

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 KENNETH G. WILTERDINK, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 REVENUE, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 85-0072-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the Personnel Commission as a request to review a selection decision. The parties agreed to the following issue for hearing:

Whether the respondent committed an illegal act or an abuse of discretion in not appointing the appellant to the position of Property Assessment Technician 1 (PAT 1) in La Crosse.

An administrative hearing was held on September 4, 1985, and the parties were provided an opportunity to file posthearing briefs.

FINDINGS OF FACT

1. The La Crosse district office of the respondent Department of Revenue includes 3 positions classified as Property Assessment Technicians. Early in 1985, two of those three positions became vacant when the former incumbents were selected on a promotional basis to become Property Assessment Specialists.

2. The Property Assessment Technician (PAT) is assigned responsibility for providing support services to the Professional Property Appraisal/Assessment staff in the Bureau of Property Tax District Office. Approximately 75% of a PAT's duties are clerical, while 25% are technical.

3. The Department of Revenue (DOR) has established minimum standards of knowledge for local assessors (who are employed by towns, villages, cities, or counties) and other assessment personnel including the DOR's own employees.

4. The appellant had passed a statewide competitive PAT examination in 1984. As a consequence of ranking #1 on that exam, appellant was certified as an eligible for the two vacancies in La Crosse.

5. Mr. Gene Hafner, the supervisor for the equalization unit of the La Crosse District, conducted oral interviews for the 7 persons certified for the positions and was responsible for ranking the candidates.

6. The appellant, Ms. Diane Forrest and Ms. Nancy Kippenham received identical numerical scores from Mr. Hafner in the interview. Mr. Hafner then ranked the candidates and placed Ms. Forrest first, Ms. Kippenham second and the appellant third, followed by two other candidates.

7. The Certificate of Eligibles provided to Mr. Hafner for filling the positions in question did not list the examination grade or ranking of the individual eligibles. Mr. Hafner was not aware of the candidates' test scores or ranking at the time of the selection decision.

8. At the time of the selection decision, Mr. Hafner had information available to him that may be summarized as follows:

a. Ms. Forrest had a BS degree and had been employed seasonally with the Army Corp. of Engineers which included some familiarity with real estate descriptions and contracts. She also had word processing experience.

b. Ms. Kippenham had a BFA degree and during the course of her prior employment in a variety of clerical positions, she had extensive experience in both data entry and word processing.

c. The appellant had a BBA degree and had a wide variety of work experience. Particularly related to the Property Assessment Technician position was over four years on a part-time basis as an assessor for the town of Harmony. Appellant also had been certified by the state as an Assessor I, which is essentially an occupational license issued by the Department of Revenue. Appellant did not indicate he had any appreciable experience in either word processing or data entry.

9. Mr. Hafner anticipated that the person selected for the Property Assessment Technician positions would spend nearly 50% of their time for the period from April 15, 1985, until July 1, 1985, performing data processing work. This was due to an annual influx of property transfer returns.

10. Based primarily on their data entry/word processing experience, Mr. Hafner ranked both Ms. Forrest and Ms. Kippenham ahead of the appellant.

11. Persons hired for the PAT position must obtain an assessor certification at the lowest certification level, Assessment Technician. They do not need that certification at the time of hire but must obtain it soon after employment. Of the approximately 7 PAT positions that Mr. Hafner has filled since the current certification requirements have been effect, none of the persons hired have been certified at the time of their initial hire. However, all have successfully obtained their certification soon after their hiring.

12. Based on the rankings by Mr. Hafner, Ms. Kippenham and Ms. Forrest were offered the vacant PAT positions in the La Crosse district. They both accepted the offers.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(d), Stats.
2. The appellant has the burden of proving by a preponderance of the evidence that the failure to appoint him to the positions in question was illegal or an abuse of discretion.
3. The appellant has not sustained his burden of proof.
4. The failure to appoint him to the position in question was not illegal nor an abuse of discretion.

OPINION

This is an appeal pursuant to §230.44(1)(d), Stats. 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 the question of whether or not there was an abuse of discretion.

In prior cases, the Commission has used a definition of the term "abuse of discretion" as meaning "... 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). Therefore, the issue for the Commission is not whether it agrees or disagrees with the decision of appointing authority, in the sense of whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Instead, this case raises the question as to 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."

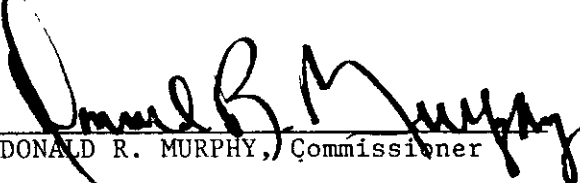
In the instant case, the appellant clearly had significant experience in performing assessments. The determinative fact in this case is that the PAT 1 positions in question did not perform assessments but merely provided support services to persons who did the professional property appraisal/assessment work. In performing the support services, the appellant had less relevant experience than the two persons ultimately selected for these two positions. Two of the three PAT positions in the La Crosse office were vacant. In addition, testimony showed that these technician positions would be performing data processing functions for nearly 50% of the time for the period from April 15 through July 1, 1985. These facts justify respondent's heavy reliance upon the candidates' relative skills in the area of data entry and word processing. In the opinion of the Commission, the respondent placed legitimate emphasis on these skills. Clearly, there were other ways that the respondent might have weighed the various factors in reaching a selection decision. A different weighing of the factors might very well have led to a different selection decision. However, the Commission cannot say that the decision reached in this case constituted an abuse of discretion.


ORDER

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

Dated: February 6, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

KMS:jmf  
JANE/1

Parties:

Kenneth G. Wilterdink  
Route 1, Box 168  
Viroqua, WI 54665

Michael Ley  
DOR, Secretary  
P. O. Box 8933  
Madison, WI 53708