

OFFICIAL

STATE OF WISCONSIN

PERSONNEL COMMISSION

 *
 JAMES McLLQUHAM, *
 *
 Appellant, *
 *
 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN-SYSTEM *
 *
 Respondent. *
 *
 Case No. 79-207-PC *
 *

INTERIM DECISION
AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to s.230.44(1)(d), Wis. Stats. The respondent has objected to the appeal on the grounds of mootness and untimely filing, and the parties have filed written arguments on these issues. The following findings are based on matter which appears to be undisputed and are made for the sole purpose of resolving these issues. (While the appellant objected to certain aspects of the affidavit filed by respondent on January 14, 1980, these objections do not run to matters material to the issues presented by respondent's objections.)

FINDINGS OF FACT

1. The appellant, while employed at UW-Stout, competed for a vacancy on that campus in a Craftworker Supervisor position.
2. The vacant Craftworker Supervisor position was in the classified Civil Service and was filled on an open competitive basis.
3. The appellant was examined and certified for the position.
4. The appellant was informed by letter from the UW-Stout Director of Personnel, dated May 30, 1979, that the position had been

filled, and had been informed before then verbally that he no longer was being considered for the position.

5. The aforesaid letter had been prompted by a candidate having accepted an offer for the position in question, with a starting date of July 2, 1979.

6. The aforesaid candidate subsequently informed UW-Stout by letter dated June 29, 1979, that he would be unable to accept the position.

7. On July 18, 1979, two candidates, not including the appellant, were removed from the certification as ineligible by the State Division of Personnel.

8. Following a supplemental certification, another candidate was offered and accepted the position on August 2, 1979, with a starting date of August 27, 1979.

9. By letter dated August 2, 1979, the UW-Stout Director of Personnel informed those individuals whose names remained on the certification, including the appellant, that another candidate had been appointed to the position.

10. The appellant on August 10, 1979, filed an appeal with the Commission which stated, in part, as follows:

"I wish to appeal the selection of Mr. Eyseth as Craftworker Supervisor at UW Stout, Menominee, Wis.

On May 26 I wrote you and thought my first sentence was asking for an investigation of abuse of discretionary authority by Mr. Newhall in this matter. After your reply and the notification dated May 30 [copy included] I decided not to proceed for the reasons stated in my letter and the possibility the person hired met Mr. Newhall's standards.

Yesterday, Aug. 6, an employe of Stout informed me Mr. Eyseth had been given this job."

11. The appellant resigned from State service effective September 15, 1979.

CONCLUSIONS OF LAW

1. This appeal was filed in a timely manner pursuant to s.230.44 (3), Stats.
2. This appeal is not moot.

OPINION

In the opinion of the Commission this appeal was not untimely filed pursuant to s.230.44(3), Stats. The respondent relies on the fact that the appellant was informed in May 1979 that he no longer was being considered for the position in question. However, after the first appointee withdrew in June, the selection process was continued and the appellant remained a certified candidate. He was informed a second time, by the August 2, 1979, letter, that the position again had been filled. Thus he was not finally informed of his non-selection for the position until after August 2, 1979, and his appeal, filed August 10, 1979, was timely.

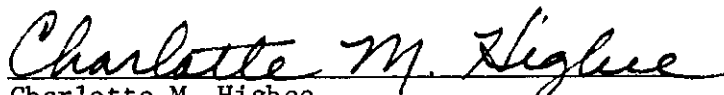
The respondent also argues that the appeal is moot ^on account of the appellant's subsequent resignation from state service.


If the Commission were to determine that there had been "obstruction or falsification" in the selection process, it is conceivable that it could enter an order that would have the effect of removal of the incumbent, see s.230.44(4)(d), Stats. If the Commission were to determine that there was illegal action or an abuse of discretion, see s.230.44(1)(d), it is conceivable that it could enter an order that would have the effect of requiring that the appellant be given certain considerations in the event of another vacancy in the position in question or a similar position.

ORDER

The respondent's objections on the grounds of mootness and untimely filing are overruled. It is ordered that this matter be scheduled for prehearing conference to discuss a hearing on the merits.

Dated: April 25, 1980. STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Gordon H. Brehm
Commissioner

AJT:arl
4/21/80

NOTE: Commissioner Murphy did not participate in the consideration or decision of this case.