

\* \* \* \* \*  
 VIRGINIA HAGENGRUBER,  
                   Appellant,  
 v.   
 Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES,  
                   Respondent.  
 Case No. 79-PC-ER-131  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF CASE

Virginia L. Hagengruber filed a charge of discrimination with the Wisconsin State Personnel Commission on September 26, 1979, charging that the Department of Health and Social Services (DHSS) had discriminated against her because of her age. Following an investigation, an Equal Rights officer issued an Initial Determination dated October 7, 1981, concluding there was no probable cause for believing the complainant had been discriminated against by the respondent. Complainant filed an appeal of the Initial Determination on October 19, 1981. Pursuant to Ch. PC 4.03(3) Wis. Adm. Code the matter was set forth for hearing on the following issue:

Was there probable cause to believe that the respondent discriminated against the complainant on the basis of age in not hiring her for the position of Clerk 2?

FINDINGS OF FACT

1. Complainant charges she was denied employment with DHSS because of her age, 60 at the time the charge of discrimination was filed.
2. Complainant is protected against discrimination by Wis. Stats. 111.31 et seq.

3. On July 27, 1979, complainant participated in a competitive examination for the Clerk 1-2 positions.

4. Complainant's score on this exam was 84.62A.

5. The examination/certification for vacancy process in effect at the time the Complainant competed was as follows:

- 1) All interested applicants were tested by the Department of Employment Relations (DER)
- 2) Examinations were scored by DER and test results were retained by DER
- 3) Agencies, including DHSS, notified DER of Clerk 2 vacancies and DER certified a roster of candidates for the vacancies to the requesting agency.
- 4) The roster would list up to the 10 top ranked applicants (on the basis of test scores) for the vacancy. Additional names might have qualified for the roster on the basis of veteran's points.
- 5) The roster received by the agency did not include information about the age of the candidates.
- 6) From the roster, the agency contacted applicants and scheduled interviews. The agency could also request from DER the application of those scheduled for interview.
- 7) 361 candidates took the exam on 7/27/79; 349 passed the exam (70% was the passing grade); more than half of those who passed the exam scored 90% or better on the exam.
- 8) The list of those who had passed the exam (70% or better) had a life of 6 months and was in effect at least from

July 27, 1979 until September 26, 1979, the date the complainant filed the charge of discrimination.

- 9) During the period 7/27/79 until late January of 1980, the complainant was not placed on any roster certified to DHSS or any other agency for the filling of Clerk 2 positions.
- 10) The only legal source of appellants to be considered/interviewed by an agency for a Clerk 2 vacancy was certification of the applicant on the roster provided to the agency by DER.
- 11) The absence of the complainant's name from a roster supplied to DHSS by DER, and her not having been considered/interviewed/hired by DHSS for a Clerk 2 vacancy was the result of her test score and corresponding ranking on the Master List (DER) of those who passed the exam rather than the result of any discriminatory act or practice on the part of the respondent.

#### CONCLUSIONS OF LAW

1. Case No. 79-PC-ER-131 is properly before the Commission pursuant to §230.45(1)(b) and Section PC 4.03(3) Wis. Adm. Code for a determination as to probable causes.

2. The complainant has the burden of proof with respect to the question of probable cause.

3. The complainant has not satisfied that burden.

4. There is not probable cause to believe that the respondent discriminated against the complainant in the manner alleged and set forth in the statement of issue.

OPINION

In a proceeding such as this on probable cause, the complainant must show that there is probable cause to believe discrimination occurred--i.e., she must show that there is "reasonable ground for belief supported by facts or circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been...committed." §PC 4.03(2) Wis. Adm. Code. Such a showing was not made.

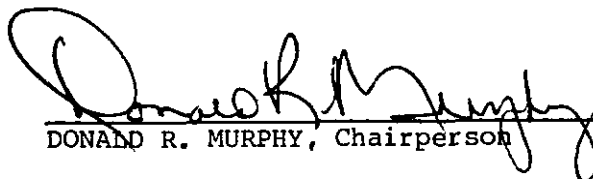
A review of the testimony and evidence indicates that DHSS never received a certification roster with the complainant's name on it. The names they did receive were those of persons scoring higher on the exam than the complainant. The complainant, having passed the exam but having scored below the certification score in effect at the time of the DHSS vacancy, would not have been certified by DER. Having not received complainant's name, DHSS would not have requested a copy of her application for review nor would they have scheduled her for an interview. Further, DHSS could not have hired the complainant because she was not on the roster certified by DER, the only roster available for use by DHSS.

Since DHSS did not receive complainant's name on a roster, did not review her application, and did not interview her, it had no knowledge of her age and there is nothing to show they even knew of her interest in a Clerk 2 position. Therefore, the age of the appellant was not a factor in the hiring process undertaken by the respondent.

ORDER

Case No. 79-PC-ER-131 is dismissed upon a determination of no probable cause to believe that discrimination occurred.

Dated: April 29, 1982 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

JWP:jmf

  
JAMES W. PHILLIPS, Commissioner

Parties

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