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 *
 JEANNINE SERSCH, *
 *
 Appellant, *
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 v. *
 *
 Secretary, DEPARTMENT OF *
 INDUSTRY, LABOR AND HUMAN *
 RELATIONS and Secretary, *
 DEPARTMENT OF EMPLOYMENT *
 RELATIONS, *
 *
 Respondents. *
 *
 Case No. 86-0075-PC *
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DECISION
 AND
 ORDER

Nature of the Case

This is an appeal, pursuant to §230.44(1)(b), Stats., of respondents' failure to reclassify appellant's position from Job Service Assistant 3 (JSA 3) (PR 02-08) to JSA 4 (PR 02-09). A hearing was held on January 27, 1987, before Laurie R. McCallum, Commissioner. At the hearing, the parties stipulated to the following issues:

1. Should respondent DILHR have considered appellant's March 26, 1985, request for the audit of her position as a request for the reclassification of appellant's position?
 2. If so, was there a constructive denial of such request?
 3. If so, was such denial correct?
- Subissue: Was appellant more appropriately classified as a JSA 3 (PR 02-08) or a JSA 4 (PR 02-09)?

Findings of Fact

1. At all times relevant to this matter, appellant has held a classified position in the Monetary and Payment Adjustment Control Unit,

Monetary Determination Section, Bureau of Benefits, Unemployment Compensation Division, Department of Industry, Labor and Human Relations (DILHR).

2. In a letter dated March 26, 1985, to the DILHR Personnel Office, appellant and six other DILHR employees stated as follows:

"We, the undersigned, hereby request that a field audit be done on our positions. This request is being made based upon the drastic changes within our job responsibilities. Your immediate attention would be appreciated."

3. In a letter dated May 8, 1985, to the DILHR Personnel Office, appellant and the six others stated that, to date, they had not been advised as to the status of their March 26 request and that they would appreciate "an acknowledgement on the disposition of this audit request."

4. Respondent DILHR never responded in writing to such request.

5. In conversations with William Komarek, the Chief of the Classification Section in DILHR's Personnel Office, appellant indicated that she had submitted the subject request because she was unhappy that certain other positions had been reclassified and hers had not. Appellant recalls referring to her request as a reclassification request in such conversation.

6. Mr. Komarek interpreted appellant's request as a request that her position be one of those audited as part of a personnel management survey that was being conducted at the time. Mr. Komarek was aware that appellant wanted her position upgraded.

7. As a result of the survey, appellant's position was reallocated from JSA 3 (PR 02-08) to Unemployment Compensation Associate 1 (PR02-09) effective March 30, 1986. Appellant received no salary increase as a result of such reallocation but would have received a salary increase as a result of a reclassification.

8. At the time of her March 26 request, appellant's position performed the following duties and responsibilities:

Responsibility for analyzing, computing and implementing Unemployment Compensation claim modifications of the most complex nature as a result of Recomputations, Local Office Initial Determinations (LIDS); Appeal Tribunal Decisions (ATD's), Labor Industry Review Commission Decision (LIRC) and Judicial Orders. Prepare and issue initial determinations. Determine adjustments to claimant's benefit entitlement and employer account charging. Communicate clarification of internal technical procedures to Agency staff including Bureaus of Local Operations, Tax and Accounting, Legal Affairs and Benefits' staff.

9. The position standard for the JSA 3 classification provides, in pertinent part:

CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities as well as the representative positions identified for specific classification levels provide examples and patterns for both present and future position allocations, as well as to serve as a basis for comparisons with positions in other class series.

JOB SERVICE ASSISTANT 3

(PR2-08)

This is entry-level paraprofessional or advanced and/or lead level job service work of moderate difficulty in the State Job Service programs. Paraprofessional positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives. Work is performed under general supervision.

Advanced and/or lead positions at this level; 1) perform advanced clerical work characterized by the application of a wide variety of complex, interrelated Job Service program policies and procedures and may train staff in area of specialty; 2) lead a medium unit of clerical employees engaged in complex, specialized clerical activities; or 3) lead a small unit of clerical employees engaged in complex and varied clerical activities. Clerical work at this level is performed in accordance with established Job Service program policies and procedures. Work is performed under general supervision.

JSA 3 Current Position Allocations and Work Examples

Computer Monetary Determinations Section, Bureau of Benefits
Administrative Office - issues or reissues monetary determinations on the most complex unemployment compensation claims involving disputed claims (often when Appeal Tribunal or Commission decisions have been issued), amends, overpayments and/or underpayments; adjusts claimant

and employer records accordingly. Work at this level requires extensive correction of previous actions and frequently is a multi-step operation where timing of computer input and a basic understanding of relevant computer programs is essential.

The position standard for the JSA classification provides, in pertinent part:

CLASS DEFINITION

JOB SERVICE ASSISTANT 4

(PR2-09)

This is a paraprofessional and/or lead job service work of considerable difficulty in the State Job Services programs. Staff positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives.

Lead work positions at this level guide: 1) a medium clerical unit in complex and varied Job Service program activities, 2) a large clerical unit engaged in complex specialized Job Service program activities. Major responsibilities include coordinating activities internally and with other work units, setting priorities and recommending new methods for accomplishing work. Work is performed under direction.

10. The duties and responsibilities of appellant's position are better described by the class specifications for the JSA 3 classification than the class specifications for the JSA 4 classification and appellant's position was more appropriately classified at the JSA 3 level as of the date the appellant made the subject request.

11. Appellant filed a timely appeal of the actions of respondents which form the basis of the instant appeal with the Personnel Commission on May 2, 1986.

Conclusions of Law

1. The appellant has the burden to show that her request to respondent DILHR of March 26, 1985, for the "audit" of her position should have been considered by respondents as a request for the reclassification of

appellant's position and that there was a constructive denial by respondents of such request.

2. Appellant has sustained her burden in these regards.
3. Respondents should have considered the subject request as a request for the reclassification of appellant's position and did constructively deny such request.
4. Appellant has the burden to show that respondents' failure to reclassify her position from JSA 3 to JSA 4 was incorrect.
5. Appellant has failed to sustain her burden in this regard.
6. Appellant's position was more appropriately classified at the JSA 3 level.

Discussion

Respondents contend that it was not unreasonable to construe appellant's March 26, 1985, request literally, i.e., as a request solely for an audit of appellant's position. However, appellant successfully rebuts this contention by appellant's specific recollection that she referred to her request as a "reclassification request" in conversations with Mr. Komarek and that she explained to Mr. Komarek in such conversations that her rationale for making such a request was her unhappiness in regard to the recent reclassification of certain other positions. Furthermore, it would have been unreasonable for respondents to conclude that appellant would have been equally satisfied with a reallocation as with a reclassification of her position since she would receive no salary increase as a result of a reallocation but she would receive an increase as a result of a reclassification. It seems likely that Mr. Komarek was preoccupied with the subject survey at the time appellant made her request and discussed her

request with him and, as a result, Mr. Komarek failed to consider appellant's request in any other context than that of the survey. The Personnel Commission concludes that it is unreasonable for respondents to have so literally interpreted a request from an employee who is not a personnel expert especially in view of appellant's subsequent conversations with Mr. Komarek and the different ramifications of a reallocation and reclassification as far as appellant's position's salary level was concerned.

Respondents were required, as a result of §ER-Pers. 3.04, Wis. Adm. Code, to respond in writing to appellant's reclassification request. The Personnel Commission interprets respondents' failure to do so as a constructive denial by respondents of appellant's reclassification request.

The position standard for the JSA 3 classification specifically identifies appellant's position as a representative JSA 3 position (See Finding of Fact 9 - JSA 3 Current Position Allocations and Work Examples - Computer-Monetary Determinations Section, Bureau of Benefits). It is not possible to ascertain from the language of appellant's position description nor from the record in this appeal the basis for appellant's assertion that the duties and responsibilities of appellant's position satisfied the requirements for classification at the JSA 4 level, i.e., the basis for a conclusion that appellant's position performs paraprofessional and/or lead work duties and responsibilities. In view of this, the Personnel Commission concludes that appellant's position was more appropriately classified at the JSA 3 level.

Order

The action of respondent is rejected in part and affirmed in part and this appeal is dismissed.

Dated: April, 1987 STATE PERSONNEL COMMISSION

Dennis P. McGilligan
DENNIS P. MCGILLIGAN, Chairperson

LRM:baj
JGF003/1

Laurie R. McCallum/baj
LAURIE R. MCCALLUM, Commissioner

Parties:

Jeannine Sersch
116 E. Randolph Street
Stoughton, WI 53589

John Coughlin
Secretary, DILHR
P. O. Box 7946
Madison, WI 53707

John Tries
Secretary, DER
P. O. Box 7855
Madison, WI 53707