

STATE OF WISCONSIN

PERSONNEL COMMISSION

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BEATRICE C. EBERT,
 Appellant,

v.

Secretary, DEPARTMENT OF INDUSTRY,
 LABOR & HUMAN RELATIONS and
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.

Case No. 79-119-PC

* * * * *

INTERIM
DECISION

NATURE OF THE CASE

This is an appeal of a decision approving the reclassification of appellant's position with an effective date of March 25, 1979. The appellant seeks an effective date of November 3, 1977. At the prehearing conference the respondents indicated that they objected to any effective date prior to the initial request for reclassification. A hearing date was established and the parties have filed written arguments and other documents relative to the question of the scope of the hearing.

OPINION

In its brief filed February 15, 1980, respondent DILHR sets forth its statement of the issues involved at this point as follows:

"1. Does Ebert's failure to appeal timely from any decision other than the Administrator's March 1979 reclassification decision deprive the Commission of jurisdiction to entertain a claim extending back to 1977?

2. Assuming the Commission has jurisdiction to entertain the question of whether Ebert's position should have been reclassified effective November, 1977, can she

recover retroactive relief in the form of back pay for the period prior to March 25, 1979?"

The respondent's brief indicates that the DILHR personnel office received on November 28, 1978, a request for reclassification of appellant's position to Job Service Assistant 3, and that following a recommendation by DILHR, the Division of Personnel approved the request effective March 25, 1979. This was followed by Ms. Ebert's appeal to this Commission.

Ms. Ebert has submitted a copy of a letter dated November 3, 1977, in which she requested reclassification to Job Service Assistant 3. She also outlines a series of communications and proceedings with respect to her attempts over the years to attain this reclassification.

The respondent argues in his brief:

"The materials submitted by appellant appear to suggest that she has been doing many of the duties of a higher level position since 1975. She also states that she had requested reclassification of her position from her immediate supervisor since November, 1977. The fact is, however, that she never sought to challenge these actions--or inactions--of her supervisors until submission of the instant appeal in April, 1979.

In the meantime, between 1976 and 1979, there were at least two personnel actions concerning the classification of Ebert's position from which she could have appealed. In May, 1976, she received notice that her position had been reallocated pursuant to the Job Service survey from that of 'Stenographer 2-Seasonal' to 'Job Service Assistant 2-Seasonal' (R. Ex. 2, Ebert letter of June 28, 1979, to Attorney Anderson, p. 3). Ebert took no appeal. Subsequently, in September, 1978, Ebert transferred from a Job Service Assistant 2-Seasonal position to a permanent position in the same classification (R. Ex. 3). Again, no appeal was taken."

The May, 1976 reallocation is of limited or no materiality to this issue since the appellant is not claiming an effective date prior to

November, 1977. As to the September, 1978 transaction, it cannot be concluded at this point in this proceeding that it involved an evaluation of the classification level of appellant's position, and accordingly the failure to appeal that transaction also would appear to be immaterial.

As it might be determined that the appellant made an appropriate request for reclassification in November, 1977, that did not receive final action until March, 1979, the Commission is not prepared at this point to conclude that it does not have jurisdiction to consider her claim for an effective date of November 3, 1977.

Respondent also argues that the Commission lacks the authority to award back pay for the period prior to March 25, 1979. The Commission held in Doll v. DP, 78-110-PC (7/5/79), that pursuant to s. 230.44(4)(c), Stats., it has the authority to modify a classification decision to provide an appropriate effective date and the attendant payment of salary differential, and that principle applies to this case.

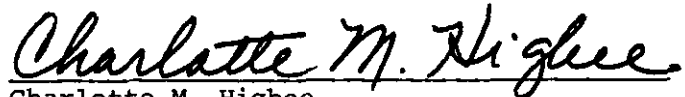
The Commission wishes to point out that in rejecting the respondent's requests to limit the scope of the hearing, it has not made any determination that the appellant is entitled to a particular effective date and back pay. This decision only permits the parties to present evidence on these issues.

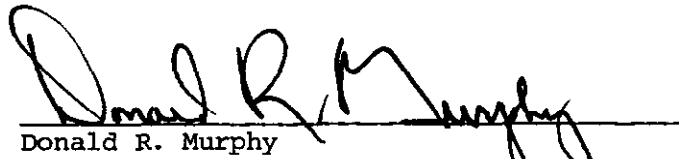
ORDER

It is ordered that this matter proceed to hearing as previously scheduled on May 6, 1980, at 9:00 a.m., in Room 803, 131 West Wilson St., Madison. This will be a class 3 proceeding pursuant to s. 230.44(1)(a), and/or (b), Stats. The issue for hearing will be whether the administrator's decision as to the effective date of the reclassification of appellant's position was correct.

Dated March 24, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner