
 JAMES H. ROBINSON, Jr.,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 and Administrator, DIVISION
 OF MERIT, RECRUITMENT AND
 SELECTION,
 Respondents.
 Case No. 85-0064-PC

INTERIM
 DECISION
 AND
 ORDER

The letter of appeal in this matter provides, in part: "[T]his is notice of an appeal regarding the rejection of my application for the position of Human Services Administrator 2-Regional Chief." No agreement as to an issue for hearing was reached at the prehearing conference. The parties were provided an opportunity to submit a proposal and to file arguments.

Appellant proposed the following issue for hearing:

Whether or not the Administrator abused his/her discretion and/or delegation relating to the recruitment, examination and appointment for the position of Human Services Administrator 2-Regional Chief?

Did the employer follow the appropriate recruitment and examination procedures in their appointment of the Human Services Administrator 2-Regional Chief?

Respondent's proposal reads:

Whether the Respondent Department of Health and Social Services' decision to "screen out" the Appellant's application for the Human Services Administrator 2 was correct?

It is apparent from these statements that the appellant's application was rejected prior to the preparation of a list of certified eligibles.

Therefore, the determination of the proper issue for hearing should reflect that the jurisdictional basis in this matter is §230.44(1)(a), Stats., rather than §230.44(1)(d), Stats.

In reviewing decisions by the Secretary of the Department of Employment Relations, the Administrator of the Division of Merit, Recruitment and Selection, and their predecessors, the Administrator of the Division of Personnel, and the Director of the Bureau of Personnel, the Commission has applied the standard of whether the decision being reviewed was correct. This standard was first adopted by the Commission's predecessor, the Personnel Board, in Ryczek v. Wettengel, 73-26, 7/2/74. There, the Board expressly overruled its past decisions applying an "arbitrary and capricious" standard due to the absence of statutory limitations as to the proper standard, the existence of administrative rules supporting the correctness standard, and the Supreme Court's rejection of the substantial evidence test in Reinke v. Personnel Board, 53 Wis. 2d 123 (1971).

Since the Ryczek decision was issued, the Commission has applied the correctness standard to reclassification cases (e.g., Werth v. DP, 81-130-PC, 8/5/81). No reasons have been advanced to indicate why the same standard should not be applied in the instant appeal.

Therefore, the Commission issues the following

ORDER

The issue for hearing in this matter shall read as follows:

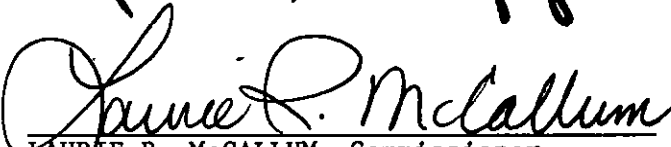
Whether the respondent's decision rejecting the appellant's application for the position of Human Services Administrator 2-Regional Chief was correct.

Dated: July 17, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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