

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

SHARON M. ROYSTON,  
                   Appellant,

v.

Secretary, DEPARTMENT OF  
 VETERANS AFFAIRS,  
                   Respondent.

Case No. 86-0222-PC

\* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal of a hiring decision. An interim decision and order issues by the Commission on June 24, 1987, established the issue as:

Whether the subject post-certification appointment process constituted an illegal action or an abuse of discretion.

A hearing was held on January 7, 1988, before Laurie R. McCallum, Commissioner.

FINDINGS OF FACT

1. In October of 1986, in a Promotional Announcement, respondent DVA announced that a competitive promotional examination would be administered to fill a Real Estate Supervisor position in DVA's Division of Veterans Programs. The announcement included the following:

JOB DESCRIPTION: This position will supervise and direct the staff and programs of the Property Management Section, Division of Veterans Programs, to ensure proper servicing of delinquent Direct Housing Loans, and the proper management and disposition of acquired real estate. Audit Real Estate Agent's assigned work territories to ensure compliance with policies and procedures; plan and establish work operations, assignments, objectives, and priorities to accomplish long range goals. Establish performance standards and evaluate performance. Review defaulted Direct

Housing Loan accounts and act as a member of the Department's Foreclosure Authorization Committee. Prepare reports relating to Direct Home Loan delinquencies, foreclosures, acquisitions by voluntary conveyance, rentals and sales of acquired properties throughout the state. Coordinate the loan collections program with the related activities of other departmental units, other governmental agencies and the private real estate and finance sectors. Conduct staff meetings and training sessions.

KNOWLEDGE REQUIRED: Extensive knowledge of collection and foreclosure laws and procedures; considerable knowledge of the factors affecting property values and the methods and techniques used in appraising real property; considerable knowledge of Wisconsin Real Estate Law, State Building Codes, Federal Veterans Administration loan servicing and guaranty requirements; current principles, techniques, and practices of program and personnel administration; techniques of oral and written communications.  
SPECIAL NOTE: A valid real estate brokers license is preferred.

2. Sixty-five percent of the subject position's time would be devoted to supervisory and program management responsibilities.
3. On November 25, 1986, the five certified candidates for the subject position, including appellant, were interviewed. The interview panel members included Joyce Krey, Director, Bureau for Administrative Services, DVA; Robert Cocroft, Administrator, Division of Veterans Programs, DVA; and Dennis Nelson, Director, Bureau of Collections, Division of Veterans Programs, DVA. Ms. Krey functioned as DVA's personnel manager, affirmative action officer, and training officer. Mr. Nelson was the supervisor of the subject position and had performed the duties of the subject position up until the time it was filled. Mr. Cocroft was Mr. Nelson's supervisor.
4. The interview panel asked the following questions of each candidate:
  1. Please tell us how your training and experience relate to this position and how you would draw upon this background to effectively perform as a Real Estate Supervisor.
    - (a) What training/or experience have you had specifically in the area of supervision?

2. If selected for this position, which supervisory style would you feel most comfortable as an employee? Why?
3. What are your career goals and how does this position fit into those goals?
4. How do you feel that others perceive you and how do you respond to these feelings?
5. Various reports and information are going to be expected from you as a Real Estate Supervisor. What information do you feel you should have available for reporting to your supervisor on a regular basis?
6. What do you feel have been your major accomplishments?
7. Why did you apply for this position?
8. What aspects of your former or present job do you most enjoy and least enjoy?

5. Each member of the interview panel scored each certified candidate's interview according to the benchmarks created, reviewed, and discussed by the panel members prior to the interviews. Each panel member accorded candidate Donald Molepske the highest score. In Ms. Krey's opinion, Mr. Molepske's broad previous supervisory and program management experience made him a better candidate than appellant. In Mr. Nelson's opinion, Mr. Molepske had a broader range of technical knowledge than the other certified candidates and, as a result of observing Mr. Molepske's performance while employed at DVA, had good supervisory skills and good technical knowledge. In Mr. Cocroft's opinion, Mr. Molepske's ten years of supervisory experience in banking and real estate made him a better candidate than appellant.

6. Each of the interview panel members considered DVA's affirmative action goals in making the selection decision. Since appellant's position and the subject position were in the same category for affirmative action reporting purposes, appointing appellant to the subject position would not have improved DVA's affirmative action record.

7. Each of the interview panel members considered supervisory and program management experience and skills a more critical selection criterion than experience as a real estate broker or appraiser.

8. Appellant's employment application, which was available to the members of the interview panel at the time of appellant's interview, indicated the following work experience:

1974-1976	Employed full-time as a real estate broker with office management responsibilities and sales responsibilities.
1975-1977	Self-employed part-time as a real estate appraiser.
1976-1977	Employed full-time by the State Department of Development as an Account Examiner with responsibility for coordinating and dispersing state and federal grants to local governments, maintaining all accounts receivable/payable, and liaison work with federal agencies for local project approval.
1977-1979	Employed part-time by the DVA as an Account Specialist with responsibility for preparing the agency's internal monthly financial reports and yearly payroll and supplies and services budget.
1979-1984	Employed full-time by the DVA as a Loan Analyst with responsibility for underwriting first and second mortgage loans and for the program audit of state lenders.
1984-Present	Employed full-time by the DVA as a Real Estate Agent with responsibility for coordinating collections, foreclosures, acquisitions and resale of acquired properties, including supervising private lenders and real estate agents. Appellant's supervisor in this position is Dennis Nelson.

9. Mr. Molepske's employment application, which was available to the members of the interview panel at the time of his interview, indicated the following work experience:

1970-1973	Employed by the Valley Bank of Madison as a Supervisor responsible for supervising the bank's collection department and assisting the bank's credit manager.
1973-1980	Employed by the DVA as a Loan Analyst in both the Consumer Loan and Housing Loan Sections.

1980-Present      Employed full-time by the DVA as the Chief of the Housing Loan Section in the Bureau of Housing Loans, Division of Veterans Programs, with responsibility for managing the underwriting of two major loan programs and for supervising the activities and reviewing the work of the professional loan analyst staff.

10. Both Mr. Cocroft and Mr. Nelson had observed Mr. Molepske's work while he was employed at the DVA.

11. Mr. Molepske was offered the subject position, accepted it, and was appointed to it. Mr. Molepske's former position has remained vacant since he left it. At the time the subject interviews were conducted and selection decision made, Mr. Cocroft was aware that changes in market conditions were changing what the Division needed to accomplish vis-a-vis certain positions within the Division, including Mr. Molepske's. Ms. Krey at that time, was unaware of this situation. Mr. Cocroft had not at that time decided that Mr. Molepske's position needed to be either restructured or eliminated.

12. Appellant filed a timely appeal of the subject selection decision with the Commission on December 29, 1986.

#### 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 that the hiring decision made by respondent was an illegal act or an abuse of discretion.
3. The appellant has failed to sustain her burden of proof.
4. Respondent's decision not to hire appellant was neither illegal nor an abuse of discretion.

DECISION

This is an appeal pursuant to §230.44(1)(d), Stats. Therefore, the standard to be applied is whether the appointing authority's decision was "illegal or an abuse of discretion."

The term "abuse of discretion" has been defined as "... a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." Lundeen v. DOA, No. 79-208-PC (/6/3/81). The question before the Commission is not whether it agrees or disagrees with the appointing authority's decision, in the sense of whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Rather, it is a question of 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." Harbort v. DILHR, 81-74-PC (1982).

Appellant argues that the primary selection criteria used by respondent, i.e., supervisory experience and program management experience, were unreasonable in view of the duties and responsibilities of the subject position and that, since this position would be supervising staff involved in the sale of real estate, experience in real estate sales and appraising should have received as much or more emphasis in the selection process as supervisory and program management experience. It is not the Commission's role to determine which of an unlimited number of possible criteria it would have been best for respondent to utilize but rather to determine whether the criteria used by respondent were reasonably related to the duties and responsibilities of the position to be filled and were uniformly applied. (See Stichert v. UW-Oshkosh, Case No. 86-0197-PC (1987)). Since 65% of the successful candidate's time would be devoted to supervising and program management duties and responsibilities, it is not possible to

conclude that respondent's reliance on supervisory and program management experience as primary selection criteria was unreasonable. Furthermore, in view of the fact that appellant's supervisory and program management experience consisted of four years of employment as a real estate broker and appraiser whereas Mr. Molepske's supervisory and program management experience consisted of three years of employment as a supervisor of a department in a bank and seven years of experience as a section chief for the DVA, it was clearly not unreasonable for respondent to conclude that Mr. Molepske's supervisory and program management experience was superior to appellant's.

Appellant further argues that Mr. Molepske was selected for the position because respondent wanted to eliminate the position he occupied at the time the selection decision was made. However, the record clearly indicates that, even though a restructuring of the position had been considered prior to the date the selection decision was made, a decision to eliminate the position had not been made and, in fact, as of January 7, 1988, the position had not been eliminated and the duties and responsibilities had not been changed. In addition, the record shows that, even though Ms. Krey was not aware, at the time the selection decision was made, that there were any plans to restructure or eliminate Mr. Molepske's position, and there was no reason she should have been aware of such plans, she, too, gave Mr. Molepske the highest interview score.

Appellant asserts that, since the Promotional Announcement did not emphasize the supervisory and program management aspects of the subject position, such aspects should not have been emphasized in the selection process. First of all, the issue in the instant appeal relates solely to the post-certification action of respondent and the promotional

announcement obviously predates the generation of the certification list. Even if this were not case, the promotional announcements specifically describe the subject position as follows:

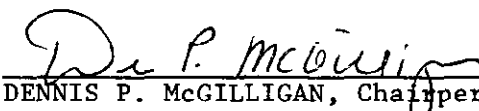
This position will supervise and direct the staff and programs of the Property Management Section, Division of Veterans Program... (emphasis added)


Finally, appellant argues that respondent was required to hire appellant because respondent had an affirmative action plan and appellant was the only woman among the five certified candidates. It is interesting to note in this regard that, since the subject position and appellant's position are in the same category for affirmative action reporting purposes, appointing appellant to the subject position would not have helped respondent achieve an affirmative action goal. More importantly, however, the existence of an affirmative action plan with affirmative action goals does not establish a requirement that an employer hire a woman, a member of an ethnic/racial minority or a handicapped person for a position.

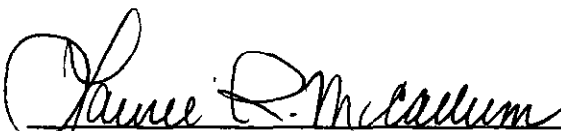
ORDER

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

Dated: March 10, 1988 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

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