

STATE OF WISCONSIN

PERSONNEL COMMISSION

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PATRICK D. BAGGOTT, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

NATURAL RESOURCES and *

Secretary, DEPARTMENT OF *

EMPLOYMENT RELATIONS, *

Respondents. *

Case No. 87-0012-PC *

* * * * *

INTERIM
DECISION
AND
ORDER

This is an appeal from a reclassification notice. A prehearing conference was held on March 2, 1987. Respondent DNR subsequently filed a jurisdictional objection, contending that there was no appealable decision rendered by the respondents. The parties were provided an opportunity to file briefs but did not request a hearing on the motion.

FINDINGS OF FACT

1. At all times relevant to this appeal, the appellant has been employed in the Air Monitoring Section of the Bureau of Air Management in the Department of Natural Resources as the air quality data systems manager.

2. On July 28, 1986, the appellant submitted a memorandum to Beecher Daniels, supervisor of the Air Monitoring section, requesting:

1. That you prepare, in consultation with me, a new Position Description for my position which accurately describes the responsibilities of my position.

2. That my position be reclassified. Based upon my investigation of the Environmental Specialist Position Standard, and the actual classification of similar positions, I believe my correct classification should be Environmental Specialist - 6. If the ES- 6 cannot be justified, then I believe the classification should be at least ES - 5.

3. That this reclassification be made retroactive to the time that I reached my present level of responsibility and performance.

4. That the new PD and a formal reclassification request be submitted to the DNR Bureau of Personnel by August 8, 1986.

3. In a second memo, dated September 8, 1986, appellant wrote his supervisor, in part, as follows:

Also, I feel that the Bureau of Personnel must be presented with a formal request to reclass this position to ES - 6 at the time this PD is presented to them. The most appropriate place for this is in your cover letter.

4. By memo dated September 15, 1986, from Mr. Daniels to Donald Theiler, bureau director, Mr. Daniels requested reclassification of appellant's position:

Request that Patrick Baggott be reclassified as the result of duties he is performing as described in the attached position description. Although we believe that the level should be at least an Environmental Specialist 5, we request that DNR Bureau of Personnel evaluate and determine what classification level this position should be at.

The request was accompanied by a revised position description for appellant's position.

5. The Secretary of the Department of Employment Relations has delegated his authority for reclassifying positions within DNR to the Environmental Specialist 4, 5 and 6 levels to DNR's Bureau of Personnel and Human Resources.

6. By directive dated May 28, 1986, respondent DNR has established a procedure for reclassifying positions. The procedure is found in Manual Code 9170.9. As applied to the appellant's request, the procedure requires, inter alia:

a. The first-line supervisor is to prepare a memo of request, including requested classification and is to develop a new PD. These materials are to be submitted to the division administrator.

b. The division administrator is to prepare a Reclassification Request/Report (Form DER-Pers-37) but is to leave blank the boxes indicating proposed classification. The division administrator also is to prepare a memorandum supporting the request and is to send the materials prepared by both the first-line supervisor and the division administrator on to DNR's Bureau of Personnel and Human Resources (BPHR).

c. BPHR is to receive the material, review the request, finalize a decision, complete the reclassification request/report form and distribute copies of that form.

7. After receiving the memo described in finding 4, Mr. Theiler, as bureau director, prepared a substantially identical memo dated September 17, 1986, to Debra Koyen, Director of BPHR. The reclassification request/report form that was also prepared for Ms. Koyen listed appellants "Proposed Class Title and Pay Range" as Environmental Specialist 5 (15-05). These documents were approved at the division level on September 24, 1986.

8. The documents described in findings 4 and 7 were received by BPHR on September 25, 1986, where Greg Samp reviewed the request and approved reclassification from ES 4 to ES 5, with an effective date of September 28, 1986.

9. The appellant filed an appeal with the Commission of the reclassification decision. He alleges that the effective date of the reclassification is incorrect and that his position should have been reclassified to the ES 6 level.

DECISION

This appeal presents two issues for decision:

- a. Whether the Commission has jurisdiction over the appeal of the September 28, 1986 effective date of reclassification.
- b. Whether Mr. Samp should have reviewed appellant's position in terms of possible reclassification to the ES 6 level as well as the ES 5 level.

The Commission answers both issues in the affirmative.

Effective Date

While respondent DNR argues that the Commission has no jurisdiction in this matter, no arguments have been advanced¹ as to why the decision setting the effective date of the reclassification is not appealable to the Commission under §230.44(1)(b), Stats., which provides:

(1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):

* * *

(b) Decision made or delegated by secretary. Appeal of a personnel decision under s. 230.09(2)(a) or (d) or 230.13 made by the secretary or by an appointing authority delegated by the secretary under s. 230.04(1m)

In turn, s. 230.09(2)(a) and (d), Stats., provide:

(a) After consultation with the appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

* * *

(d) If after review of a filled position the secretary reclassifies or reallocates the position, the secretary shall determine whether the incumbent shall be regraded or whether the position shall be opened to other applicants.

The Commission is unaware of any provision in the statutes that have the effect of separating the decision to establish an effective date from the remainder of the reclassification/regrade decision. In s. ER-Pers 3.03(4), Wis. Adm. Code, effective date is discussed as follows:

¹ It is not clear from the briefs whether respondent DNR seeks dismissal of the entire case, i.e., the effective date and the ES 6 claim, or only dismissal of the ES 6 claim. This interim decision addresses both claims for purposes of efficiency.

Requests for reallocation, reclassification or regrade are cancelled when an employe resigns, retires or is terminated from pay status in the position prior to the effective date of the requested action. The effective date of the requested action shall be determined under s. ER-Pers 29.03(3).

S. ER-Pers 29.03(3)(a), Wis. Adm. Code, provides:

Pay adjustments resulting from regrading an employe shall be effective in accordance with schedules established by the administrator or on specific dates approved by the board when such approval is necessary.

The effective date of a reclassification/regrade is not listed within s. 230.09, Stats., as a separate decision such as decisions to conduct surveys (s. 230.09(2)(am), Stats), assigning classifications to pay ranges (s. 230.09(2)(b), Stats) or adjusting pay rates upon reclassification, reallocation or allocation (s. 230.09(2)(f), Stats.). In absence of a separate provision regarding effective dates, the Commission construes the language of s. 230.09(2)(a) and (d), Stats., to include a determination of effective date.

Therefore, the Commission does have the authority under s. 230.44(1)(b), Stats., to review determinations of the effective date of a reclassification decision.

Environmental Specialist 6 Review

The important facts relative to the second issue before the Commission are as follows:

- a. Twice, the appellant wrote his supervisor specifically requesting him to forward the forms for reclassifying the appellant's position to the ES 5 or ES 6 levels.
- b. Appellant's supervisors within his division wrote memos that reached DNR's BPHR requesting reclassification of the appellant's position to "at least an Environmental Specialist 5" and requesting BPHR to "evaluate and determine what classification level this position should be at."

- c. Although DNR's written policy is that the portion of the reclassification request/report form setting forth the "Proposed Class Title and Pay Range" is to be completed after the form reaches BPHR, that portion of the appellant's request was completed before it reached BPHR.
- d. The person within BPHR who rendered the decision on the reclass request did not explicitly consider the ES 6 classification even though he had the letters from appellant's supervisors before him.

There are two theories that could permit the Commission to hear this matter even though there was no explicit denial of reclassification to the ES 6 level. The first theory is that respondents erred in not considering the ES 6 level as well as the ES 5 level. This theory is based on the principle that a refusal to act under certain circumstances is cognizable by the Commission under s. 230.44(1)(b), Stats. In both Corning v. DER & DP, 82-185-PC, 10/27/82, and Spilde v. DER, 86-0040-PC, 1/8/87, the Commission held that it could review decisions not to process a reclassification "request" that respondent contended was incomplete.

Here, the question of whether Mr. Samp should have reviewed appellant's position in terms of the ES 6 classification as well as the ES 5 classification was effectively addressed by the parties in the context of their briefs on respondent's motion to dismiss. The findings of fact show that Mr. Samp's office, rather than the division administrator, should have filled in the "Proposed Classification" blank on the reclassification request/report. In addition, the appellant had clearly requested consideration of both the ES 5 and 6 levels in his memos to his supervisors. These findings establish that the respondent should have considered both classifications. Because there was no explicit consideration of the ES 6 level, and because ES 6 should have been considered by the respondents, the Commission will direct DNR to consider the ES 6 classification now and to notify the appellant and the Commission of the results of the review.

In light of the conclusion on the first theory, it is unnecessary to consider the second theory, i.e., that the decision to reclassify the appellant's position to the ES 5 level may be considered an implicit denial of a higher level within the same series. Kennedy et al. v. DP, 81-180, etc.-PC, 1/6/84.

Based on the above analysis, the Commission issues the following

ORDER

The respondent's motion to dismiss is denied and respondent DNR is directed to review the request received on September 25, 1986, to reclassify the appellant's position in terms of the ES 6 classification and to notify the appellant and the Commission of the results of that review. Once those results are received, the Commission will then schedule a second prehearing conference.

Dated: April 29, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

KMS:jmf
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