

* * * * *
 *
 DAVID COLLINS, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 TRANSPORTATION, and *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 84-0105-PC *
 *
 * * * * *

DECISION
 AND
 ORDER

This matter is before the Commission as an appeal from a reclassification denial. The parties agreed to the following for hearing:

Was respondent's reclassification decision of May 25, 1984, denying the reclassification of appellant's position from Trooper 2 to Trooper 3 correct?

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed by respondent as one of seven troopers in B Troop, covering Columbus County in District 1 of the Wisconsin State Patrol. His supervisor is Sargeant David Heinle.

2. In order for a trooper to be reclassified from the 2 to the 3 level, the trooper must complete 60 hours of in-service training, must pass two examinations administered at the end of the required training, and must be performing at the objective level of Trooper 3 for a period of 6 months as evaluated by their sargeant. Failure to meet any one of these requirements will prevent reclassification to the 3 level.

3. The appellant completed the required 60 hours of in-service training and had passed both of the required examinations by the end of March, 1984.

The in-service that permitted him to fulfill this requirement was held during the last week of March, 1984.

4. Appellant's supervisor, Sgt. Heinle, completed an evaluation of appellant's performance for the period from October 1, 1983, to March 17, 1984, and concluded that the appellant had not performed at the objective level for this "six months." Based upon that conclusion, appellant's reclassification was denied.

5. An objective method for measurement of the level of performance of a particular trooper is the number of various types of contacts with civilians the trooper has had during a given time period. On a daily basis each trooper is responsible for listing their contacts in the following areas, among others: accident citations, accident investigations, equipment violation notices, criminal law enforcement contacts, hazardous moving vehicle citations, motor carrier inspection reports, motorist assists, registration assistance contacts, drunk driving arrests, non-hazardous moving violation arrests, speed detection arrests and written warnings.

6. For the period from October 1, 1983 to March 17, 1984, the appellant performed below the troop averages in the following areas: equipment notices, hazardous moving violation arrests, motor carrier inspection reports, non-hazardous moving violation arrests, speed detection arrests, total written arrests and warnings. The appellant had higher than troop averages in the time he spent having his squad car repaired and serviced (equipment service time), the time he spent on preparing his weekly worksheet (FOS reporting time) and the time he spent transporting violators to a location where they could post bond (bond posting time). Specifically, the appellant

had no motor carrier inspection reports during this period and only had half the troop average for written warnings.

7. Troopers who pad the time they spend on non-enforcement activities will generate a more desirable ratio between their total enforcement contacts and their total enforcement hours.

8. During the period from October 1, 1983 to March 17, 1984, the appellant was late to work by between one and four minutes on a total of 13 occasions.

9. Sgt. Heinle prepared a second evaluation for the appellant's performance during the period from March 18, 1984, to September 15, 1984. Sgt. Heinle concluded that the appellant had performed at the objective level for this six month period. Based upon that conclusion, appellant's reclassification was granted.

10. During the period covered by the second evaluation, the number of total arrests by the appellant increased and became closer to the troop average, while his number of motorist arrests decreased, thereby also moving toward the troop average. Appellant's radar citations were above the troop average whereas during the first evaluation he was significantly below troop average in that area. All of these changes were consistent with Sgt. Heinle's goal of emphasizing enforcement activities and deemphasizing assistance to motorists.

11. During the second evaluation period, the appellant was late for work on 21 occasions.

12. At all times relevant to this proceeding, the appellant worked the 3 p.m. to 11:30 p.m. or afternoon shift. There is generally a higher traffic volume during the day shift and lower volume during the night shift as

compared to the afternoon shift. Therefore, there are more opportunities for contacts during the day shift. Bond posting may take somewhat longer during the afternoon shift as compared to the day shift because fewer bond posting locations are open.

13. Major portions of the interstate highway within B Troop's jurisdiction were under construction during 1983 and 1984. By September of 1983, expansion of the Wisconsin River bridge was tapering down and work on grading the median strip and laying temporary lane of asphalt in the median was underway. During the second evaluation period two of the existing interstate lanes were ripped up and replaced by three new lanes.

14. Until March of 1984 the appellant was unaware that the day shift had been using highways off of the interstate for regular enforcement duties since the beginning of the year due to the level of construction on the interstate. In at least some construction areas it was unsafe to have a motorist stop their vehicle. Prior to March, appellant understood that a trooper in his unit could only go off the interstate to eat, post bond, take a break or to pick up equipment at a scale.

15. After March of 1984, the appellant began to spend enforcement time on highways other than the interstate. However, the appellant's ratio of enforcement hours per contact was significantly worse in April of 1984 than earlier that year. The ratio did not improve from the March level until July of 1984 and the first significant improvement was in August of 1984.

16. After January of 1984, the winter of 1983-84 was an especially productive period for contacts by troopers in the district as compared to prior years.

17. The appellant had roughly the same amount of hours of overtime as the other troopers in his unit during the first and second evaluation periods.

18. The appellant has consistently indicated on his weekly timesheets (FOS reports) that he spends one hour on his last work day during that week to complete those timesheets. The troop average was 26 hours for the year 1983 and nothing suggests that this average (of $\frac{1}{2}$ hour per week) changed during the first three months of 1984.

19. The appellant spent 38.5 hours for equipment service during the year of 1983 compared to a troop average of 22.1 hours during the same period.

20. The appellant's enforcement hours and contacts for the period relevant to this appeal are as follows:

<u>Time Period</u>	<u>Enforcement Hours</u>	<u>Contacts</u>	<u>Hours/Contact</u>
<u>1983</u>			
09/18 to 10/01	62 ¹	33	1.9
10/02 to 10/29	92	54	1.7
10/30 to 11/26	94	95	1.0
11/27 to 12/10	46.5 ¹	54	0.9
12/11 to 12/31	66 ¹	49	1.3

¹Enforcement hours were determined by totalling columns 542 and 543 on appellant's weekly trooper worksheets for the period in question.

<u>Time Period</u>	<u>Enforcement Hours</u>	<u>Contacts</u>	<u>Hours/Contact</u>
<u>1984</u>			
01/01 to 01/28	113.5	87	1.3
01/29 to 02/25	71.5	59	1.2
02/26 to 03/17 ²	64	55	1.2
03/18 to 03/31 ²	21	18	1.2
04/01 to 04/28	100	65	1.5
04/29 to 05/26	74.5	46	1.6
05/27 to 06/23	96	67	1.4
06/24 to 07/28	111	104	1.1
07/29 to 09/01	117.5	160	0.7
09/02 to 09/15	45 ³	63 ³	0.7
SUBTOTAL A			
9/18/83 to 3/17/84	609.5	486	1.3
SUBTOTAL B			
10/02/83 to 03/31/84	568.5	471	1.2
SUBTOTAL C			
03/18/84 to 09/15/84 (period of Sgt. Heinle's second evaluation)	565	523	1.1

²The only statistics found in the record cover the entire five week period from February 26 through March 31, rather than a portion thereof. In order to develop statistics compatible with the evaluation periods utilized in this case the Commission has assumed that because he was participating in in-service training during the last week of March, the appellant had no enforcement hours or contacts during that week. The Commission then assumed that for the remaining four week period of February 26 through March 24, the appellant's enforcement hours and contacts were evenly distributed. By multiplying the five week totals by one-fourth, the Commission was able to generate statistics for the periods of February 26 through March 17, and March 18 through March 31.

³The figures on appellant's worksheet for the period of September 2 through September 15 are indecipherable. However, testimony established that there were 63 contacts during this period. The Commission selected 45 enforcement hours for this two week period because 22.5 hours is the approximate weekly average for the period from April 1 through September 1.

21. On a statewide basis, the average number of enforcement hours per contact is 1.3 hours.

22. The appellant's level of performance was not at the objective level for either the six month period ending March 31, 1984, or the six month period ending March 17, 1984.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of showing that respondent's decision not to reclassify his position from Trooper 2 to Trooper 3 was incorrect.

3. The appellant has failed to sustain his burden.

4. Respondent's decision of May 25, 1984 to deny the reclassification of the appellant's position was not incorrect.

OPINION

This case is before the Commission as an appeal of a reclassification denial. Typically for such appeals, the Commission is asked to determine which of two position standards "best fit" the appellant's position. In the present case, however, the appellant seeks to be reclassified due to "the attainment of specified education or experience," which is generally referred to as a reclassification within a progression series. §ER-Pers 3.01(3), Stats. As of March 31, 1984, the appellant had fulfilled two of the three requirements for reclassification to the Trooper 3 level. The only question before the Commission is whether, as of that date, the appellant had also "performed at the objective level for the past six months."

There were three areas of appellant's performance during the period from October 1, 1983 through March 31, 1984 that could arguably justify the

conclusion that the appellant was not performing at the objective level: 1) relatively low level of enforcement contacts, 2) relatively high level of certain non-enforcement activities, and 3) the frequency of occasions he was late for work.

Respondent established that even though the appellant's ratio of enforcement hours per contact was just about at the statewide average, his performance was below, and in some areas significantly below, the averages for his troop over the same period. It must be remembered that the statewide APA of 1.3 hours per contact should not be used as the sole standard for granting reclassifications. In Jansen et al v. DOT & DP, 78-170, etc-PC, 1/8/81, affirmed by Dane County Circuit Court, 81 CV 0684, 9/30/81, the Commission concluded that the respondent's sole reliance on the appellant's Measurable Standard of Activity, which was computed from the number of enforcement hours, total contacts and hazardous moving violation citations and was the forerunner to the APA ratio utilized in the instant appeal, failed to take into consideration other matters relevant to the trooper's performance.

Here, other information about appellant's performance during the relevant time period must also be considered. Comparisons focused on the appellant's unit's averages for contacts and non-enforcement hours rather than the statewide averages in those areas. By using appellant's own troop as a basis for comparison, many of the "environmental" distinctions that would exist with positions in other districts fall away.

The appellant has identified several factors in an effort to justify the discrepancies in performance. Factors such as different shifts, construction, and availability of alternative highways all are apt to have

some impact on numbers of contacts. However, with respect to each factor there are arguments suggesting they are not entitled to all that much weight. For example, even though there is higher traffic volume on the day shift than appellant's afternoon shift, his performance was being compared to averages from the rest of the unit, which included troopers on all three shifts, including the night shift, which has the lowest traffic volume of all. Construction on the interstate affected everyone on the unit and not just the appellant. While others in the troop may have gone to alternative highways earlier than the appellant, appellant's performance worsened, if anything, at the time he moved to the off-interstate routes.

Much of appellant's argument focused on comparing his performance during the first evaluation period to his performance in the second. He argued that his total contacts were very similar for the two periods especially after taking into account overtime and the additional two week period in September, 1983 necessary for the evaluation period to cover a full six months that ended on March 17, 1984. It is true that the total contacts reflected in subtotals A and C of finding 20 are comparable after overtime is considered. However, Sgt. Heinle testified that the reason he favored appellant's reclassification at the end of the second evaluation period was the appellant's very noticeable improvement beginning July.

Appellant also argued that his performance was comparable to that of two other troopers, Thomas Fassbender and Michael Kuban. However, Kuban was the one trooper in the unit assigned to the midnight shift. Fassbender also spent three months of the evaluation period working the midnight shift for another work unit.

Another area of appellant's performance that leads one to conclude that his performance was not at the objective level was the relatively high level of non-enforcement activities. Sgt. Heinle suggested that appellant's high level of motorist assists as compared to his level of enforcement contacts showed that appellant was not giving sufficient emphasis to enforcement activities. In addition, appellant spent a higher than average time on FOS writing, equipment service and bond posting. Appellant suggested that at least some other troopers regularly took one hour per week to complete this FOS report. Appellant argued that Sgt. Heinle's perception that only emergency breakdown time could be charged as "equipment service time" was inconsistent with the FOS manual which merely refers to time spent out of service for repair and maintenance of equipment and vehicle. With respect to his bond posting time, appellant stated that fewer locations for posting cash bonds were open on his shift which increased his travel time. Of the appellant's arguments, the strongest is as to the bond posting time. However, his equipment service time argument is addressed to the perceptions of his supervisor, not of his co-workers, whose activities form the basis for the troop averages. If the appellant could have shown that everyone in his troop actually takes one hour to complete their FOS reports but that one-half of those troopers never actually claim that time on their weekly reports, then there would be a basis for concluding that appellant's handling of FOS time was not excessive.

The final point regarding appellant's performance is that he was late for work on thirteen occasions during the six month evaluation period. On each of those occasions, appellant was late by no more than four minutes. Sgr. Heinle testified that he did not check the arrival time of anyone in the

troop other than the appellant but the record simply does not reflect that anyone else in the troop was late to work as often as the appellant.

Summary

The Commission is placed in the position of analyzing appellant's overall performance. Many areas of appellant's performance were satisfactory. However respondent contended that several important areas were lacking. The various mitigating factors identified by the appellant make the conclusion a difficult one. However, the Commission finds that the appellant was not in fact performing at the objective level during the evaluation period in question.


ORDER

The respondent's decision denying the reclassification of the appellant's position is affirmed and this case dismissed.

Dated: May 9, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

KMS:ers
E003/3

Parties

David Collins
707 E. Cohant St.
Portage, WI 53901

Lowell Jackson
Secretary, DOT
P.O. Box 7910
Madison, WI 53707

Howard Fuller
Secretary, DER
P.O. Box 7855
Madison, WI 53707