 3 reclassification?
 4. What is the appropriate date with respect to back pay, if any?
- Hearing was held on January 31, 1980, before Charlotte M. Higbee, Commissioner.

FINDINGS OF FACT

1. The appellant was employed as a FSW 2 at Central Wisconsin Center (CWC) in the Division of Community Services, Department of Health and Social Services (DHSS) beginning May 1, 1978.

2. FSW 2 is the entry level FSW at CWC.

3. In February, 1979, appellant took a Wisconsin State civil service examination for FSW 3; on February 27, 1979, she received notification of her grade of 85.00E.

4. Appellant was first interviewed for a vacant FSW 3 position during the summer of 1979, at which time there were two openings at the Memorial Union. Appellant was not selected for either opening.

5. There were no vacant FSW 3 positions at CWC as of April 30, 1979, nor during the summer or fall of 1979.

6. It is the policy and practice of the CWC Food Service to consider a FSW 2 for reclassification to FSW 3 six months after the completion of probation as FSW 2, based on evaluating her work performance as relates to:

- 1) knowledgeability and capabilities in performing and maintaining required tasks and procedures.
- 2) standards of food handling and general sanitation.
- 3) cooperation and flexibility.
- 4) grooming and conduct.
- 5) general interest and sincerity.

(App. Exh. 7)

7. All FSW 2 employees of the CWC Food Service, including the appellant, were given this information on a form (App. Exh. 7) on the first day of employment; it was explained that this evaluation is conducted at the end of the first year of employment.

8. At the end of the first full year of employment, a FSW 2 can be reclassified to FSW 3 on the basis of satisfactory performance and a passing grade on a test, developed by the Food Service staff, without there being a FSW 3 opening. The test consists of 14 questions testing knowledge of specific procedures the FSW 3 must be able to perform. The questions are weighted as to their importance, and point values are assigned to each; a grade of 70 is required to pass. An opportunity to repeat the test is given in approximately three months to those FSW 2's who do not pass the test initially.

9. During the first year of employment FSW 2's are specifically trained and instructed regarding all procedures covered by the test.

10. The basis for using this test as the criterion for reclassification is that the employe who passes the test knows the procedures and is following them.

11. The test is administered informally by the supervisor; there are no written instructions for its administration nor guidelines for its scoring.

12. The FSW 2 is expected to be at full performance for that classification at the end of six months.

13. The position descriptions for FSW 2 and FSW 3 are identical, including that both work under the close supervision of the Production Managers or Food Service Supervisors. The FSW 2 is trained in one area and then progresses to the next, whereas the FSW 3 is more knowledgeable in all facets of the work and does not require as much supervision. At the end of one year both are performing substantially the same tasks.

14. FSW 3's only are used in the formula room or as Dietary Aides, because the work is more involved and requires knowledgeability regarding the entire facility. This work is performed under limited supervision.

15. Appellant's score the first time she was tested at the end of her first year of employment was below 70. Her supervisor reviewed the test with the appellant and asked her orally the questions she had missed on the written test. The appellant was also unable to answer those questions orally.

16. The appellant appealed the denial of her reclassification to FSW 3 on May 16, 1979.

17. Subsequently, the appellant successfully passed the test and was reclassified as a FSW 3 in November, 1979.

18. The test given to FSW 2's at the time of the annual review is job-related and meets the requirements of content validity.

19. FSW 2's are reclassified to FSW 3 both on the basis of a logical and gradual change in the duties and responsibilities of the position and on the basis of specified training and experience and demonstrated performance in the FSW 2 position.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)(b), Wis. Stats.
2. The burden of proof is on the appellant to establish that she should have been reclassified to FSW 3 prior to November, 1979.
3. The appellant has failed to sustain that burden.
4. The procedure used by respondent DHSS to reclassify FSW 2's to FSW 3 was in conformance with PERS 3.02(4)(a) and (b), WAC.
5. The respondent's denial of the reclassification of appellant's position from FSW 2 to FSW 3 prior to November, 1979, was correct.

OPINION

There is no real dispute as to the facts of this case. The basic issue is whether or not the procedure used at the Central Wisconsin Center (CWC) for reclassifying a Food Service Worker 2 to the 3 level was in conformance with civil service law. The Commission concludes that it was.

The fact that the appellant had passed a civil service test and was on the register for Food Service Worker 3 (Sub-Issue 1) did not entitle her to reclassification, which can be accomplished only via the procedures delineated in PERS 3.02(4). Had there been a job opening for a FSW 3 at CWC, the appellant would have been eligible for consideration following her placement on the register. Failing that, she had no alternative but to qualify for the FSW 3 through a request for reclassification.

Sub-issue 2 raises the question of the validity of the test administered to determine whether FSW 2's had attained the experience and demonstrated the performance required for reclassification to FSW 3. (It is undisputed that on-the-job training was provided.) Although the test was administered in an informal manner and although there are no written instructions for its administration or guidelines for its scoring, no evidence was adduced at the hearing to indicate that there was any element of bias in its administration or grading, nor that those possible deficiencies contributed to the appellant's failure to pass. In fact, the appellant was given an opportunity to respond orally to questions she had failed, in effect a second chance whereby she might have clarified or expanded upon her original written answer. The questions clearly were job-related and designed to measure knowledge of procedures necessary to performance at the FSW 3 level.

As to the requirement of one year of experience in the position as a prerequisite to reclassification to FSW 3, the appellant was not prejudiced by this requirement, since she was unable to pass the test when it was administered. As respondent pointed out, the FSW 2 is an entry level position at CWC and the first six months are a probationary period, at the end of which the employe is expected to be at the full performance level for FSW 2. An additional six months of training and experience to qualify for FSW 3 is consistent with the provisions of PERS 3.02(4), both (a) and (b).

Based on the Commission's disposition of the first three sub-issues, the issue of back pay is moot.

Marilyn K. Pittz v. DHSS
Case No. 79-116-PC
Page 7

The Commission concludes that the action of the respondents in denying appellant's reclassification to FSW 3 prior to November, 1979, was correct and in conformance with civil service law.

ORDER

The action of the respondents is affirmed and this action is dismissed.

Dated _____, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Chairperson

Donald R. Murphy
Commissioner

Gordon H. Brehm
Commissioner

CMH:mek

Parties:

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