

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOANN CRAFT, *

Appellant, *

v. *

Secretary, DEPARTMENT OF HEALTH *

& SOCIAL SERVICES, *

Respondent. *

Case No. 80-159-PC *

* * * * *

ORDER

RECEIVED

APR 15 1987

Personnel
Commission

The Commission adopts as its final decision of this matter the Proposed Decision and Order attached hereto, with the addition of the following comment to the "Opinion":

"The Commission also is of the opinion on this record that there was a failure of compliance with §Pers 17.03, Wis. Adm. Code, and that this is an additional reason for rejection of the respondent's action."

Dated June 11, 1981

STATE PERSONNEL COMMISSION

Gordon H. Brehm
Gordon H. Brehm
Chairperson

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

AJT:mek
Parties:

Ms. JoAnn Craft
DHSS, 6th Floor
1 W. Wilson St.
Madison, WI 53702

Mr. Donald Percy
DHSS
1 W. Wilson St.
Madison, WI 53702

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Secretary, DEPARTMENT OF HEALTH
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* * * * *

PROPOSED
DECISION
AND
ORDER

NATURE OF THE CASE

This is the appeal of a demotion. The Commission has jurisdiction of this appeal pursuant to s.230.44(1)(c), Wis. Stats. A hearing on this appeal was conducted by Commissioner Gordon H. Brehm, on November 18, 1980, and December 4, 1980, and briefs were subsequently filed by the parties.

FINDINGS OF FACT

1. Appellant, Jo Ann Craft, has, at all times relevant herein, been an employe of respondent Department of Health and Social Services (DHSS).
2. Ms. Craft had been an employe of the State of Wisconsin for about 8½ years, at the time of the hearing, in the area of personnel work.
3. Appellant began employment with the DHSS Bureau of Personnel and Employment Relations (BPER) on July 30, 1978, as a Personnel Specialist 4. In October, 1978, Ms. Craft won appointment as a Personnel Administrative Officer 2 (PAO-2) with the working title of Team Leader of the Corrections Team.
4. On April 7, 1980, appellant conferred with her former supervisor, William Kuntz, team leader of the Multi-Divisional Team in BPER. Kuntz agreed to accept her back on his team as a Personnel Specialist 5 if she requested a voluntary demotion.

5. Later on April 7, 1980, appellant met with Larry Tainter, BPER Chief of Personnel Services, and Ken DePrey, bureau director, and orally requested a voluntary demotion. She also met with Nathaniel Harris, administrator of the DHSS Division of Management Services, and repeated her request to him. Appellant admits that she initiated the demotion request for various personal reasons.

6. Sometime between April 7 and 10, 1980, Tainter advised Craft that tentative class approval had been obtained for her to voluntarily demote to the Personnel Specialist 5 position with the title of Assistant Team Leader of the Multi-Divisional Team, retaining her same rate of pay as a PAO-2, although demoting to a lower pay range. Consequently, on April 10, 1980, Ms. Craft submitted a letter directed to Tainter and DePrey, requesting a voluntary demotion.

7. During the week of April 7-11, 1980, a meeting was held between Craft, Kuntz, Tainter and DePrey, announcing her new assignment and designating an April 21, 1980, starting date.

8. During the week of April 14-18, 1980, Tainter met with Steve Christenson and Marion Walluks of the Division of Personnel regarding establishing the position of Assistant Team Leader classified as Personnel Specialist 5. Christenson and Walluks gave their tentative approval contingent on the proper paper work being submitted. (Tr. 194).

9. On or about April 18, 1980, a Certification Request/Report was sent to the Division of Personnel requesting formal approval of the personnel transaction concerning Ms. Craft. A revised position description for Ms. Craft was also sent to the Division of Personnel.

10. The Division of Personnel subsequently informed BPER that it had never received a copy of appellant's letter requesting a voluntary demotion and asked that it be sent a copy of the letter. BPER was unable to send a copy since the original letter could not be found.

11. Appellant began working as a Personnel Specialist 5 under the supervision of William Kuntz on the Multi-Divisional Team on April 21, 1980.

12. Ms. Walluks approved, after making some modifications, the revised position description for Ms. Craft on May 6, 1980, (Appellant's Exhibit 2).

13. Linda Langlois, a BPER team secretary, signed the Certification Request approving the new position for appellant on behalf of Harris, the appointing authority, on May 20, 1980.

14. Sometime in late April, 1980, appellant discussed with Harris retracting her demotion (Tr. 25-26, 263).

15. During the week of May 5-9, 1980, appellant met with Harris and discussed the reasons why she wanted to retract her demotion. Harris asked Ms. Craft to furnish him in writing the reasons why she had changed her mind and appellant subsequently did so that week.

16. Late in the week of May 5-9, 1980, appellant again met with Harris regarding withdrawing her demotion request. Harris told her she had better "get a letter to me pretty quick." (Tr. 30)

17. On May 12, 1980, Ms. Craft submitted a letter addressed to Tainter and DePrey requesting withdrawal of her voluntary demotion. She stated in the letter that she had never submitted written acceptance of the demotion. (Appellant's Exhibit 3)

18. On May 19, 1980, appellant met with Harris and Tainter and was informed that her request to withdraw her voluntary demotion had been denied.

19. By letter dated May 20, 1980, respondent notified appellant that her voluntary demotion to Personnel Specialist 5 was confirmed, effective April 20, 1980. (Appellant's Exhibit 4)

20. By the time of the hearing in this appeal, appellant's former position as a Personnel Administrative Officer 2 had been filled through a competitive examination. (Tr. 248)

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to s.230.44(1)(c), Wis. Stats.

2. In the case of a voluntary demotion such as this, the burden of proof is on the appellant to show by greater weight of credible evidence that her demotion was not legally effective and therefore not for just cause.

3. Appellant has met her burden of proof.

4. Since the administrator of the Division of Personnel never received anything in writing from the appellant either requesting or accepting the voluntary demotion, the voluntary demotion was not legally approved.

5. The voluntary demotion was not legally effective.

OPINION

The pertinent statutes and administrative rules in this case are as follows: Pers. 17.04(3), Wis. Adm. Code. Voluntary demotion within a department:

An employe may request and with approval of the appointing authority may accept a voluntary demotion within the department either to a position in the same employing unit, or to a position in a different employing unit. Acceptance of such voluntary demotion shall be furnished the director in writing by the employe.

Sec. 230.06(b), provides as follows:

An appointing authority shall:

* * *

"Appoint persons to or remove persons from the classified service, discipline employes, designate their titles, assign their duties and fix their compensation, all subject to this sub-chapter and the rules prescribed thereunder."

Pers. 8.04, Wis. Adm Code. Definition of appointment:

"An appointment is the commitment of an appointing authority to place a person in a position in his agency in accordance with provisions of the law and these rules."

There is no dispute here that appellant voluntarily requested demotion.

Her initial request came in conversations with Tainter and DePrey on April 7, 1980. She had previously requested and received an affirmative response from Kuntz that he would accept her in the position she wished to demote to.

Appellant then submitted in writing on April 10, 1980, to Tainter and DePrey her demotion request. She was orally informed that her request had been granted to demote to the position she requested. At appellant's own request, respondent agreed to make the demotion effective as soon as possible. Therefore, April 21, 1980, was selected as the date the demotion would take place.

On April 21, 1980, appellant gave up her former duties as a Personnel Administrative Officer 2 and began work in her new position as a Personnel Specialist 5. Sometime during her first or second week in her new position, appellant informed Harris that she was considering requesting that her demotion be rescinded.

Appellant subsequently had several more conversations with Harris concerning withdrawing her voluntary demotion request. On May 12, 1980, she submitted a letter requesting that the demotion request be withdrawn.

In her May 12, 1980 letter, appellant stated that, "I have not received written approval of my request, nor have I tendered written acceptance of my request."

Appellant contends that the personnel action demoting her was not completed prior to her request that it be withdrawn because respondent had not informed her in writing that her demotion request was accepted prior to May 12, 1980, and because she never accepted the demotion in writing as required by Pers. 17.04(3). There can be no dispute that respondent did not accept her demotion in writing until its May 20, 1980, letter to appellant. (Appellant's Exhibit 4)

Respondent argues that at the time of the demotion request, there was no requirement in the statutes or administrative rules for appointments to be confirmed or acknowledged in writing. This may very well be true but there certainly was a requirement that the Administrator of the Division of Personnel must be furnished a copy in writing of the request for voluntary demotion before it could be approved. Even assuming that a request for voluntary demotion could be considered acceptance under Pers. 17.04(3), this is a minimum requirement before such a request could be legally approved. In the instant case, no such written request was ever furnished to the administrator.

Both Paul Hanks and Langlois testified that appellant's demotion request was never received by the Division of Personnel. (Tr. 136, 147, 155, 156).

During direct examination, Hanks, a Personnel Specialist for the Division of Personnel, testified as follows:

MR. WHITCOMB:....You have indicated that you were aware of the fact that the personnel rules requires (sic) that written acceptance of the employe of a voluntary demotion be submitted to the director. Is that correct?

MR. HANKES: Yes.

MR. WHITCOMB: When did you find that out by the way?

MR. HANKES: When did I find that out. Probably in the first couple of weeks of my employment.

Later during cross-examination, Hanks, after being shown Respondent's Exhibits 6, 7, and 8, testified:

MS WESTON: In all of these cases, the individuals received a letter from the Department confirming their demotions before starting their new positions, right?

MR. HANKES: Yes.

MS WESTON: And in all of these forms a class and a transfer was approved before the people started their new positions.

MR. HANKES: Yes.

The obvious purpose of Pers. 17.04(3) is to insure that a voluntary demotion is just that, voluntary. In the instant case, it is apparent by the evidence presented that the Division of Personnel approved appellant's request for a voluntary demotion without ever having seen anything in writing from Ms. Craft confirming such request.

There can be no question that appellant caused respondent considerable inconvenience by requesting a voluntary demotion which required establishing a new position to demote to and then changing her mind and retracting her request. However, there also is no question that the Division of Personnel violated its own rules by approving appellant's original request without any written documentation to substantiate the personnel actions.

Therefore, under the circumstances, the Commission finds that appellant's voluntary demotion was never legally effective. Since the Commission does not believe that there was "a showing of obstruction or falsification" as provided in s. 230.44(4)(d), Stats., which would permit removal of the incumbent in appellant's former position, it concludes that the proper remedy is to reinstate appellant to her former pay range and to appoint her to the next PAO-2 position

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which becomes open in BPER that she is otherwise qualified to fill.

ORDER

The action of respondent in demoting appellant is rejected and this matter is remanded to respondent for action in accordance with this decision.

Dated _____, 1981

STATE PERSONNEL COMMISSION

Gordon H. Brehm
Chairperson

Donald R. Murphy
Commissioner

GHB:mgd

Parties

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