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 LORENZ R. MITTELSTADT, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 TRANSPORTATION, and Adminis- \*  
 trator, DIVISION OF PERSONNEL, \*  
 \*  
                   Respondents. \*  
 \*  
 Case No. 81-31-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Wis. Stats., of the refusal of the respondent Department of Transportation (DOT), to consider the appellant for reclassification from Trooper 2 to Trooper 3 prior to the appellant having served one year in the Trooper 2 classification.

FINDINGS OF FACT

1. The appellant initially was appointed to a position as a trooper in the classified service, with DOT, in August 1963.
2. After approximately 11½ years as a trooper, he transferred to a position classified as Investigator.
3. The investigator's work primarily involved trucking regulation compliance, and was not a law enforcement position.
4. After approximately 6½ years as an investigator, the appellant accepted a voluntary demotion in lieu of layoff to a position classified as Trooper 2, effective August 10, 1980.
5. Following completion of a training program, the appellant was certified by the Wisconsin Law Enforcement Standards Board on December 2, 1980, as qualified to be a law enforcement officer, and commenced field work as a Trooper 2 in District 3 (Fond du Lac) around January 1, 1981.

6. Respondent DOT refused to consider the appellant for reclassification to Trooper 3 prior to August 10, 1981, when he will have had one year's experience as a trooper following his demotion.

7. Pursuant to the State Patrol Trooper 3 class specifications, Respondent's Exhibit 3, this classification is defined as "full performance law enforcement work. . ." Trooper 1 is the entry level and Trooper 2 the objective level. All 3 classifications involve basically the same type of duties and responsibilities.

8. Reclassification to Trooper 3 has been based on "attainment of specified training and experience, and demonstrated performance by an incumbent . . ." in accordance with §Pers 3.02(4)(b), Wisconsin Administrative Code (1975), and pursuant to policies developed by DOT, such reclassification required completion of two annual 30 hour in-service training courses and satisfactory performance evaluation for the immediate past 12 months as a trooper.

9. At the time that the Trooper 3 classification was initiated, respondent DOT utilized a "grandfather" approach to employes in the Trooper 2 classification and required only one in-service training after becoming a Trooper 2 before being evaluated for Trooper 3 and said evaluations were for the preceding period of 12 months performance as Trooper.

10. As a result of the foregoing policy, Trooper Barnett was reclassified from Trooper 2 to 3 after 6 months as a Trooper 2. He was evaluated for a period of 12 months performance as a Trooper 2 and 3 immediately prior to the reclassification.

11. The work of a trooper is performed under highly independent conditions and usually in the absence of supervision in the immediate proximity.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44 (1) (b), Wisconsin Statutes.
2. The burden of proof is on the appellant to establish that the respondents erred in refusing to consider the appellant's request for reclassification as requested by the appellant, and prior to August 10, 1981.
3. The appellant has failed to sustain his burden of proof.
4. The respondent's did not err in refusing to consider the appellant's request for reclassification prior to August 10, 1981.

OPINION

SPers 3.03(2), WAC (1975), provides:

"Normally, filled positions will not be reclassified until the incumbent has carried the duties and responsibilities for at least 6 months." (emphasis added)

The current rule, effective March 1, 1981, provides:

"Incumbents of filled positions which have been reclassified will not be regraded until the incumbent has performed the permanently assigned duties and responsibilities for a minimum of 6 months." SPers 3.01(3), WAC. (emphasis added)

The rules make it clear that an employe must be in a position for a minimum of six months before reclassification or regrade following reclassification. The wording of the rules also makes it clear that this six-month period is only a minimum and that a longer period can be required.

In this case, respondent DOT has utilized a one-year period of performance as a trooper as a prerequisite to reclassification to Trooper 3. One of the reasons for this policy is the highly independent conditions under which the work is performed and lack of immediately available supervision.

The appellant argues that he should be given credit for his prior service, which included 11½ years as a trooper. The respondent DOT, in turn, argues that the intervening 6½ years during which the appellant was not employed as a trooper is so substantial a gap that reliance on this earlier service would not be appropriate.

The appellant has the burden of proof, and in the Commission's opinion, although this is a close case, he has not established, by the greater weight of credible evidence, that the respondent's insistence on a one year period of evaluation was incorrect.

As discussed above, while the rules require a six-month minimum period in a position, they also allow a longer period. Thus, the respondent's action was not in violation of the rules as such.

As far as the merits of this particular case is concerned, it is true that the appellant had considerable duty as a trooper followed by service as an investigator. On the other hand, there was a 6½ year period prior to appellant's voluntary demotion to a trooper position, during which he was not performing as a trooper or law enforcement officer. The work of a trooper is performed highly independently, with little immediate supervision, and consequently, there is less opportunity to observe and evaluate the troopers performance than is the case with other types of jobs where the supervisor is in closer proximity. Also, in the appellant's case, there will actually be less than one year's full performance at the Trooper 2 level because he was in a training program after his voluntary demotion and did not commence work in the field until approximately the beginning of 1981.

The case of Trooper Barnett, which was cited as an example of disparate treatment, is not convincing. He was reclassified to Trooper 3 after 6 months as a Trooper 2. However, he had a period of one year's performance as a trooper at both the 1 and 2 levels immediately preceding his reclassification. Since the duties and responsibilities of the Trooper 1, 2, and 3 classifications are basically the same, he actually would have a larger period of field performance for evaluation immediately prior to reclassification than appellant.

ORDER

The action of the respondents is affirmed and this appeal is dismissed.

Dated: October 2, 1981

STATE PERSONNEL COMMISSION


AJT:nwb

Parties

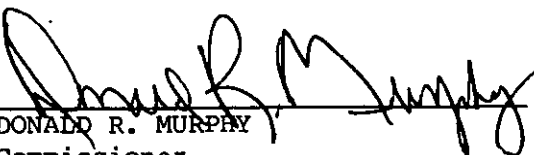
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