

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAVID WING,

Appellant,

v.

Secretary, DEPARTMENT OF  
INDUSTRY, LABOR AND HUMAN  
RELATIONS and Administrator,  
DIVISION OF PERSONNEL,

Respondents.

Case No. 80-65-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

In a decision dated April 5, 1983, and mailed on April 7, 1983, the Commission rejected the action of respondent DILHR in failing to consider the appellant for permissive reinstatement. The decision was issued by the Commission's hearing examiner as the final decision of the Commission pursuant to §227.09(3)(a), Stats. On April 27, 1983, respondent DILHR filed a petition for rehearing under §227.12, Stats., of the April 5th decision. The petition was granted for the limited purpose of providing the parties an opportunity to submit additional arguments with respect to the abuse of discretion issue.

The respondent DILHR offered the following argument:

There was no requirement that Pedro, the appointing authority, consider Wing's application [for permissive reinstatement] at all because his eligibility was merely permissive. The DILHR personnel office, in the persons of Brenna and Burke, did all it was required to secure consideration of Wing's application by transmitting it to Pedro through inter-departmental mail channels in routine fashion. Pedro did not, however, receive either the application itself or Burke's cover memo notifying him that he could also consider Wing (Finding 16(c)). Pedro, therefore, never became aware that he had discretion to consider Wing for the position. Instead, Pedro considered only those candidates actually certified for the position -- the only rational, logical and legal course known to him under the circumstances.

The decision made by Mr. Pedro cannot be viewed in isolation but must be considered in light of the information that may have been available to Mr. Pedro's secretary as well as the information that actually reached Mr. Pedro. In this case, Judy Burke, a personnel assistant in DILHR's personnel office sent a memo to Mr. Pedro via inter-departmental mail indicating that he could also consider the appellant's application for the position in question. Mr. Pedro, as Director of the Bureau of Program Management in DILHR's Division of Employment and Training Services (and the appointing authority for the Planning Analyst 4 - Supervisor position) did not receive the memo. However, it is merely uncertain whether Pat Appledorn, who was secretary in the Division and would normally receive personnel documents from the personnel office and transmit them to other persons within the Division, received the memo from Ms. Burke. The respondent failed to overcome the presumption that the memo mailed by Ms. Burke was properly handled in the inter-departmental mail and actually reached Ms. Appledorn's office. Mishandling of the document that might have occurred at any point thereafter is attributable to the respondent and prevented the appointing authority from exercising informed discretion in not considering the appellant for the Planning Analyst 4 - Supervisor position.

Therefore, the Commission reconfirms its decision dated April 5, 1983,  
with the additional analysis outlined above.<sup>FN</sup>

<sup>FN</sup> Pursuant to §227.09(3)(a), Stats., this decision and order is  
issued under the authority of the hearing examiner designated by the  
Commission to make the final decision in this matter.

Dated: August 4, 1983 STATE PERSONNEL COMMISSION

  
KURT M. STEGE, Hearing Examiner

KMS:jmf

Parties:

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DMRS (Division of Merit Recruitment & Selection)  
(formerly DP - Division of Personnel)