

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 BARBARA GLASER,
 Appellant,
 v.
 DEPARTMENT OF HEALTH AND
 SOCIAL SERVICES,
 Respondent.
 Case Nos. 79-66-PC
 79-PC-ER-63
 * * * * *

PREHEARING
 DECISION
 AND
 ORDER

This matter is before the Commission on the appellant's request for a prehearing ruling, filed July 16, 1979, on the following evidentiary question:

"Absent a stipulation by the parties, are the results of petitioner's polygraph examination admissible as evidence for the purpose of corroborating the truthfulness of the petitioner's responses as to facts testified to during examination and contradicted by respondent's witness(es)."

The respondent has objected the admissibility of such evidence, citing State ex rel Harris v. Schmidt, 69 Wis. 2d 668, 681-683, 230 N.W. 2d 890 (1975). The court there held:

"... before the results of a polygraph test on one of the state's witnesses may be considered at a probation or parole revocation hearing or made a part of the record, there must be a written consent to the admission of such test by the probationer or his attorney. Admissibility of the test results is subject to the discretion of the hearing examiner and if he is not convinced that the examiner is qualified or that the test was conducted under proper conditions, he may refuse to accept such evidence. If the graphs and examiner's opinion are offered in evidence, then the opposing party shall have the right to cross-examine the polygrapher examiner respecting the examiner's qualifications and training, the conditions under which the test was administered, the limitations of and possibilities for error and the techniques of polygraphic interrogation and,

at the discretion of the hearing examiner, any other matters deemed pertinent to the inquiry." 69 Wis., 2nd at 683.

In the opinion of the Commission the probation revocation hearing in Harris, which involved the possibility of a return to imprisonment, is distinguishable from the hearing before this Commission. The polygraph evidence in that case was to be used by the State against the probationer, whereas in this case the appellant seeks to use the evidence to corroborate facts to be testified to by the appellant in her attempt to sustain her burden of proof. In this instance, it should not be necessary that there be a stipulation before a polygraph test of the party offering it can be considered. See Christensen v. DHSS, Wis. Pers. Comm., 77-62 (9/13/78).

The Commission does believe that the other qualifying factors quoted in Harris apply as a matter of sound evidentiary law and that questions of admissibility and probative value and weight of the proffered evidence is committed to the sound discretion of the examiner.

ORDER

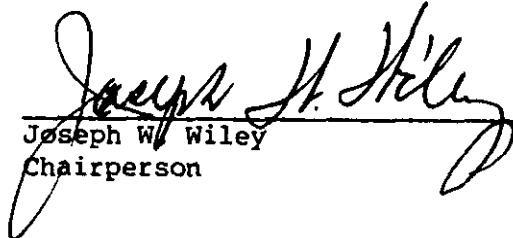
IT IS HEREBY ORDERED that:

1. The appellant will not be barred from introducing the results of her polygraph test solely because there has been no stipulation as to its admissibility by the respondent.
2. If the polygraph results and polygraph examiner's opinion are offered in evidence, the opposing party shall have the right to cross examine the polygrapher as delineated in Harris, quoted above.

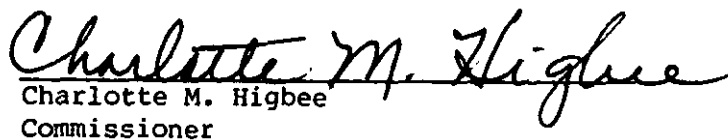
3. If the hearing examiner is not convinced that polygrapher was qualified or that the test was conducted under proper conditions, he may refuse to accept such evidence.

Dated: July 31, 1979.

STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

AJT/JWW:jmg/ar1
7/31/79