

STATE OF WISCONSIN      CIRCUIT COURT      DANE COUNTY

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BOARD OF REGENTS OF THE  
UNIVERSITY OF WISCONSIN  
SYSTEM, STATE OF WISCONSIN,

Petitioner,      Case No. 79-CV-3718

v.

JUDGMENT

WISCONSIN PERSONNEL  
COMMISSION, STATE OF  
WISCONSIN (Catherine  
Beauheim),

**RECEIVED**

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Respondent.

**Personnel  
Commission**

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BEFORE: Hon. GEORGE R. CURRIE, Reserve Circuit Judge

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The above entitled review petition having been heard by the Court on the 10th day of March, 1980, at the City-County Building in the City of Madison; and the petitioner having appeared by Assistant Attorney General Maureen McGlynn; and the respondent Commission having appeared by Attorney Daphne Webb of the law firm of Jacobs, Webb & Weiden; and the respondent Catherine Beauheim having appeared by Attorney Richard V. Graylow of the law firm of Lawton & Cates; and the Court having had the benefit of the argument and briefs of counsel, and having filed its Memorandum Decision wherein Judgment is directed to be entered as herein provided;

It is Ordered and Adjudged that the Decision and Judgment of respondent Wisconsin Personnel Commission dated June 30, 1979, entered in the matter of Catherine Beauheim, Appellant, v. University of Wisconsin, Respondent, Case No. 78-125-PC, be, and the same hereby are, reversed, and the matter is remanded with directions to dismiss respondent Catherine Beauheim's appeal.

Dated this 20th day of March, 1980.

By the Court:

George R. Currie  
Reserve Circuit Judge

Rec'd  
3-21-80  
JW

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BOARD OF REGENTS OF THE  
UNIVERSITY OF WISCONSIN  
SYSTEM, STATE OF WISCONSIN,

Petitioner,                      Case No. 79-CV-3718

v.

MEMORANDUM DECISION

WISCONSIN PERSONNEL  
COMMISSION, STATE OF  
WISCONSIN (Catherine  
Beauheim),

Respondent.

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BEFORE: Hon. GEORGE R. CURRIE, Reserve Circuit Judge

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This is a proceeding by petitioner Board of Regents under ch. 227, Stats., for review of a decision and order of the Wisconsin Personnel Commission (hereafter the Commission) dated June 30, 1979, wherein the Commission determined the University of Wisconsin had erred in denying the employee Catherine Beauheim's request and that her classified civil service position should have been reclassified from that of Clerk 4 to Student Admissions Examiner I.

THE ISSUES

Petitioner's brief raises these three issues:

- (1) Whether certain findings of fact are unsupported by substantial evidence in the record.
- (2) Whether the Commission failed to make material findings of ultimate fact as required by sec. 227.10, Stats., concerning the application of the position standard for Clerk 4 to the duties of Beauheim's position.

(3) Whether the Commission committed an error of law in concluding that Beauheim's position should be classified as a Student Admissions Examiner I.

#### STATEMENT OF FACTS

Catherine Beauheim has been employed since May, 1977, on a half-time basis as a graduate secretary at the University of Wisconsin-Madison for the Department of Physical Education and Dance within the School of Education. The position Beauheim holds has a civil service classification as a Clerk 4 (Pay Range 1-07). Beauheim works with a sub-unit of the Department under the Dance Program Director, Dr. Mary Brennan.

On April 20, 1978, Beauheim submitted a request through departmental channels that the position she holds be reclassified to that of Student Admissions Examiner I (Pay Range 1-08). Accompanying the reclassification request was a position description prepared and signed by Beauheim and her civil service supervisor. According to Beauheim's position description, Beauheim's job duties include the following: serving as the initial source for program information for the graduate and undergraduate dance programs (15%); preparation of materials related to admission of graduate students to the dance program (10%); provision of clerical and other services related to currently enrolled graduate students (15%); provision of support services to the faculty of the graduate dance program (5%) (R. Ex. 4). The remaining 5% of Beauheim's half-time duties included maintenance of the department's thesis library and faculty research files and the preparation of materials for statistical and research reports (R. Ex. 4).

Beauheim's reclassification request was transmitted on May 5, 1978, to the University of Wisconsin-Madison Personnel Director by

Dr. Montoye, Chairman of the Department of Physical Education and Dance (R. Ex. 6). In his letter of transmittal, Dr. Montoye commented:

"I do not doubt that Ms. Beauheim accurately describes what she does; however, she is not solely responsible for those duties as implied. Ms. Doleta Chapru, in Unit II, does similar duties for a larger majority of our graduate students. . . . The actual number of graduate students in Dance is quite small. Decisions for admittance to the Graduate program in our department are made by professional staff." (R. Ex. 6).

After receipt of the reclassification request, Beauheim's position was audited by a U. S. personnel specialist, Arlene Mitchell. Mitchell discussed the prepared position description and the duties of the job with Beauheim herself and with Beauheim's clerical supervisors. She evaluated Beauheim's request by reviewing the established position standards for Clerk 4 and Student Admissions Examiner I (R. Exs. 2, 9) and by comparing Beauheim's duties with those of other persons with similar duties in the same and related classifications and in the requested classification (R. Exs. 10, 11, 13, 14, 15). Based on her audit and review of the applicable position standards, Mitchell determined that Beauheim's position was properly classified at the Clerk 4 level rather than that of Student Admissions Examiner I (R. Ex. 7).

Beauheim timely appealed the denial of her reclassification request to the Commission pursuant to sec. 230.44(1)(b), Stats. After preliminary proceedings, the matter was heard before Commissioner Durkin as hearing examiner on February 8, 1979. On February 26, 1979, Commissioner Durkin issued his proposed decision pursuant to sec. 227.09(2), Stats., concluding that Beauheim's position should be classified at the Student Admissions Examiner I level.

After the filing of objections and oral argument, the Commission issued its final decision on June 30, 1979, adopting with minor modifications the findings of fact, conclusions of law and opinion of the

examiner. The Commission substituted its own order for that of the examiner, purporting to modify rather than reverse the denial of Beauheim's reclassification request and remanding the matter for action in accordance with the Commission's decision. The Board of Regents has sought review in this court of the Commission's decision and order.

#### THE COURT'S DECISION

##### A. Whether Certain Findings of Fact Are Unsupported by Substantial Evidence in the Record.

The petitioner concedes that most of the findings of fact are supported by substantial evidence as that term has been applied in Stacy v. Ashland County Dept. of Public Welfare, 39 Wis. 2d 595, 603, 159 N.W. 2d 630 (1968). However, it is contended certain very material findings of fact are not so supported.

The findings of fact so attacked consist of findings of fact 12, and two statements made in the Commission's memorandum opinion which have the nature of findings of fact.

Finding of fact 12 reads:

"Appellant makes the initial determination as to whether applicants to the graduate school of dance are accepted into the program."

The two statements in the Commission's opinion which possess the nature of findings of fact appear at page 4 and read:

"[Beauheim] does in fact have the duties and responsibilities found in the class description for Student Admissions Examiner I.

"\* \* \*

"[Beauheim] has the same duties and responsibilities as the other two Student Admissions Examiner I's that she was compared to."

Much of the record testimony concerns the role Beauheim plays in reviewing the applications for the relatively small (R. Ex. 6) number of graduate positions in the Dance program. Although it is

undisputed that Beauheim plays a clerical and support role in compiling and reviewing an applicant's file, there is no evidence that Beauheim herself has responsibility for initially determining whether a particular application is accepted.

Beauheim's position description (R. Ex. 4) which was drafted by Beauheim (Tr. 32, 37, 40) indicates that she performs a number of tasks in the admissions process. These tasks, which take up roughly 10% of a full-time position or 20% of Beauheim's half-time position, include initially reviewing transcripts for deficiencies, preparation of files, determinations concerning eligibility for financial aid, and handling inquiries and correspondence (Tr. 32; R. Ex. 4).

The basic accuracy of the position description, as it relates to Beauheim's role in the admissions process, is corroborated by the testimony of Dr. Brennan and of Beauheim herself. Dr. Brennan testified that while Beauheim may initially review student files, including transcripts, Brennan makes the final decision on student deficiencies and on recommending student admissions (Tr. 10-23). Dr. Brennan specifically testified that in cases of admissions she reviewed all student information and transcripts before any rejection is made (Tr. 20, 23, 24). She further stated that it was not Beauheim's decision, but Beauheim did put materials together for her, make notations and otherwise assist her (Tr. 23). It is Brennan, not Beauheim, who makes the recommendation or, in the Commission's words, "initial determination" which is then submitted to Dr. Wolf, the Department Admissions Officer, who in turn signs the warrant for admissions (Tr. 19). Beauheim, who was present throughout Brennan's testimony, testified that she agreed with Brennan's description of her duties, specifically including Brennan's description of her role in making recommendations concerning applicants (Tr. 41, 50-51).

Nowhere is it stated in Beauheim's position description that she has the responsibility for making the initial determination as to whether applicants to the Dance program of the graduate school are accepted into the program.

The Court believes that the Commission grounded finding of fact 12 on the testimony given by Beauheim and Dr. Brennan relating to Beauheim's preparing letters to applicants such as Appellant's Exhibits 3, 4, 6, and 7. Beauheim does review transcripts and other materials applicants, or prospective applicants send in, and then drafts letters for Dr. Brennan's signature pointing out deficiencies. In some cases the letter recommends that the applicant seek to be admitted as a School of Education Special student. None of the four letters (App. Exs. 3, 4, 6, and 7) admit or reject the addressee applicant's application for admission to the Dance program. Dr. Brennan testified that, when such letters are drafted by Beauheim, Dr. Brennan looks over the letter and the addressee applicant's file to see if she agrees with the letter, and, if she does, she then signs the letter (Tr. 13). She further stated that it is not often she makes any revisions in the letter (Tr. 13). The Court is of the opinion that the preparation of such letters to applicants and presenting them to Dr. Brennan for signature is not the making of "the initial determination as to whether applicants to the graduate school of dance are accepted into the program".

For the reasons stated above the Court determines that finding of fact 12 is not supported by substantial evidence in the record.

The Court now turns to the Commission's findings made in its opinion that Beauheim has the same duties and responsibilities as found in the "class description" for Student Examiner I and as two currently employed Student Examiners I.

Pursuant to sec. 230.09, Stats., the Administrator of the Division of Personnel in the Department of Administration is responsible, subject to the approval of the Wisconsin Personnel Board, for classification of positions in the state classified (civil) service, including the development of position standards and identifying the salient characteristics of the various classification series. Under Wis. Adm. Code section Pers 2.04 each classification is described by a job specification, consisting of three main parts: (1) Title; (2) Position Standards; and (3) Qualification Standards. These job specifications provide the analytical framework for determining proper allocation to classes.

"Class specifications. Class specifications shall consist of 3 major parts: title, position standards, and qualification standards. Subject to subsections (1) and (2) the class specifications shall be the basic authority for the allocation of positions to a class and for all phases of the selection process for any class or position therein." (WAC Pers 2.04; emphasis added.)

Here there are in evidence "position standards" and a "position description" for the Clerk 4 position (R. Exs. 2 and 4); and there is in evidence a "class description" for the Student Admissions Examiner I positions with whom Beauheim was compared (R. Exs. 10 and 11); but there is no document in evidence labeled "position standards" for the Student Examiner I position. The Court, however, is satisfied that the "class description" for the Student Admissions Examiner I position (R. Ex. 9) constitutes the "position standards" for that position. None of the briefs submitted address themselves to the point of what constitutes the "qualification standards" for the Clerk 4 and Student Admissions Examiner I positions, probably because this was not considered material.

The class description for the position of Student Admissions Examiner I (R. Ex. 9) reveals that Student Admissions Examiners I



perform two essential functions: first, they make initial admissibility determinations concerning graduate and undergraduate applications; and, secondly, they review student academic records to determine if degree, credit, grade point and other requirements are met for purposes of graduation. Arlene Mitchell, a personnel Specialist II in the employ of the University of Wisconsin who audited Beauheim's request for reclassification, stressed this in her report determining that Beauheim's position was "most appropriately classified at its present level of Clerk 4 rather than the requested level of Student Admissions Examiner I" (R. Ex. 7).

Beauheim's limited role in processing applications for admission to the Dance program has been discussed above. Semantic differences aside, it is clear from the unrebutted testimony of both Arlene Mitchell and of Lorraine Meythaler, Assistant Dean of the Graduate School, that persons performing the duties of Student Admissions Examiner I play a significantly broader, more responsible role in the admissions process than does Beauheim (Tr. 65, 72, 81-82, 88). Moreover, it is clear that Beauheim performs no formal duties at all with respect to the second essential function, that of examining student records to determine if degree requirements are met. There is testimony that Beauheim maintains graduate files and assists students in the proper procedures for solving school-related problems (Tr. 10, 36-37). Brennan and Beauheim agreed, however, that faculty, not Beauheim, advised students concerning substantive problems and progress toward a degree (Tr. 18, 25-27, 41-42, 44). The record is clear, therefore, that Beauheim performs no formal function comparable to the second major element identified in the position standard for Student Admissions Examiner I.

The two Student Admissions Examiners I, with whose position

descriptions Mitchell compared the position description of Beauheim (R. Ex. 4) in her report (R. Ex. 7), are Joyce Kemper and Margery Blum. In comparing position descriptions it appears that all three employees perform similar clerical functions with regard to maintenance of student files. The role Beauheim plays in the admissions and record examination process differs both in degree of responsibility and in proportion of time allotted to the function. Kemper spends ~~nearly 40%~~<sup>48</sup> of her time in activities related to making actual admissibility determinations for both graduate and doctoral programs and another ~~15%~~<sup>10</sup> in evaluating student records to determine compliance with degree requirements (R. Ex. 10). Blum spends 30% of her time determining admissibility including the submission of routine admissions to faculty for automatic consent (R. Ex. 7, 11). In addition, she spends approximately 20% of her time recording progress towards the degree for individual students (R. Ex. 11).

The record simply does not support the Commission's findings either that Beauheim performs the same duties described in the Student Admissions Examiner I class description (R. Ex. 9) or that she performs the same duties as Kemper and Blum in that classification.

B. Alleged Failure of Commission to Make Required Findings of Fact.

According to the Commission's Notice of Hearing contained in the Prehearing Conference Report of October 9, 1978, the issue for hearing was whether Beauheim's position should be classified as Clerk 4 or Student Admissions Examiner I. Under sec. 227.10, Stats., therefore, the Commission had before it factual issues concerning the applicability of not only the position standard for Student Admissions Examiner I but that for Clerk 4 as well. The Commission's decision refers exclusively to the former and there are no findings which deal with the position standard for Clerk 4.

The Supreme Court has made clear the necessity for findings of ultimate fact as required by sec. 227.10, Stats., for purposes of meaningful judicial review, Edmonds v. Board of Fire and Police Commissioners, 66 Wis. 2d 337, 348-350, 224 N.W. 2d 575 (1975). The inadequacies of the Commission's fact-finding with regard to Beauheim's position and the position standards for Clerk 4 are well illustrated by the case of Transport Oil, Inc. v. Cummings, 54 Wis. 2d 256, 195 N.W. 2d 649 (1972). In Transport Oil, the agency decision had to be remanded because the agency had applied only one part of a two-part test for determining statutory coverage and had failed to make findings as to the second part of the statutory definition of the term "employee," id. at 262. Here, as in Transport Oil, the agency has effectively made findings with regard to only one part of the two-part issue noticed to be heard.

Normally, such deficiencies in fact-finding can be remedied only by the agency on remand, sec. 227.20(6), Stats. There is an exception, and courts can supply missing findings in cases in which the evidence is clear and convincing, or otherwise undisputed, Connecticut General Life Ins. Co. v. DILHR, 86 Wis. 2d 393, 404-405, 273 N.W.2d 206 (1979), citing Forest Home Dodge, Inc. v. Karns, 29 Wis. 2d 78, 87, 138 N.W. 2d 214 (1965). In the latter case Mr. Justice Heffernan, speaking in behalf of the Court, stated (29 Wis. 2d at p. 87):

"Additionally, where the evidence is clear and convincing, this court or the trial court can supply a finding of fact where it may be required."

The evidence in the record here is undisputed concerning the position standards for Clerk 4 (R. Ex. 2). Upon the undisputed evidence the Court makes the following findings of fact:

- a. Beauheim performs advanced administrative clerical work in the coordination and administration of the graduate Dance program which is both specialized and complex.
- b. Beauheim exercises considerable initiative, judgment

and specialized knowledge in the application of established Dance program policies and procedures to a variety of complex situations.

- c. Beauheim reviews transcripts and other materials which applicants to the Dance program have supplied to ascertain whether applicants have met the requirements for admission, and, where these do not, she drafts letters to the applicants for the signature of Dr. Brennan, the faculty member in charge of the program.
- d. The duties of Beauheim's position demand knowledge of the organizational structure of the University and its graduate programs, and detailed knowledge of work assignments, the flow of work and procedural regulations among numerous interrelated operating units of the University.
- e. Beauheim has frequent contact with a variety of operating units of the University, with students and the general public in a coordinative and informative capacity.
- f. Beauheim is responsible for the clerical work in a sub-unit of a large organization, the University, and performs a highly specialized function in that capacity.

The findings set forth above are based on the undisputed testimony of Beauheim, Brennan and Mitchell and from all the supporting documentary materials in the record. They are, moreover, directly applicable to the position standard for Clerk 4 (R. Ex. 2) on which they are patterned.

C. Whether the Commission Committed an Error of Law When It Concluded That Beauheim's Position Should Be Classified Student Admissions Examiner I Rather Than a Clerk 4.

There is some overlap of the clerical duties performed by Beauheim as Clerk 4 and of Kemper and Blum as Student Admissions Examiners I. This the Court has found to be a common occurrence in the civil service classification of positions. For example, a Secretary 2 may perform many of the functions of a Secretary 1. It is the additional duties and responsibilities of the Secretary 2 position that justify the higher classification.

As hereinbefore pointed out, Beauheim's role in handling student applications to the Dance program is not great. According to her own estimate the time she spends in this type of work takes only 20% of her time (R. Ex. 1). Being a half-time employee this would consume only 10% of the time of a full-time employee such as Kemper or Blum. In contrast, Kemper spends 48% of her time on admissions work (R. Ex. 10) and Blum spends 30% of her time on such work (R. Ex. 11). Furthermore, both Kemper and Blum do make initial determinations of eligibility while Beauheim does not.

Other responsible work which Kemper and Blum perform and which is covered by their "class description" (R. Ex. 9) is to examine student academic records to determine if major and minor degree requirements, grade point level, credit accumulations, and other requirements have been met in order to graduate. Beauheim does none of this. (See R. Ex. 1).

The Commission's brief contends the Clerk 4 classification for Beauheim is inappropriate because the position standard for Clerk 4 (R. Ex. 2) states "Positions allocated to this level perform advanced supervisory and administrative clerical work", but Beauheim had no other employees under her supervision. The Clerk 4 classification would not exist in the absence of there being Clerk 1, Clerk 2, and Clerk 3 classifications. The issue here is not whether Beauheim should


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The Court has concluded that as a matter of law position classification which best or most closely fits the totality of the duties assigned to Beauheim's position is that of Clerk 4 rather than Student Admissions Examiner I, and therefore the Commission erred as a matter of law in making the contrary determination.

Let judgment be entered reversing the Commission's decision and order and remanding the matter with directions to dismiss Beauheim's appeal.

Dated this 20th day of March, 1980.

By the Court:

  
Reserve Circuit Judge

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