

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SHARON M. ROYSTON,

Appellant,

v.

Secretary, DEPARTMENT OF
 VETERANS AFFAIRS and
 Administrator, DIVISION OF
 MERIT RECRUITMENT & SELECTION,

Respondents.

Case No. 86-0222-PC

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INTERIM
 DECISION
 AND
 ORDER

This is an appeal, pursuant to §§230.44(1)(a) and (d), Stats. The issues governing the appeal are:

1. Whether the appellant has standing to maintain the instant appeal.
2. Whether the agency-competitive promotion examination for the position of Real Estate Supervisor, Department of Veterans Affairs-Madison area held on November 12, 1986, was conducted in accordance with §§230.16(4) and (5), Stats., with respect to those matters alleged in appellant's letter of appeal.
3. Whether the subject post-certification appointment process constituted an illegal action or an abuse of discretion, as alleged in appellant's letter of appeal.

In her letter of appeal, filed on December 29, 1986, appellant cites the following as the bases for her appeal:

1. The job announcement did not state that substantial supervisory experience was required for the subject position.
2. Two of the oral exam panel members were friends/associates of the Administrator of the Division of Veterans Programs in the Department of Veterans Affairs (who had the effective hiring authority for the subject position) and, therefore, not impartial.

3. The oral exam did not sufficiently test for knowledge and skills required to perform the duties and responsibilities of the subject position.

4. Many of the interview questions were unclear and emphasized supervisory experience and style.

5. The successful applicant was selected because his position was to be eliminated.

6. Although the DVA is required to give hiring preference to veterans, a veteran was not hired for the subject position despite the fact that there were three veterans on the list of certified candidates.

7. The successful applicant was not the best qualified candidate for the subject position.

On February 23, 1987, respondent DVA filed a motion to dismiss the instant appeal and cited the following bases, in the alternative, for the motion:

1. The Respondent, Department of Veterans Affairs, moves to dismiss the Department of Veterans Affairs as a Respondent in the above action as the complaint pertains to "The Job Announcement" and "The Exam" (Issue #1) on the grounds that the complaint fails to state a claim against the Respondent, Department of Veterans Affairs, upon which relief can be granted because as a matter of law the responsibility for the merit recruitment and selection program lies with the administrator of the division of merit recruitment and selection and cannot be delegated. Sec. 230.05(2)(b), Wis. Stats.
2. The Respondent, Department of Veterans Affairs, moves to dismiss the complaint in the above action as it pertains to the selection process on the grounds that the appellant does not have standing to maintain this action because she has at no time alleged that she should have been selected for the promotional position, nor in any other way, alleged that she has sustained an injury in fact.
3. The Respondent, Department of Veterans Affairs, moves to dismiss the complaint in the above action as it pertains to "Veterans Preference" on the grounds that the appellant does not have standing to maintain this action because she has at

no time alleged that she is a veteran (and, in fact, she is not) and she has not alleged (and, obviously, not sustained) an injury in fact.

On March 30, 1987, respondent DMRS filed a motion to dismiss the instant appeal and cited the following bases, in the alternative, for the motion:

1. Appellant lacks the standing necessary to maintain the appeal insofar as it relates to respondent DMRS's actions.

2. With respect to those aspects of the appeal relating to the job announcement and the oral exam, the appeal was untimely filed.

None of the parties requested an evidentiary hearing on the motions. The parties were permitted to and did file briefs. The briefing schedule was completed on April 30, 1987

The following facts appear to be undisputed:

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 for the subject position:

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.

2. Appellant filed an application for the subject position. The oral examination panel was convened on November 12, 1986, and appellant was one of the applicants examined. The questions used in the oral exam were reviewed and approved by respondent DMRS. The panel's raw scores were forwarded to respondent DMRS for final scoring. After final scoring, DMRS mailed appellant in Mazomanie her notice of examination results on November 17, 1986, and she received this notice prior to November 29, 1986. Respondent DMRS certified five applicants as eligible for appointment to the subject position, and the list of certified applicants was received by respondent DVA on November 17, 1986. On November 25, 1986, the five certified applicants, including appellant, were interviewed. Letters were mailed to the unsuccessful applicants, including appellant, informing them of the appointment decision on December 1, 1986.

3. Appellant is not a veteran.

4. The instant appeal was filed with the Commission on December 29, 1986.

Job Announcement/Oral Exam

Respondent DVA argues that the statutory authority for administering the job announcement/oral exam aspects of the recruitment and selection process is vested exclusively in the administrator of DMRS pursuant to §230.05(2)(b), Stats., and, therefore, that DVA could not and should not be held responsible for any deficiencies in the job announcement and/or the oral exam. This grant of statutory authority is clear and the Commission agrees with respondent DVA's position in this regard.

Respondent DMRS argues that appellant has no standing to challenge the sufficiency of the job announcement and/or the oral exam since, as a result

of the fact that appellant was certified by DMRS for the subject position, she suffered no "injury in fact." Inasmuch as it appears to be clear that this appeal was not timely filed with respect to the examination process (as distinguished from the post-examination/certification selection decision), the Commission will not address the issue of standing with respect to the examination process.

With respect to the timeliness issue, §230.44(3), Stats., provides that the Commission may not hear an appeal unless it is filed "within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later...."

Respondent contends that it mailed the notice of examination results to the appellant on November 17, 1986, and that she must have received it more than 30 days before she filed her appeal -- i.e., that she received the notice prior to November 29, 1986.

In her response on this point, appellant has not contested this assertion. Rather, she asserts:

"DVA personnel director did not inform me of any other appeal deadlines other than the one I complied with on the appeal of the appointment...."

In light of this, the Commission can only conclude that the appeal letter was filed more than 30 days after the appellant received notice of the exam results. With respect to appellant's contention concerning the DVA personnel director failing to inform her of an appeal deadline with respect to the examination, this would not affect the question of timeliness. The employer is not required to inform an employe of his or her rights, so long as the employer does not unfairly mislead the employe with misinformation about his or her rights. See Jacobs v. State Board of

Personnel, 34 Wis. 2d 245 (1967); Newbury v. DILHR, Wis. Pers. Commn. No. 80-50-PC (9/23/80).

Selection/Appointment Decision

Respondent DVA argues that appellant has no standing to challenge the selection/appointment decision because she has at no time alleged that she should have been selected for the promotional position, nor in any other way alleged that she has sustained an injury in fact. Appellant does mention in her letter of appeal the fact that persons other than herself were aggrieved by those actions which she was appealing. However, in her brief, appellant states that, "... I was not selected, was ranked No. 2, had substantial practical work experience in this field for over 13 years, had knowledge of current principles, techniques and practices of program and personnel administration..." From this language, it is obvious that appellant is appealing the selection/appointment decision because she feels she was better qualified for the subject position than the successful applicant and, as a result, has, indeed, suffered an "injury in fact" since she was not selected for the subject position. The appellant clearly has standing in this regard. The Commission agrees with respondent DVA, however, that appellant does not have standing to challenge respondent DVA's alleged failure to follow their policy regarding hiring preferences for veterans since appellant is not a veteran and has not suffered any "injury in fact" in this regard.

Respondent DMRS argues that an appointing authority (in this appeal, DVA) has the exclusive statutory authority for selection/appointment decisions and, therefore, that DMRS could not and should not be held responsible for any deficiencies in this regard. In view of the language of §230.06(1)(b), Stats., that "an appointing authority shall appoint

persons to or remove persons from the classified service," the Commission sustains this argument of respondent DMRS.


ORDER

DMRS's motion to dismiss is granted and, as a result, DMRS is no longer a party respondent to the instant appeal.

DVA's motion to dismiss is granted in part and denied in part in accordance with the foregoing and, as a result, DVA remains a party respondent in the instant appeal but the only remaining issue in the instant appeal is:

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

Dated: June 24, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM/AJT:jmf
RK2/2


LAURIE R. McCALLUM, Commissioner