

Original

STATE OF WISCONSIN

PERSONNEL COMMISSION

 *
 JUANITA HARBORT, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 INDUSTRY, LABOR AND HUMAN *
 RELATIONS, *
 *
 Respondent. *
 *
 Case No. 81-74-PC *
 *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to s.230.44(1)(d), stats., of the failure to appoint the appellant to a position following certification.

FINDINGS OF FACT

1. This appeal involves the selection process for a position in the classified civil service in the Department of Industry, Labor, and Human Relations (DILHR), Division of Systems and Data Processing, Data Control unit, classified as Management Information Technician (MIT) 4 Lead Worker.
2. The appellant applied and was examined for this position. She was certified with a rank of first. The second-ranked applicant, Ronald J. Baeseman, was appointed with an effective date of February 22, 1981.
3. The appellant, at the time that she was being considered for appointment, had been employed as an MIT 3 for approximately 6 years, and had occupied the position in question on an acting basis for approximately 7 months.
4. Mr. Baeseman had approximately 3 years prior experience as an MIT.
5. At the time of the hiring decision, the appellant had more technical competency for the position in question.

6. The appellant has demonstrated, during the course of her employment as aforesaid, various difficulties with interpersonal relationships and communications. Her supervisor received at least one complaint about her from a "user" of the unit's services and one complaint from a co-employee. Her performance evaluations dated 8/24/81, Appellant's Exhibit 3, and 6/27/80, Appellant's Exhibit 2, which had overall ratings of "Superior", included the following comments:

6/27/80: "Sometimes slow to compromise. Listening skills could be improved upon. Keep calm under pressure. Excitement is easily detected in your voice."

8/24/81: "Unwilling to compromise when facing a disagreement."

7. Successful performance in the position in question requires communications and interpersonal as well as technical skills, and this was the primary factor why Mr. Baeseman was appointed instead of the appellant.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to s.230.44 (1)(d), stats.

2. The appellant has the burden of proving by a preponderance of the evidence that the failure to appoint her to the position in question was illegal or an abuse of discretion.

3. The appellant has not sustained her burden of proof.

4. The failure to appoint her to the position in question was not illegal or an abuse of discretion.

OPINION

This is an appeal pursuant to s.230.44(1)(d), stats. Therefore, the standard to be applied is whether the appointing authority's decision was "illegal or an abuse of discretion." The appellant has not alleged illegal

action, so the Commission is concerned solely with whether there was an abuse of discretion.

The term "abuse of discretion" has been defined as "... a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." Murray v. Buell, 74 Wis. 14, 19 (1889). Thus, the question before the Commission is not whether it agrees or disagrees with the appointing authority's decision, in the sense of whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Rather, it is a question of whether, on the basis of the facts and evidence presented, the decision of the appointing authority may be said to have been "clearly against reason and evidence."

Based on this record, the Commission cannot say that the decision of the appointing authority was "clearly against reason and evidence." Management admitted that the appellant had more technical competence than Mr. Baeseman. She also presented positive testimony from certain co-employees regarding her communications and interpersonal relation skills. On the other hand, the respondent's witnesses provided negative testimony about these areas, including a complaint from a user. Although her performance evaluations were good, they included negative comments about these aspects of her performance. In the opinion of the Commission, the agency had legitimate concerns about these factors. Obviously, there were other ways that the agency might have weighed all the factors, and this might have lead to a different decision. However, the Commission cannot say that the decision that was reached constituted an abuse of discretion.

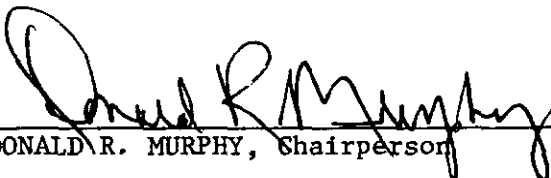
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ORDER

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

Dated: April 2, 1982

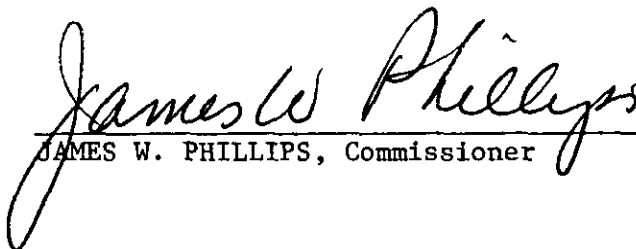
STATE PERSONNEL COMMISSION


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