

STATE OF WISCONSIN

PERSONNEL COMMISSION

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GREG M. DOYLE, *

Appellant/Complainant, *

v. *

Secretary, DEPARTMENT OF *

NATURAL RESOURCES, and *

Administrator, DIVISION OF *

MERIT RECRUITMENT & SELECTION, *

Respondents. *

Case Nos. 86-0192-PC *

87-0007-PC-ER *

* * * * *

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of the validity of an examination. On April 6, 1988, appellant filed a Notice of Motion and Motion for Judgment. An evidentiary hearing on the motion was waived by the parties. The final brief was filed on September 27, 1988.

FINDINGS OF FACT

The following facts were drawn from documents supplied by the parties and appear to be undisputed:

1. On November 6, 1986, appellant filed this appeal of an examination administered for the position of Administrative Officer 1 - Chief, Education and Youth Section, Department of Natural Resources. Appellant took the examination on or around October 22 - 23, 1986.

2. On January 21, 1987, appellant filed with the Personnel Commission a complaint (Case No. 87-0007-PC-ER) alleging that he was discriminated against on the basis of his sex in regard to the filling of the position of Chief, Education and Youth Programs Section, Department of Natural Resources.

3. At a prehearing conference related to the subject appeal held on September 10, 1987, the parties agreed to the following issue for hearing:

Whether the examination for the position of Administrative Officer 1 - Chief, Education and Youth Section, Department of Natural Resources, conducted on October 22 - 23, 1986, violated §230.16(4), Stats.

4. On December 22, 1987, appellant made the following request of respondents:

I ask you, on behalf of your client, to admit or deny the validity of the Examination given for the position of AO-1/Chief of Education and Youth. I understand that this Examination was given by the State on or about October 22 and 23, 1987.

The instant request is made per the provisions of WAC PC 4.03 and Section 804.11, Wis. Stats. (1985-86).

5. Respondents failed to respond to such Request for Admission and, on February 7, 1988, appellant filed a Notice of Motion and Motion to Compel Admission.

6. In an Interim Decision and Order dated March 16, 1988, the Personnel Commission decided that the matter presented in the subject Request for Admission (i.e., the invalidity of the subject exam) was deemed admitted by operation of §804.11, Stats., for purposes of the subject appeal, but not for purposes of the discrimination complaint filed by appellant (see Finding of Fact 2, above).

7. On April 6, 1988, appellant filed a Notice of Motion and Motion for Judgment in regard to both the subject appeal and the above-described discrimination complaint filed by appellant.

8. The subject position was filled some time late in 1986 or early in 1987.

9. The employment register generated as a result of the subject examination has expired.

CONCLUSIONS OF LAW

1. This case is properly before the Personnel Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden of establishing that summary judgment should be granted, i.e., that there is no genuine issue as to any material fact and that he is entitled to a decision in his favor as a matter of law.

3. Appellant has sustained his burden of proof.

DECISION

Section 230.16(4), Stats., provides, as follows:

(4) All examinations, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

It is clear, then, that the issue in this appeal is whether the subject examination was valid, i.e., complied with appropriate validation standards as to job-relatedness. It is equally clear that, as a result of the Personnel Commission's March 16, 1988, Interim Decision and Order, the invalidity of the subject examination was deemed admitted by operation of §804.11, Stats.

Section 802.08(2), provides that summary judgment shall be rendered if

...the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ...

In a case such as the instant one where the ultimate issue has been resolved in the appellant's favor as a result of a party's admission by operation of law, there clearly remains "no genuine issue as to any material fact" and a decision shall be entered by the Personnel Commission for the appellant.

Questions remain as to the scope of such decision and as to the appropriate remedy.

Appellant's Notice of Motion and Motion for Judgment reference both the subject appeal (Case No. 86-0192-PC) and the above-described discrimination complaint filed by appellant (Case No. 87-0007-PC-ER). However, since the Personnel Commission's March 16, 1988, Interim Decision and Order specifically limited its application to the subject appeal only and the instant decision rests on such Interim Decision and Order, and since the issue in the discrimination complaint (Case No. 87-0007-PC-ER) is not limited to that regarding the validity of the subject examination, the Personnel Commission grants appellant's Motion for Judgment in Case No. 86-0192-PC only.

Section 230.44(4)(c), provides that the Personnel Commission

May not remove an incumbent or delay the appointment process as a remedy to a successful appeal under this section unless there is a showing of obstruction or falsification as enumerated in §230.43(1).

Section 230.43(1), Stats., provides:

- (1) OBSTRUCTION OR FALSIFICATIONS OF EXAMINATIONS.
 - (a) Any person who willfully, alone or in cooperation with one or more persons, defeats, deceives or obstructs any person in respect of the rights of examination or registration under this subchapter or any rules prescribed pursuant thereto, or
 - (b) Who willfully, or corruptly, falsely marks, grades, estimates or reports upon the examination or proper standing of any person examined, registered or certified, pursuant to this subchapter, or aids in so doing, or
 - (c) Who willfully or corruptly makes any false representations concerning the same, or concerning the person examined, or
 - (d) Who willfully or corruptly furnishes any person any special or secret information for the purpose of either improving or injuring the prospects or chances or any

persons so examined, registered or certified, being appointed, employed or promoted, or

(e) Who personates any other person, or permits or aids in any manner any other person to personate him or her in connection with any examination, registration, application or request to be examined or registered, shall for each offense be guilty of a misdemeanor.

Clearly, the administration of an invalid exam in and of itself does not demonstrate obstruction or falsification within the meaning of §230.44(c), Stats. Since the judgment rendered here by operation of law finds only that the subject exam was invalid, the Personnel Commission clearly does not have the authority to order the removal of the incumbent of the subject position.


The only appropriate remedy in this case is to order respondent to cease and desist from utilizing the subject exam or an employment register created using the results of the subject exam. It would not be appropriate to certify the appellant for or appoint the appellant to (if there were a vacancy) the subject position since it has not been shown and it would be purely speculative to conclude that appellant would have been so certified if a valid exam had been administered or would have been selected if so certified. It would also be inappropriate for the order to encompass any other exam, register, certification, or position since no others were encompassed by the issue in this case.

Appellant's Motion for Judgment also includes a request for "costs, disbursements, and attorney's fees." Such a request appears to be premature under §227.485(3), Stats., in that it was filed before a decision on the merits was issued by the Personnel Commission. Appellant may, of course, renew such request after this decision is issued.

ORDER

The Motion for Judgment is granted as to Case No. 86-0192-PC and denied as to Case No. 87-0007-PC-ER. Respondent is ordered to cease and desist from using the subject exam or the employment register created using the results of the subject exam. A decision finally disposing of the instant case will not be issued until appellant has an opportunity to file a motion for costs and the Personnel Commission issues a decision on such motion if one is filed.

Dated: November 3, 1988 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

LRM:jmf
JMF01/2