

and worked in the Employment Assistance Unit of the Waukesha Job Service Office.

2. On November 27, 1983, Ms. Mund transferred to a position as a Job Service Specialist 1 (placement specialist) in the Employment Assistance Unit of the Waukesha office. Her duties involved the development of new procedures and organizational work to help convert the unit from a "one on one" client intake process to a group intake process. This was a temporary assignment. If she had stayed in this position beyond March of 1984, she would have begun performing regular "account representative" Employment Assistance functions involving employment counseling and placement.

3. On March 18, 1984, Ms. Mund transferred to a Job Service Specialist 1 position in the Special Applicant Services (SAS) Unit of the Waukesha Office. Her duties involved programs that she had not dealt with in the EA Unit (for example, Targeted Jobs Tax Credit, food stamps, liaison work with the Division of Vocational Rehabilitation).

4. In the opinion of Ms. Mund's immediate supervisor, Ms. Mund has been performing her duties at the Job Service Specialist 2 level in independence and experience since June 1, 1984. Ms. Mund began to work under general supervision at that time.

5. When considering whether to apply to transfer to the SAS position in March of 1984, Ms. Mund talked to Mr. Richard, the district director. Mr. Richard told her that the transfer should not harm her eventual reclassification to JSS 2. He said this because he believed, based on a conversation with the Job Service administrative office in Madison, that Ms. Mund could not be reclassified from a JSS 1 to a JSS 2 sooner than one year from the date that she began working as a JSS 1.

6. The following documents are submitted as stipulated exhibits:

Ms. Mund's JSS 1 pd for 11/27/83 - 3/16/84;
Ms. Mund's JSS 1 pd for 3/18/84 - present;
Appeal letter of 10/11/84;
Turndown memo of 9/27/84.

7. As is set forth in the memo of September 27, 1984, the effective date of the reclassification of Ms. Mund's position from JSS 1 to JSS 2 was established as December 1, 1984, based essentially on the following rationale:

Ms. Domoracki [appellant's immediate supervisor] has verified that beginning on June 1, 1984, the permanently assigned duties and responsibilities of your position reached the degree of independence and experience indicative of the Job Service Specialist 2 level. Beginning at that time you were performing under general supervision.

Your position can be reclassified and you can be regraded when you have performed the permanently assigned duties and responsibilities for six months. It appears that as of December 1, 1984 you will have completed the six months required at the Job Service Specialist 2 and you are eligible for reclassification consideration.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), stats.
2. The respondents' determination of December 1, 1984, as the effective date for reclassification of appellant's position from JSS 1 to JSS 2 was not incorrect.
3. There is no equitable estoppel in connection with the representation made to the appellant by her supervisor in connection with her transfer to the position in question on March 18, 1984, as set forth in Finding #5, above.

OPINION

Section ER-Pers 3.015(3), Wis. Adm. Code, provides, in part, as follows:

"Incumbents of filled positions which will be reclassified. . . may not be regraded while the incumbent is serving the first 6 months of a trial or probationary period. Such employe shall also have

performed the permanently assigned duties and responsibilities for a minimum of 6 months. . ." (emphasis added)

Pursuant to this rule, the appellant could not have been regraded before having performed the duties and responsibilities for at least 6 months. Based on the record before the Commission, there is no basis on which to conclude by a preponderance of the evidence that Ms. Domoracki was wrong in her assessment that Ms. Mund did not begin performing at the JSS 2 level until June 1, 1984. It also is noted that there is an appreciable difference between Ms. Mund's position description (PD) in the job she held before transfer and the one she held after transfer, and that her prior job involved a temporary assignment as opposed to permanently assigned duties and responsibilities.

With respect to the question of equitable estoppel, in order to have equitable estoppel against the state, the acts of the state through its agent "... must amount to a fraud or a manifest abuse of discretion...." Surety Savings & Loan Assoc. v. State, 54 Wis. 2d 438, 445, 195 N.W. 2d 464 (1972). Also, the party asserting the estoppel must have reasonably relied to its detriment in taking some action based on the representations of the state agency. Toth v. DILHR & DER, Wis. Pers. Co.,mn. No. 84-0009-PC (2/29/84).

Implicit in appellant's posture on this issue is that she would not have accepted the transfer had she known that it would have affected the ultimate effective date of her regrade from JSS 1 to JSS 2. In this connection, there is no reliance to her detriment unless it could be said that had she remained in her JSS 1 position in the Employment Assistance Unit in Waukesha, rather than having transferred to the Special Applicant Services Unit in Wausau, she would have been regraded earlier to the JSS 2 level. However, based on the facts of this case, any such conclusion would be speculative.

As pointed out above, §ER-Pers 3.015(3), Wis. Adm. Code, requires that before an incumbent may be regraded, he or she must have performed the permanently assigned duties and responsibilities for a minimum of 6 months. Prior to her transfer, Ms. Mund was performing a temporary assignment. Had she stayed in that position, she then would have begun performing regular 'account representative' Employment Assistance functions involving employment counseling and placement." Finding #2. Since she was not discharging permanently assigned duties and responsibilities before her March 18, 1984, transfer, the work she had been doing before March 18th could not have counted in the 6 months needed under §ER-Pers 3.015(3), even if she had stayed in her position in the Employment Assistance Unit. Also, it would be speculative to suggest that had she not transferred she would have been determined to have been working at the JSS 2 level with respect to the permanently assigned duties and responsibilities before June 1, 1984, when that determination was made with respect to her job in the Special Applicant Services Unit.

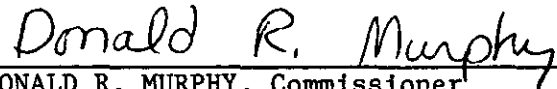
ORDER

The respondents' decision establishing December 1, 1984, the effective date for the reclassification of appellant's position and the regrade of the appellant to JSS 2 is affirmed and this appeal is dismissed.

Dated: November 7, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner
VIC


LAURIE R. McCALLUM, Commissioner

AJT:vic
VIC01/1

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