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 \*  
 ROXANA RASMUSON, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 85-0124-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This is an appeal pursuant to §230.44(1)(d), Wis. Stats., of the denial of permissive reinstatement. The following findings are based upon a hearing held March 14, 1986, before Commissioner Donald R. Murphy. The posthearing briefing schedule was completed May 21, 1986.

FINDINGS OF FACT

1. The appellant, Roxana Rasmuson was first employed in the state classified civil service on February 20, 1967, by the respondent at Southern Wisconsin Center as an Institution Aid.
2. She worked in that capacity at the Center until January 30, 1984, when she resigned in anticipation of getting married.
3. In June, 1984, Ms. Rasmuson requested reinstatement to employment at the Center. Her previous annual evaluations were good and she had no record of disciplinary action.
4. The respondent granted Ms. Rasmuson's request for reinstatement and she resumed work at the Center on July 24, 1984.
5. Ms. Rasmuson worked at the Center for approximately three months. Then, one day after being assigned to the hospital, she orally advised

respondent on October 8, 1984, that she was resigning effective October 12, 1984.

6. Prior to the October, 1984 resignation, Ms. Rasmuson had been considering resigning since her return to work and was aware that respondent's work rules required a two week notice of resignation.

7. On October 16, 1984, Ms. Rasmuson's supervisor, Walter Paten prepared and signed her termination report. On the report he gave her five average marks, four fair marks, indicated that she had not submitted a written resignation in accordance with Center policy and left blank the question of whether or not he would recommend her rehire.

8. In January 1985, Ms. Rasmuson requested reinstatement as an Institutional Aid 2 at the Center.

9. Respondent's Personnel Manager at the Center following his usual procedure in reinstatement requests for Aid positions, looked at her records, including her termination report, and referred her request to unit supervisors for their response to the request. None of the supervisors recommended reinstatement.

10. Subsequently, the Center's Personnel Manager informed Ms. Rasmuson her request for reinstatement was denied. Also, Ms. Rasmuson was advised of the reasons for the denial.

11. Ms. Rasmuson had received a less than average rating by her supervisor during the period from July to October, 1984, and it was the Personnel Manager's policy not to reinstate former employees with below average work records.

12. All former center employes, except one, reinstated to Aid positions by the current Personnel Manager had better work performance records before leaving employment than Ms. Rasmuson.

13. In the instance of the one exception, the Personnel Manager, after meeting with the employe at her request, discovered that the employe's poor attendance and work record was caused in part by misinformation and poor supervision from her supervisor, whose employment, since then, was terminated.

14. Ms. Rasmuson appealed the reinstatement request denial to this Commission before 30 days, after she was notified of the denial, had lapsed.

15. There was a reasonable basis for the decision not to reinstate Ms. Rasmuson.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)(d), Wis. Stats.

2. The appellant has the burden of proving to a reasonable certainty, by the greater weight of credible evidence, that respondent's failure to reinstate her following her resignation was illegal or an abuse of discretion.

3. The appellant has failed to sustain her burden.

4. The failure of respondent to reinstate appellant following her resignation was neither illegal nor an abuse of discretion.

#### OPINION

The parties in this action are consonant on the points that Ms. Rasmuson requested and was eligible for reinstatement. Accordingly, the applicable statutory law is contained in sections ER-Pers 16.01(1), 16.01(2) and 16.035(1), Wis. Adm. Code which provides in pertinent part:

ER-Pers 16.01 Definition. (1) Reinstatement and restoration mean the act of re-appointment without competition of an employe or former employe (a) to a position in the same class in which the person was previously employed or (b) to a position in another classification to which the person would have been

eligible to transfer had there been no break in employment or (c) to a position in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to new workers in the position.

(2) Reappointment under sub. (1) may be either permissive at the discretion of the appointing authority or mandatory as required by the law or rule of the administrator. In those instances where an employe or former employe has "eligibility" for reinstatement, the action is permissive. In those instances where an employer or former employe has the "right of restoration, the action is mandatory. In these rules of the administrator, "reinstatement" refers to a permissive act and "restoration" refers to a mandatory right.

Section ER-Pers 16.035(1), Wis. Adm. Code, provides:

ER-Pers 16.035 Types and conditions of reinstatement (1) General. An employe who has terminated from the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be eligible for reinstatement in the agency for 3 years from the date of such resignation or demotion.

The appellant having alleged no illegality and none being reasonably inferred, the question before the Commission is whether or not respondent's act of denying appellant's request for reinstatement was an abuse of discretion. The term "abuse of discretion" is well established in law. In Murray v. Buell, 74 Wis. 14, 19 (1889) the Court provided the following definition:

The term 'abuse of discretion' exercised in any case by the trial court, as used in the decisions of Courts and in the books, implying in common parlance a bad motive or wrong purpose, is not the most appropriate. It is really a discretion exercised to an end or purpose and justified by, and clearly against, reason and evidence."

The Commission in Lundeen v. DOA, CN 79-208-PC (6/3/81) recognized the definition of abuse of discretion articulated in Murray (supra) as applicable to reinstatement actions under Per Chpt. 16, Wis. Adm. Code.

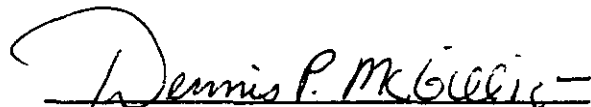
The record in this matter before the Commission does not support a conclusion that there was an abuse of discretion. In considering reinstatement of Ms. Rasmuson, the Personnel Manager of the Center, in keeping with agency policy, reviewed Ms. Rasmuson's work records, compared her record with those of other reinstated former employees, obtained recommendations from unit supervisors and considered her prior attitude and initiative before making his decision. He stated that Ms. Rasmuson had quit her job without prior notice which caused the Center some hardship and she had received a less than average rating from her supervisor during her previous employment. Further, he said, consistent with his policy not to reinstate below average former employees, he decided not to reinstate Ms. Rasmuson.

It is the opinion of the Commission that this provided a rational basis for respondent's decision not to reinstate the appellant.


ORDER

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

Dated: October 1, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

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