

STATE PERSONNEL COMMISSION

PERSONNEL COMMISSION

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 JOYCE DE MARB, \*  
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 Appellant, \*  
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 v. \*  
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 Secretary, DEPARTMENT OF \*  
 INDUSTRY, LABOR, AND HUMAN \*  
 RELATIONS, and Administrator, \*  
 DIVISION OF PERSONNEL, \*  
 \*  
 Respondents. \*  
 \*  
 Case No. 81-391-PC \*  
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 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b) of the denial of a request for reclassification of appellant's position from Job Service Assistant 3 to Job Service Assistant 4. The Commission has considered the proposed decision of the examiner and the objections and arguments of the parties, on file herein, and has consulted with the hearing examiner. Certain changes have been made in the findings and opinion to better reflect the record. The hearing examiner concurs in these changes.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed in the classified civil service in the Department of Industry, Labor and Human Relations at its Fond du Lac Job Service office, in a position classified as Job Service Assistant 3.

2. A summary of appellant's duties includes the following:

Under general supervision of Intake and payment Examination, supervisor acts as a lead worker in payment demand examination unit. Prioritizes and shifts work assignments of between 3-10 employees to meet payment demands of a fluctuating claim load. Has functional responsibility for payment of benefits to eligible UC applicants. Implements System IV in Processing Initial Claims. Acts as lead worker and TRA Intake and UC-TRA processing specialist. Answers technical UC questions from staff, Adjudication Unit, Intake Unit, claimants and/or employers. Answers questions from the general public regarding the reason for late or delayed benefit payments caused by incomplete or late return of wage reports from employer, fraudulent claims or other reasons. Evaluates wage discrepancy claims to determine existence of possible fraud and to prevent overpayment. Issue appropriate Initial Determination after ascertaining appropriate amount of weekly pension effective UC weekly entitlement under §103.04(15)(b) of the Wisconsin Statutes and issues "quit and requalify determinations under §103.04(7)(a & h). Reviews and interprets results of Local Initial Determinations, Appeal Tribunal Decisions and/or Commission Review Decisions to determine whether additional action is required to expedite payment of benefit checks because of a shift of liable employers due to determination on decision etc. and determines whether workers compensation payments qualifies the claimant for an extended benefit year or a longer base period under UC law. (Resp. Exhibit #3)

3. Appellant functions as a lead worker in the payment examination unit (claims examination unit) and is the only permanent classified clerical employe in that unit.

4. As a lead worker, the appellant had the responsibility to guide, train and review the work of 3 to 15 nonpermanent employees (a combination of seasonal and LTE employees). Additionally, appellant from time to time serves as lead worker for permanent employees (Job Service Assistant 1's and 3's who are assigned to the payment examination unit from the intake unit in order to meet fluctuating claims and work loads.

5. Appellant, through competitive examination, became a JSA 3 in January of 1977.

6. Appellant, in addition to her lead work responsibilities, has since October of 1980 been assigned to handle "the special programs" at the

Fond du Lac office. These "special programs" such as DUA (disaster unemployment assistance), SUA (supplemental unemployment assistance), FEB 1 & 2 (federal extended benefits) and TRA (trade readjustment act), have occupied substantially more than 50% of her time. Appellant's responsibility with regard to such special programs included the coordination of the programs, conducting claimant interview and information sessions and the training of other Job Service office employees with regard to the program and the handling of claims related to the programs.

7. There are no clerical employees assigned to the adjudication unit at the Fond du Lac Job Service office.

8. The current position allocations work examples for a Job Service Assistant 4 in an adjudication unit (Resp. Exhibit #1) indicates that a JSA 4 at a field office in a paraprofessional position would perform a combination of the following tasks: 1) taking statements from claimants/employers concerning disputed claims, 2) counseling claimants on combined claims, 3) investigating cases for possible fraud, 4) taking appeals on initial determinations, 5) determining continuing eligibility for claimants who had failed to register for work or return claim card on time, 6) contacting affected claimants/employers to collect delinquent taxes, fees and benefit overpayments, 7) reviewing initial determinations for logicalness, 8) coordinating with the administrative office and county officials the filing of warrants and garnishments, 9) providing information to interested parties on all aspects of the Unemployment Compensation law.

9. Since late December of 1980, appellant has performed the tasks listed in finding of Fact #8 with the exceptions of #4, #6, & #8. With regards to numbers 6 & 8, these tasks have not been performed at the Fond-du Lac office by anyone for at least two years, and with regard to #8, when

it was done it was done only by the supervisor or the senior analyst and not by the Job Service Assistant. Appellant was selected by the District Director to receive training from the adjudication unit supervisor and was trained in and does perform the JSA 4 level work which would be performed by a JSA 4 in the adjudication unit if one had been assigned to the unit. The clerical work of this unit which is below the JSA 4 level is performed by other clerical employes of the Fond du Lac Job Service office who are assigned to the unit on a temporary, as needed, basis. (Testimony of the adjudication unit supervisor)

10. In early October of 1980, appellant was assigned as lead worker and TRA intake and UC-TRA processing specialist responsible for the TRA program relative to Mercury Marine Corp. The Mercury Marine TRA situation involved multiple certification dates, multiple plant locations, individual employes who may have worked at more than one plant, and a product mix such that some products worked on were adversely affected by foreign competition and others were not. The Mercury Marine situation involved complex calculations and data analysis regarding such things as holiday pay, vacation pay, retroactive payments, wage determinations, incentive pay and the calculation and conversion and preparation of other data and analysis which was not provided or performed by the employer. This program had an applicant potential of three thousand to thirty-five hundred people and had to be conducted against strict legal and time requirements. Appellant's activity with regard to this TRA program went well beyond "claims taking" activities. She conducted group claims taking sessions and group benefit rights eligibility interview sessions. It was her responsibility, as testified to by the District Director, to make sure the information and answers given to the groups and the individual claimants in them were

correct; and, if necessary, would stand the test of court review vis-a-vis the standards of the Federal TRA rules and regulations.

11. Appellant was the liaison between the Fond du Lac (and other job service offices involved in Mercury Marine TRA) office and the professional staff responsible for TRA in Madison. Frequently, due to the unusual nature of the Mercury Marine TRA, the questions she formulated and the information/interpretation sought from Madison had to be referred to the Federal Regional Office in Chicago. Upon receipt of advice from Madison/Chicago the appellant had to apply it to the TRA program she coordinated at Fond du Lac.

12. Appellant was the person who contacted and conferred with union officials regarding information needed to qualify or clarify TRA claims. Determinations of how to treat contractual holiday pay, incentive payments, vacation payments, etc. relative to the impact of such payments on TRA eligibility or qualification were made by the appellant. Information about the TRA program, its requirements and policy was provided to the union and for individual union members.

13. Appellant, with regard to the payroll/time worked information needed to meet TRA requirements, acted as a "broker" between the Fond du Lac office and the employer (Mercury) or the firm retained by the employer to keep such records (Gates McDonald). Due to the multiple certification dates, plant locations, product mix, etc., the information initially supplied by the employer was neither complete enough nor in the correct form to satisfy TRA requirements. As the need for more information and information in an acceptable format became apparent, it was the appellant who, through direct, frequent contact with the various sources, obtained

the information and translated it to apply to individual TRA claim situations.

14. In the Job Service Assistant Position Standard the term "paraprofessional" is defined as:

A type of work closely relating to and resembling professional level work, with a more limited scope of functions, decision-making and overall accountability. A paraprofessional position may have responsibility for segments of professional level functions, but is not responsible for the full range and scope of functions expected of a professional position. (Resp. Ex. 1)

"Considerable Difficulty" is defined as:

Refers to duties which require independent judgment; many factors must be considered and weighed before a decision can be reached. Usually positions requiring the planning, development or coordination of activities or programs or part thereof and the direction or coordination of employes fall into this category. (Resp. Ex. 1)

15. Given the complexity and scope of the TRA program, the limited amount of supervision received, the responsibility and accountability given the appellant, the nature and level of internal and external coordination and communication in which the appellant was engaged and the efforts necessary to interpolate and apply information in order to make determinations relative to TRA standards, the Commission concludes that appellant's duties and work relative to the Mercury Marine TRA program were of "considerable difficulty" and were "paraprofessional" in nature.

16. Because her assignment was to "manage" and coordinate the total TRA activity at the Fond du Lac Job Service office, appellant's work transcended, to a considerable degree and for greater than the majority of time, the "advanced clerical" and "moderate difficulty" work contemplated by the JSA 3 standard.

17. The established Job Service program policies and procedures were not such that this TRA program adhered to precisely defined and established policies. Rather, the appellant was engaged in providing "direct services

to clients and employers" and supporting professional staff and was exercising "considerable discretion" and judgment in tailoring services to meet client/employer needs and Job Service program objectives. (JSA 4 Class Definition, Resp. Ex. 1)

18. During the six month period from October of 1980 to April of 1981, appellant frequently worked a 60 to 70 hour week of which 45 to 50 hours were TRA activities.

19. The position standard for Job Service Assistant (Resp. Exhibit #1) includes the following descriptions and examples of worked performed:

JOB SERVICE ASSISTANT 3

(PR2-07)

This is entry-level paraprofessional or advanced and/or lead level job service work of moderate difficulty in the State Job Service programs. Paraprofessional positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives. Work is performed under general supervision.

Advanced and/or lead positions at this level: 1) perform advanced clerical work characterized by the application of a wide variety of complex, interrelated Job Service program policies and procedures and may train staff in area of specialty; 2) lead a medium unit of clerical employes engaged in complex, specialized clerical activities; or 3) lead a small unit of clerical employes engaged in complex and varied clerical activities. Clerical work at this level is performed in accordance with established Job Service program policies and procedures. Work is performed under general supervision.

JOB SERVICE ASSISTANT 4

(PR2-08)

This is paraprofessional and/or lead job service work of considerable difficulty in the State Job Services programs. Staff positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives.

Lead work positions at this level guide: 1) a medium clerical unit in complex and varied Job Service program activities, 2) a large clerical unit engaged in complex specialized Job Service program activities. Major responsibilities include coordinating activities internally and with other work units, setting priorities and recommending new methods for accomplishing work. Work is performed under direction.

20. Current position allocations and work examples of the Job Service Assistant 3 and Job Service Assistant 4 are as follows (Respondent's Exhibit #1):

JOB SERVICE ASSISTANT 3 - Current Position Allocations and Work Examples

Paraprofessional Positions - see Job Service Assistant 4.

Computer Monetary Determinations Section, Bureau of Benefit Procedures -

Administrative Office - issues or reissues monetary determinations on the most complex unemployment compensation claims involving disputed claims (often when Appeal Tribunal or Commission decisions have been issued), amends, overpayments and/or underpayments; adjusts claimant and employer records accordingly. Work at this level requires extensive correction of previous actions and frequently is a multi-step operation where timing of computer input and a basic understanding of relevant computer programs is essential.

Lead Worker, Job Service Intake Claims Processing Unit - Field Offices - leads a small clerical staff in all unemployment compensation claims intake, client registration, unemployment compensation claims processing, and clerical support activities in a geographic area of the state.

JOB SERVICE ASSISTANT 4 - Current Position Allocations and Work Examples

Paraprofessional Field Office Positions - performs a combination of the following tasks:

- 1) (In adjudications units) taking statements from claimants/employers concerning disputed claims,
- 2) counseling claimants on combined claims,
- 3) investigating cases for possible fraud,
- 4) taking appeals on initial determinations,
- 5) determining continuing eligibility for claimant who has failed to register for work or return claim card on time,



- 6) contacting affected claimants/employers to collect delinquent taxes, fees, and benefit overpayments,
- 7) reviewing initial determinations for logicalness,
- 8) coordinating with the administrative office and county officials the filing of warrants and garnishments,
- 9) providing information to interested parties on all aspects of the Unemployment Compensation law.

(In employment assistance, special applicant services, and WIN units) job order taking, applicant interviewing, routine job placement (e.g., self-service, odd jobs), registering WIN participants, determining eligibility of clients for specially funded training programs, coaching client in assigned job service activity to assist client in job adjustment or to encourage maximum cooperation with supportive services, assisting in locating and providing necessary community services.

21. Respondent DILHR, acting on a delegated basis pursuant to §230.05(2)(a) Wis. Stats., denied the request for reallocation of appellant's position from JSA 3 to JSA 4 in a letter dated September 18, 1981. (Resp. Exhibit #5)

22. Based upon the work appellant performs for the adjudication unit, her assignment to coordinate special projects as they occur at the Fond du Lac office, and especially her involvement in the TRA program, the Commission concludes the appellant spends greater than a majority of her time involved in work which is at the JSA 4 level.

23. The appellant's position is better described by the JSA 4 position standard than the JSA 3 position standard and is more properly classified as a JSA 4 than as a JSA 3.

#### CONCLUSION OF LAW

1. This matter is properly before the Commission pursuant to §233.44(1)(b), Wis. Stats.

2. The appellant has the burden of proving that the Respondent erred in denying the request to reclassify her position from JSA 3 to JSA 4.

3. The appellant has satisfied that burden.

4. The respondent erred in denying the request to reclassify the appellant's position and the appellant is entitled to have her position reclassified to JSA 4.

OPINION

A review of the class definitions for the Job Service Assistant 3 and 4 levels reveals that the distinction between these two classifications is either the level of the work performed or the size and nature of work performed by the unit over which the individual serves as a lead worker. The appellant leads a small unit of clerical employes engaged in complex and varied activities as opposed to a medium unit engaged in complex and varied activities. From testimony and documents presented at the hearing, appellant is lead worker over a fluctuating number of employes and the vast majority of those employes over which she is lead worker are not permanent employes. They are, rather, seasonal or LTE employes. Appellant's position, therefore, does not appear to qualify for the JSA 4 level on a lead worker analysis because the position fails to meet the requirements of leading a medium unit. A complete assessment of the best fit for the appellant's classification then turns to a review of the level and nature of work performed by the appellant.

In a review of the level and nature of work performed by the appellant, a number of "unique" characteristics of the Fond du Lac Job Service office should be noted. Testimony and exhibits provided at the hearing indicate, 1) there is no clerical employe (permanent) assigned to the adjudication unit at the Fond du Lac office, 2) the appellant is the only permanent classified employe assigned to the claims examination unit, 3) the TRA program administered by the Fond du Lac office was probably the most complex TRA experience in the State of Wisconsin, 4) whenever a

"special project" had to be completed, it was the appellant who was assigned to coordinate and complete that special project.

Appellant's job description (Resp. Exhibit #3) makes frequent reference to work performed by the appellant for or on behalf of the adjudication unit. (See for example, A.8., B.9. b., C.1.b., C.4.) The testimony of the adjudication supervisor indicates that the work performed by the appellant was not simply a referral of applicants or questions or information to the adjudication unit. Appellant had received training from this supervisor relative to the needs of and work done by the adjudication unit. On behalf of or for the adjudication unit, appellant counseled claimants/employers. Appellant performed analysis and preparation of data for the adjudication unit. Indeed, from the testimony of the supervisor relative to the current position allocation and work examples of a Job Service Assistant 4 in an adjudication unit, the appellant performed most of the tasks therein listed. He further testified that she was capable of and, in fact, did exercise independent judgment in determining what was to be done in the adjudication and how it was to be done. In essence, the adjudication supervisor was of the opinion the appellant was capable of and was performing JSA 4 level work for the adjudication unit. The Commission concurs with the adjudication unit supervisor.

The supervisor of the intake and claims examination (the appellant's supervisor) testified that the appellant is solely responsible for the training and retraining of the 3 to 15 seasonal and LTE workers who may be working in the claims examination section at any given time. Additionally, the appellant "is in charge" of this section and operates with a very high degree of independence from the supervisor. According to the supervisor, the appellant also has the authority to prioritize work and to obtain

permanent employes from registration review when the work warrants it. On those occasions when other JSA's (including 3's) come to appellant's unit, she serves as lead worker over them. The appellant must also possess knowledge and understanding of the laws and regulations governing programs in her unit. These change frequently, and, as the only permanent employe in the area, appellant is the one responsible for keeping current on these regulations. The supervisor further indicated that with respect to special programs, appellant is the "key" person and is responsible for liaison with the offices in Madison, conducting of group interview and applicant sessions as well as coordination of the special programs. The District Director of the Fond du Lac office testified that the Appellant was the person "put in charge" when there was a special project to be done. She was the person he depended upon to coordinate and complete the special projects regardless of their complexity, and the handling of these projects and the conducting of large group sessions was "a cut above" what was usually expected of a Job Service Assistant 3. He acknowledged that particularly with respect to the TRA program, time limits and legal requirements were unusually acute and, when coupled with the very large volume of applicants and complex character of the program, the Mercury Marine program presented an assignment which was very difficult to accomplish. The district director further stated that the appellant spends up to 50% of her time coordinating and implementing special programs.

Upon review of the class definitions and work examples with regard to assignments given to and completed by the appellant, the Commission concludes that the appellant spends a majority of her work time working at the "paraprofessional" level and performing duties which are of "considerable difficulty," as those terms are defined in the position standard. (Resp.

Exhibit #1.) Respondent's letter denying the appellant's reclassification request (Resp. Exhibit #5), is essentially correct in its analysis of the appellant's lead work responsibilities relative to qualifying for reclassification. However, this audit of the appellant's position misses the mark in its analysis of the appellant's work regarding the adjudication unit responsibilities and the TRA program. The comparisons with other Job Services offices and other TRA experiences do not accurately reflect the actual situation at Fond du Lac. It is the conclusion of the Commission that a logical and gradual change to the duties and responsibilities of the appellant has occurred. While these changes may reflect the organization, staffing and program demands of a single Job Service office, they nonetheless result in a determination that the position in question involves a substantial amount of work at the paraprofessional level and of considerable difficulty in its degree. It therefore must be concluded that the appellant's position is better described by the Job Service Assistant 4 class specification and that the respondent erred in denying the request for reclassification to that level.

ORDER

The action of the Respondent is rejected, and this matter is remanded for action in accordance with this decision.

Dated: January 10 1988 STATE PERSONNEL COMMISSION

Donald R. Murphy  
DONALD R. MURPHY, Chairperson

JWP:jmf

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