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 *
 ROBERT MOSS, *
 *
 Appellant, *
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 v. *
 *
 Administrator, DIVISION OF *
 MERIT³ RECRUITMENT & SELECTION, *
 *
 Respondent. *
 *
 Case No. 87-0015-PC *
 *
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal from a decision by respondent to remove appellant's name from a register of eligible candidates.

FINDINGS OF FACT

1. As part of his application for a position as an Officer 1 with the Division of Corrections, Department of Health and Social Services, appellant completed an Employment Application/Applicant Registration Supplement Form on September 10, 1986. In the Work Experience Summary section of the form, appellant indicated the following, among other things:

<u>Employer Name</u>	<u>Your Title</u>	<u>Employment Dates</u>	<u>Full-Time or or Part-Time</u>	<u>Reason for Leaving</u>	<u>Reference</u>
Justice Dept. Fed. Corr. Instit. - Oxford, WI	Correc. Officer	6/85 - 4/86	Full-Time	Background check was false	Richard Graham
Whallon Machinery	Painter	12/84 - 2/85	Full-Time	Quit temp. job	Russ Whallon

<u>Employer Name</u>	<u>Your Title</u>	<u>Employment Dates</u>	<u>Full-Time or or Part-Time</u>	<u>Reason for Leaving</u>	<u>Reference</u>
Monon Trailer	Diesel Mechanic	1983 - 1984	Full-Time	Fired - I Refused to Change a Transmis- sion without safety jacks	Chuck Fish
Continen- tal Machine	Welder	1980 - 1981	Full-Time	Quit due to health reasons	Jim Glaze

2. On such form, in response to the following question: "May we conduct a personal background check including contact of your references named above and review other records as may be required for some posi- tions?", appellant checked the box indicating a "Yes" response and added in writing, "Please confirm any derogatory statements."

3. Appellant signed such form and above his signature on the form was printed the following:

I understand that all the information on this application is to be true and complete to the best of my knowledge and that any false or missing job-related information may disqualify me for this position.

4. As part of the recruitment and selection process for the Officer 1 positions for which appellant was applying, staff of the Office of Human Resources, Division of Corrections, Department of Health and Social Services, followed its standard procedure and checked the references of those applicants under consideration. The checks of appellant's references were conducted by Patricia Griffith of the Office of Human Resources and by Gary Fergot and Janet Brownlea of the Correctional Training Center in Oshkosh.

5. A telephonic reference check with Richard Graham of the Federal Correctional Institution in Oxford on September 25, 1986, revealed, among

other things, that appellant was fired because he falsified certain background material on his application; that he was very aggressive and had threatened other employees and had used firearms to threaten others; and that his judgment, quality of work, and dependability were poor. In a letter to Ms. Griffith dated October 20, 1986, Mr. Graham confirmed in writing what he had stated in the September 25 telephone conversation.

6. A telephonic reference check with a foreman at Whallon Machinery on September 25, 1986, indicated, among other things, that appellant had been employed for them a total of 70 hours from December 19 to December 26, 1984; that appellant had an inadequate attendance record; that his relationships with co-workers, his judgment, his quality of work, his dependability, and his overall work performance were poor; and that he had been terminated and had started a fight and had threatened a police officer when told he had been terminated.

7. An attempt was made to contact Monon Trailer by phone but there was no phone listing for either Monon Trailer or Chuck Fish, the person listed as a reference on appellant's Employment Application/Applicant Registration Supplement Form.

8. A telephonic reference check with the plant manager of Continental Machine and Engineering on October 28, 1986, indicated, among other things, that appellant's use of 29 days of sick leave resulted in an inadequate attendance record; that appellant didn't get along with his supervisor and when he was assigned duties he didn't like, he would leave work sick; that he was reprimanded for poor workmanship and sent home four times for horseplay; that his attitude and work performance were poor; and that he was fired for refusing to do assigned work.

9. As a result of the information received from these reference checks, the Department of Health and Social Services requested, in a letter dated October 31, 1986, that the Division of Merit Recruitment and Selection (DMRS) of the Department of Employment Relations remove appellant's name from the current Officer 1 - Statewide Register.

10. In letter to appellant dated November 7, 1986, the Administrator of DMRS advised appellant that, pursuant to the authority granted by §§ER-Pers 6.10(5)(7), and (8), Wis. Adm. Code, DMRS was removing his name from the current Officer 1 - Statewide Register.

11. Appellant filed a timely appeal of this action with the Commission.

CONCLUSIONS OF LAW

1. This appeal is appropriately before the Commission pursuant to §230.44(1)(a), Stats.

2. Appellant has the burden of proving that respondent violated §§230.17(1) or (2), Stats., or §§ER-Pers 6.10(5), (7), or (8), Wis. Adm. Code, by removing appellant's name from the subject register.

3. Appellant has not sustained this burden.

DECISION

Sections ER-Pers 6.10(5), (7), and (8), Wis. Adm. Code provide:

ER-Pers 6.10 Disqualification of applicants. In addition to provisions stated elsewhere in the law or rules, the administrator may refuse to examine or certify an applicant, or may remove an applicant from certification:

(5) Who has made a false statement of any material fact in any part of the selection process;

(7) Who practices, or attempts to practice, any deception or fraud in his or her application, certification, examination, or in securing eligibility or appointment;

(8) Whose work record or employment references are unsatisfactory.

Sections 23.17(1) and (2), Stats., provide:

230.17 Applicants and eligibles may be barred; bonds may be required. (1) The administrator shall provide by rule, the conditions, not otherwise provided by law, under which an applicant may be refused examination or reexamination, or an eligible refused certification. These conditions shall be based on sufficient reason and shall reflect sound technical personnel management practices and those standards of conduct, deportment and character necessary and demanded to the orderly, efficient and just operation of the state service.

(2) If the administrator refuses to examine an applicant, or after an examination to certify an eligible, as provided in this section, the administrator, if requested by the applicant so rejected within 10 days of the date of receipt of the notice of rejection, shall give the applicant a full and explicit statement of the exact cause of such refusal to examine or to certify. Applicants may appeal to the commission the decision of the administrator to refuse to examine or certify under s.230.44(1)(a).

The issue in the instant appeal is: Whether the respondent violated §§ER-Pers 6.10(5), (7), and/or (8), Wis. Adm. Code, and/or §230.17(1) or (2), Stats., by removing appellant's name from the register of eligible candidates for the classification of Officer I pursuant to respondent's letter dated November 7, 1986.

The Commission considered a similar issue and fact situation in Pflugrad v. DP, Case No. 82-207-PC (3/17/83) and stated in that decision that:

Pursuant to this rule (§ER-Pers 6.10(8), Wis. Adm. Code), the administrator may remove an applicant from certification "whose work record or employment references are unsatisfactory." This rule clearly permits the administrator to make the decision on the basis of the applicant's work record or employment references. This rule does not provide for the administrator to go beyond the work record or employment references to hold a hearing to determine whether the actual facts concerning the employment of an applicant are as reflected in his or her record or by his or her references. The policy reasons behind this are obvious. A contrary approach could require for example, that the

administrator conduct evidentiary hearings concerning whether there was proper cause for an applicant's discharge by one employer, poor evaluations by a second, and unsatisfactory references by a third, when the employment in question may have occurred years ago and involved various employers who might be outside of state service and, for that matter outside of the State of Wisconsin altogether.

The essential problem with many of the thirty witnesses which had been proposed to be called by the appellant to testify at this hearing is that the appellant had been attempting to show that the facts concerning his employment at BVTAE, the Director of State Courts and the UW were not as reflected in his work record. If this line of testimony were permitted, the appellant essentially would be litigating the issues, for example, of whether there was a proper basis for certain of his evaluations at BVTAE, and whether there was proper cause for the termination of his employment at the latter two agencies. Such inquiry goes beyond what is set forth in s.Pers 6.10(8), Wis. Adm. Code, and should not be permitted in an appeal of an action by the administrator acting pursuant to that rule. Also beyond the scope of the hearing is evidence as to the motives of the BVTAE in providing information regarding the appellant's work record to the administrator. Such motivation is not material to the question of whether the administrator had an appropriate basis for removing the appellant's name from the certification because of unsatisfactory work record or employment references.

In the instant appeal, the issue involves §§ER-Pers 6.10(5) and (7), Wis. Adm. Code, as well as §ER-Pers 6.10(8), Wis. Adm. Code. The rationale employed by the Commission in deciding the Pflugrad case, however, is equally applicable in the present case. An employer is justified in accepting as accurate the information provided by an applicant's references. To require an employer to "confirm any derogatory statements" provided by a reference, as requested by appellant in his application, would require the employer to determine, through an evidentiary hearing or some other formal mechanism, whether the information supplied by the applicant or the information supplied by the reference is more accurate. As the Commission decided in Pflugrad, this goes well beyond what should be required of the Administrator of DMRS in removing an applicant's name from an employment register and is not expressly or impliedly required by the

language of §ER-Pers 6.10, Wis. Adm. Code. If the applicant feels aggrieved by the actions of a reference or former employer, the proper recourse is against the reference or former employer, not against the Administrator of DMRS who relied on the information supplied by such reference or former employer.

It is clear that respondent was correct in concluding, on the basis of the information obtained through the reference checks, that appellant's work record and employment references were unsatisfactory within the meaning of §ER-Pers 6.10(8), Wis. Adm. Code. Each of the references indicated that appellant had been fired, that he did not have a positive relationship with co-workers and supervisors, and that his work performance was poor.

It is also clear that appellant made false statements of material facts on his application and practiced deception in his application within the meaning of §§ER-Pers 6.10(5) and (7), Wis. Adm. Code. On his application, appellant indicated that he left the Federal Correctional Institution at Oxford because "background check was false." Appellant's reference indicated that appellant was fired because he falsified background material on his application. On his application, appellant indicated that he had quit his position with Whallon Machinery. Appellant's reference indicated that appellant had been fired. On his application, appellant indicated that he had quit his position at Continental Machine and Engineering due to health reasons. Appellant's reference indicated that he was fired for refusing to do assigned work.

ORDER

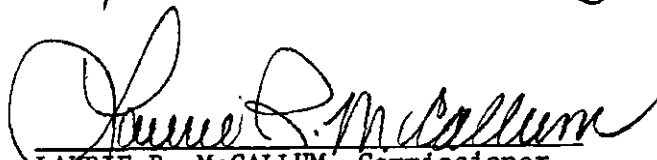
The action of respondent is affirmed and this appeal is dismissed.

Dated: October 7, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
JMF05/2


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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