

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 JEAN FOUST, *
 *
 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 INDUSTRY, LABOR AND HUMAN, *
 RELATIONS, and Secretary, *
 DEPARTMENT OF EMPLOYMENT *
 RELATIONS *
 Respondents. *
 *
 Case No. 84-0218-PC *
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 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal from respondent, Department of Industry, Labor and Human Relations' (DILHR) decision to deny reclassification of appellant's position from Unemployment Benefits Specialist 2 to 3. At the prehearing conference held on November 8, 1984, before Anthony J. Theodore, General Counsel, the parties agreed to the following issue for hearing:

Whether the decision of the respondent denying the request for reclassification of the appellant's position from Unemployment Benefits Specialist 2 to Unemployment Benefits Specialist 3 was correct.

Hearing in the matter was held on December 18, 1984, before Dennis P. McGilligan, Commissioner. The parties completed their briefing schedule on February 5, 1985.

FINDINGS OF FACT

1. At all times material herein, the appellant was employed by respondent DILHR as an adjudicator of disputed unemployment compensation claims in the Oshkosh office of DILHR's Unemployment Compensation Division.

2. A request was made to reclassify appellant's position to Unemployment Benefits Specialist 3. The reclassification request was denied by letter dated October 9, 1984, because the appellant did not attain the minimum performance evaluation score. By letter dated October 26, 1984, the appellant filed a timely appeal of the reclassification denial to the Commission.

3. The term "reclassification" is defined in the Wisconsin Administrative Code as follows:

§ER-Pers 3.01 Definitions

* * *

(3) RECLASSIFICATION. Reclassification means the assignment of a filled position to a different class by the administrator as provided in §230.09(2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

4. Respondent DILHR is delegated the authority by respondent DER to make reclassification decisions for employes in the department seeking reclassification from the UBS 2 to UBS 3 level. DILHR has further delegated responsibility to the Bureau of Benefits, Job Service Division, to determine whether an individual is satisfactorily performing at the UBS 3 level so as to qualify for reclass to that level.

5. The position standard for the JSS (now UBS) series provides, in part, as follows:

Entrance and Progression Through the Series

The majority of positions included in this position standard will be filled by competitive examination. There are two methods of entrance into this series. At the Job Service Specialist 1 level, positions will be filled by competitive promotional exam or open recruitment of applicants with clerical or paraprofessional-level experience in a job service program area or its equivalent.

Classification Factors

Because of the variety of existing or potential future positions identified in the Job Service series, individual position allocations will in most instances be based upon general classification factors such as those listed below:

- 1) Organizational status as it relates to level of responsibility.
- 2) Availability and applicability of established job service guidelines, procedures, precedents, and legal interpretations.
- 3) Potential impact of policy and/or program decisions on claimants, employers, job seekers, and overall Division operations.
- 4) Degree of internal and external coordination and cooperation required.
- 5) Availability of other staff (either within the Division or at the Regional Office) whose authority it is to make the most difficult and unprecedented program decisions or legal interpretations.
- 6) Complexity of employment services or unemployment compensation work performed.
- 7) Professional and paraprofessional staff size if applicable.

* * *

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

* * *

Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific classification level if the functions of these positions change significantly in level of complexity and responsibility. It is intended, rather, to be a framework within which classifications can be applied equitably to the present program and also adjusted to equitably meet future personnel relationships and patterns that develop as a result of changing program and emphasis.

* * *

JOB SERVICE SPECIALIST 2

PR 12-02

Definition

This is responsible job service work in the Department of Industry, Labor and Human Relations.

Positions in the field offices allocated to this class function at the full performance level with responsibility for developing jobs, placing job seekers, and performing related job service program functions of a comparable level of complexity and responsibility.

* * *

Representative Positions

Objective level positions:

Field Offices

* * *

Adjudicator - issues non-monetary determinations on disputed unemployment compensation issues after conducting an investigation and interviews to obtain the facts, explains determinations to involved parties. Positions at this level may assist the Adjudications Supervisor in public relations and public information programs.

* * *

JOB SERVICE SPECIALIST 3

PR 12-03

Definition

This is specialized and advanced professional job service work in the Department of Industry, Labor and Human Relations.

Positions in the field offices allocated to this level are typically located in one of the largest field job service offices with full-time responsibility for one or a combination of the following job service programs: employer relations, labor market analysis, rural job service office operations, special applicant services, CETA contract monitoring and comparable specialities. Functions include responsibility for planning, developing and monitoring the application of program policies and procedures. Also identified at this level are adjudicators responsible for complex unemployment compensation claims adjudications and lead workers over small placement or job development units.

* * *

Representative Positions

Field Offices

Adjudicator- issues non-monetary determinations on disputed unemployment compensation claims involving unusually complex issues after conducting an investigation and interviews to obtain the facts; explains determination to involved parties. Trains

less experienced adjudicators. Positions at this level may assist the Adjudications Supervisor in public relations and public information programs.

* * *

III. QUALIFICATIONS

JOB SERVICE SPECIALIST SERIES

Required Knowledges, Skills and Abilities

The level of these qualifications must be related to the specific classification level. As one progresses in this series the degree of ability and knowledges will increase. Also for individual positions, a certain combination of knowledges, skills and abilities may need to be emphasized while for another position different emphasis will be needed. Generally individuals in this series need the following general knowledges, skills and abilities; however, additional qualifications will need to be considered for recruitment and examination purposes:

Knowledge of specific manpower and/or unemployment insurance programs and pertinent related state and federal laws, rules, regulations and procedures.

Knowledge of job service district operations and capabilities.

Knowledge of industrial and labor conditions of the community being served and of state and national industrial labor conditions.

Ability to effectively communicate with persons with differing viewpoints, priorities and objectives.

Ability to exercise judgment and discretion in the application and interpretation of departmental policies and regulations.

Ability to write well and concisely, to express thoughts clearly, and to develop ideas in logical sequence.

Ability to accept responsibility for the direction, control, or planning of an activity.

Required Training and Experience

* * *

JOB SERVICE SPECIALIST 2

One year of professional level experience in job service work. Experience shall have been gained after graduation from an

accredited college or university. An equivalent combination of training and experience may also be considered. Appropriate graduate school training may be substituted for experience on a year-for-year basis.

NOTE: For positions requiring specialized entry knowledges, skills or abilities, pertinent experience or training in a specialized area may be required.

JOB SERVICE SPECIALIST 3

Two years of professional level experience in job service work. Experience shall have been gained after graduation from an accredited college or university. An equivalent combination of training and experience may also be required. Appropriate graduate school training may be substituted for experience on a year-for-year basis.

NOTE: For positions requiring specialized entry knowledges, skills or abilities, pertinent experience or training in a specialized area may be required.

6. As noted above, UBS 1 is the entry level for adjudicators. The objective level is UBS 2 and UBS 3 for adjudicators performing advanced or unusually complex determinations. Respondent DILHR grants reclassifications from UBS 2 to UBS 3 based, in material part, on achieving a specified level of performance (as measured by an examination). With respect to movement from the UBS 2 to UBS 3 level, respondent's "Management Handbook" also provides as follows:

2. Wisconsin Fact-Finding Interview Index

The Fact-Finding Interview Index evaluation is required whenever the candidate has not had 8 interviews evaluated or had previously failed the Wisconsin Fact-Finding Interview. The same standards will apply whether the candidate is going from a Job Service Specialist 2 to 3 or from a Job Service Specialist 1 to 2.

7. The Bureau of Benefits conducts the performance exam for reclassification and regrade to the UBS 3 level. The exam is generally referred to as the Quality Performance Index (QPI) and is a quality review of twenty actual case files of completed non-monetary investigations. The

requirement for reclassification from Unemployment Benefits Specialist 2 to 3 is no more than one case score below 75%.

8. Appellant received a score of less than 75% on three files. As a result, she failed to meet the minimum score for passing the QPI that was administered after her requested reclassification to the UBS 3 level. The Bureau of Benefits recommended denial of the reclassification.

9. Respondent DILHR denied the appellant's reclassification request because the appellant failed the QPI. DILHR maintained appellant's position at the UBS 2 level.

10. As noted above, appellant received a failing score on three files. The respondent's reasons for the low scores on the three files were, in summary, as follows:

a. Doe^{FN} file - Issuing a determination that the claimant was able and available for work at a particular time without obtaining any medical documentation as to the disability described by the claimant or explaining why documentation was not needed.

b. Ebert file - Identifying the wrong issue; the question of whether the claimant had been duly recalled by a former employer should have been addressed through an examination of the pertinent facts to resolve it.

c. Broderick file - Failure to contact the employer before identifying a misconduct issue and not allowing the employer enough time to respond to a request for information.

11. John M. Roche is the Bureau of Benefits specialist who regularly trains adjudicators and scores case files for QPI evaluations. He found that the significant problem with the Doe file was that the nature of the

^{FN} Due to the sensitive nature of the underlying facts of this file, this pseudonym is being used in lieu of the claimant's real name.

medical condition affecting the claimant's "able and available for work" status was not adequately documented. The determination issued by the appellant states that the claimant was not able or available to work for the period of time in question "due to hospitalization." Appellant also made handwritten notations on a computer printout that the claimant had been in the hospital for "alcohol treatment." The respondent contends that appellant should have used the standard medical report form to verify this condition. However, the record indicates that a medical report is not required in every investigation and the adjudicators have some discretion in determining whether one is necessary. Based on the facts that the claimant brought the issue to the department's attention by voluntarily removing herself from the labor market, the nature of the condition (alcoholism) and appellant's impressions of claimant when she personally reported at the time the determination was issued (thus demonstrating to appellant her availability), the appellant decided a medical report did not have to be filed. Appellant testified, unrebutted by respondent, that she did not believe it was the department's intent to cause claimants unnecessary expense and delay in requiring medical reports for conditions which in her judgment (based on the facts of this case) were not restrictive in nature and demonstrated no ongoing limitations. The appellant has met her burden of persuasion that she did not abuse the discretion permitted by the respondent's standards in determining how to document claimant's medical condition herein. Since this was "the significant problem" with this file according to respondent, and based on all of the above, respondent's QPI scoring in the Doe file was incorrect and appellant should have received a passing score regarding same.

12. In the Ebert case the claimant was on layoff from a former employer. The employer sent claimant a card on July 24, 1984, notifying her that a job was available "for her as soon as possible." The claimant stated that she left town on July 26th to visit her sister and returned on July 29th, at which time she "became aware" of the notice from the employer. Claimant also stated that prior to this date "there was no one at my home opening my mail or who could have reached me to return for work." Appellant identified this as an "able to work and available for work" issue. Appellant noted that claimant was available at least three consecutive days during the week in question. Roche felt that appellant failed to determine whether the facts raised a "duly recalled" issue (whether the claimant had been duly recalled by a former employer during that week). Roche claims that the dates and the ambiguous nature of the claimant's statement raise the distinct possibility that the claimant received the notice before going out of town. However, the claimant's statement appears fairly straight forward and clear regarding the sequence of events as noted above. In addition, the record indicates that in Oshkosh you can't rely on 1 day mail delivery service. Having reached the conclusion that claimant did not receive employer's notice prior to leaving town, appellant decided there was no "duly recalled" issue but instead the issue was one of availability. The primary basis for Mr. Roche's scoring of this file was that appellant should have identified and discussed the "duly recalled" issue instead of, not in addition to, the "able and available" issue.^{FN}

^{FN} The Commission added this sentence to more completely reflect the record in this matter.

This seems to be a reasonable conclusion, in the opinion of the Commission, based on the facts of the case. The appellant has met her burden of persuasion that she did not abuse the discretion permitted by respondent's standards in exercising her judgment as to the proper issue in this case. Based on same, respondent's QPI score in the Ebert file was incorrect and appellant should have received a passing score.

13. In the Broderick file appellant, after interviewing the claimant, determined that she had not been discharged for misconduct. Respondent's problem with appellant's determination is that she failed to contact the employer first to determine whether the misconduct issue really existed. The record supports respondent's contention that the employer should always be contacted first and that the appellant made an inadequate effort in this regard (appellant called the employer on the day of the interview to obtain further detail but the employer was not available). Respondent also claims that appellant gave the employer less than 48 hours to respond to her request for information before she sent out the initial determination for processing and issuance. Respondent argues that although more than 48 hours elapsed before the determination was actually issued, this is not the same thing as allowing the employe to reply before ruling on the issue. There is considerable doubt whether this 48 hour requirement is strictly enforced. The applicable standard seems to be more one of reasonableness in allowing the employer to respond to a claim. In this regard appellant seemed to act reasonably by not sending out the determination for 48 hours and allowing the employer to respond during this period of time. If the employer had responded as requested, appellant could have retrieved the decision from typing and made any changes as necessary. However, based on

all of the above, respondent's QPI scoring in the Broderick File was correct.

14. Based upon the results of the QPI, appellant did perform her duties at the required level necessary for a reclassification from the UBS 2 level to the UBS 3 level.

15. The duties and responsibilities of appellant's position are more accurately described by the class specifications for an Unemployment Benefits Specialist 3 and appellant's position is more appropriately classified as an Unemployment Benefits Specialist 3.

CONCLUSIONS OF LAW

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

2. The appellant has the burden of proving that the respondents' decision to deny reclassification of the appellant's position was incorrect.

3. The appellant has met the burden of proof.

4. The respondents' decision to deny the reclassification of appellant's position was incorrect.

OPINION

The parties stipulated to the aforesaid issue. Appellant argues that respondent DILHR erred in denying her request for reclassification of her position from Unemployment Benefits Specialist 2 to Unemployment Benefits Specialist 3. Respondents take the opposite position.

Within this context, the only question presented to the Commission is whether appellant's QPI score was correct. As in every reclassification appeal, the appellant has the burden of proving that the respondents' decision to deny the reclassification of the appellant's position was

incorrect. In this case, that involves appellant proving that at least two of the three files in which she received scores below 75% were entitled to a score of 75% or more. As noted in the Findings of Fact, and for the reasons listed below, the Commission finds it reasonable to conclude that appellant has sustained her burden of proof by establishing that two of the three files which received scores below 75% were entitled to a passing score of 75% or more. The requirement for reclassification from Unemployment

Benefit Specialist 2 to 3 is that no more than one case may score below 75. Since the Commission has found that appellant only had one case score below 75, she is entitled to reclassification, or at the very least "entitled to resume the reclassification process at the stage where it was discontinued because of her QPI score."

The reasons for appellant's low scores on the three files were, in summary, as follows:

Doe - "Issuing a determination that the claimant was able and available for work at a particular time without obtaining any medical documentation as to the disability described by the claimant."

Ebert - "Wrong issue identified; the question of whether the claimant had been duly recalled by a former employer should have been addressed."

Broderick - "Failure to contact the employer before identifying a misconduct issue; allowing the employer insufficient time to respond to a request for information."

In the Doe case, appellant presented several witnesses (Andresen, a 30+ year veteran of Unemployment Compensation, Lorene Weber, Carla Sorenson and Robert Whitaker, all Program Managers) to corroborate her testimony that she properly handled this case file. In particular, the record

evidence (See also Joint Exhibit No. 1, documents A-4, A-5, A-8 and A-9) supports a finding that appellant properly identified the issue; properly exercised her discretion in not requiring medical documentation; and, in general, correctly handled the case. Appellant relied on claimant's statements which were essentially statements made against interest and therefore inherently more creditable than statements which are self-serving.

This reliance, combined with personal observation, led to appellant's conclusions in this case. As noted previously, the record contains better evidence that appellant properly exercised her judgment and discretion in writing up this file. Put another way, appellant's testimony as well as the record evidence noted above was more persuasive than respondent DILHR's evidence in support of its position. Based on same, the Commission finds that respondent's scoring of the Doe file was incorrect and appellant should have received a passing score of 75% or higher.

Again in the Ebert case, appellant presented several witnesses to corroborate her testimony that she properly handled this claim. (Testimony of Andresen, Weber, Sorenson and Whitaker noted above). In this regard, the Commission notes that there is nothing inherent in Roche's testimony that his opinion of appellant's judgment herein is more valid than appellant's testimony which was supported by four witnesses with years of experience, including managerial, in the department. The record indicates that a "duly recalled" issue was not applicable as argued by respondent, since the claimant admitted to receiving the written notice requesting her to contact them about work from the employer when she returned to town. To the contrary, the record indicates that appellant correctly identified the issue herein as "able and available" since claimant was able to work and

available for "three consecutive days" during the week in question. (See testimony of appellant, Roche, Joint Exhibit No. 2, and Respondent's Exhibit No. 3 for an articulation of this standard). In addition, the record supports a finding that appellant properly exercised her discretion in deciding that claimant did not receive the disputed notice before going out of town. Based on all of the above, the Commission finds that respondent's scoring of the Ebert file was incorrect and appellant should have received a passing score.

With respect to the Broderick file, the evidence is much closer. As noted in Finding of Fact No. 13, the Commission is of the opinion that respondent's QPI scoring in Broderick was correct. However, since the Commission has already found that respondent's QPI scoring in the Doe and Ebert files was incorrect, there is no reason to discuss the Broderick file in any further detail.

Based on all of the foregoing, the Commission finds that the decision of the respondent denying the request for reclassification of the appellant's position from Unemployment Benefits Specialist 2 to Unemployment Benefits Specialist 3 was incorrect. It would appear appellant is entitled to reclassification. However, respondent argues in its brief that appellant is not eligible for immediate reclassification but is "entitled to resume the reclassification process at the stage where it was discontinued because of her QPI score." Respondent adds that "after an adjudicator has passed the QPI, an evaluation of 8 interviews is required before the reclassification decision is made." (See Respondents' Exhibit No. 2, page 3, item B(2)). The matter was not covered at hearing except for the introduction of the aforesaid exhibit. If appellant has not satisfied step 2 of the reclassification process for reclass from an Unemployment Benefits

Specialist 2 to Unemployment Benefits Specialist 3, then appellant is entitled to resume the reclassification process at that stage (where it was discontinued because of her QPI score). If appellant has satisfied step 2, then appellant is eligible for immediate reclassification. The Commission will retain jurisdiction over this portion of the decision in order to resolve any issues that may arise on this point, or until otherwise notified by the parties.

With respect to the effective date of the reclassification, if the appellant satisfies or has satisfied the second step in the reclassification process, it appears the effective date should be established as the date she would have been reclassified if she had not been given a failing score on the QPI, utilizing after the fact, if necessary, the normal time frame that likely would have been involved with respect to the second step.

ORDER

The respondents' reclassification decision is rejected and this matter is remanded for action in accordance with this decision, with the limited retention of jurisdiction as set forth above.

Dated: MAY 22, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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