

STATE OF WISCONSIN

PERSONNEL COMMISSION

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Nanette Darnill, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

HEALTH & SOCIAL SERVICES *

and Administrator, *

DIVISION OF MERIT *

RECRUITMENT & SELECTION, *

Respondents, *

Case No. 87-0194-PC *

* * * * *

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the commission on the objection of respondent Department of Health & Social Services (DHSS) to part of this appeal. Both parties have submitted briefs. Additionally, appellant has consented to the dismissal of Division of Merit Recruitment & Selection (DMRS) as a party.

DISCUSSION

This case involves an appeal filed November 5, 1987, which stated, in pertinent part, as follows:

This letter is intended to serve as an appeal of a testing, interview and hire transaction conducted by the Department of Health and Social Services for the positions of Program Specialists for the JRPA 3% Older Worker Program and Title V Senior Community Services Employment Program in the Department's Bureau Aging. I received a telephone call on 10/16/87, and written notification dated 10/21/87, that I had not been selected for either vacant position. I was the incumbent in the position of JTPA 3% Coordinator from May 1984 to October 1987 as a project employee (Social Services Specialist 1), pay range 01-14.

A Civil Service exam was given for these positions on May 9, 1987. I took the exam at a U.W.-Madison testing site. In mid-June 1987, I received information after several attempts from the Division of Merit

Recruitment and Selection in the Department of Employee Relations, that the exam scores were rendered invalid and were to be re-scored. On the second scoring I received a score of 94.6 and was ranked #2. No information regarding the invalidation, my original exam score nor the method of re-scoring was provided to me. I am appealing this portion of the process.

Oral interviews were scheduled and I participated in one of the scheduled interviews on September 9, 1987. On this date I also received information from Mabel Smith-Reed, Acting Department Affirmative Action Officer, that the benchmarks for the exam give May 9th had been re-established after an initial scoring of the exams.

On September 16, 1987, I received information from Frederico Villarreal, one of the interview panel members, that disparaging remarks were made about me in the presence of the panel members by Sharon Taylor, who was a panel member. I believe the remarks negatively influenced the panel's recommendations to the Director of the Bureau on Aging. I am appealing this portion of the process.

On September 25, 1987 I received written notice that my project/project appointment as a Social Services Specialist 1 in the Division of Community Services would end on October 9, 1987. At this time I was informed by Janice Smith, Policy and Planning Section Chief in the Bureau on Aging, that a second set of interviews would be scheduled for the following week because one of the panel members had a previous experience with one of the applicants. On October 2, 1987, Janice Smith called me to confirm a second interview with herself, the Bureau Director and my immediate supervisor.

My last day of work was October 9, 1987. On October 16, 1987, I received a telephone call from Marilyn Slautterback of the Aging Bureau that I had not been selected for either of the vacant positions for which I had interviewed. This conversation was confirmed by written notification dated October 21, 1987, from Janice Smith.

In its brief in support of its objection or motion to dismiss, respondent DHSS states it seeks dismissal of "any issue in the above-captioned complaint that is related to the first interviews held for the position...." The brief goes on to contend:

Ms. Darnill was aware as early as September 25, 1987, that the first set of interviews were not going to be used and in fact was reinterviewed on October 5, 1987. Her appeal on November 5, 1987, is more than 30 days from the notice received by her that the first interview would not be used. Therefore, the issue for hearing should not include reference to the validity of the first interview."

The thrust of this appeal, with respect to the interviews conducted

September 9, 1987, is that disparaging remarks were made that "negatively influenced the panel's recommendations to the Director of the Bureau of Aging." While the appellant was made aware on September 16, 1987, of the alleged disparaging remarks, it was not until about a month later when she learned of her rejection that she was in a position to conclude that she had been injured as a result of the alleged remarks. The time for appeal under §230.44(3), Stats., begins to run from the effective date of the action (or from the date of notice, whichever is later). The subject matter of this appeal pursuant to §230.44(1)(d), Stats.,¹ is respondent's failure or refusal to have appointed Ms. Darnill to the position in question. Notwithstanding appellant's statement in her appeal letter that she is "appealing this portion of the process" -- i.e., the negative remarks which influenced the panel's recommendation -- the making of negative remarks about a candidate is not a personnel action which is appealable under §230.44(1)(d), Stats. Rather, it is a part of the selection process leading up to the non-selection decision that can not and does not need to be separately appealed, but which can constitute part of appellant's case in seeking to show that the personnel action in question -- her non-selection -- was illegal or an abuse of discretion. The appeal was timely filed with regard to the appealable subject matter -- i.e., the nonselection.

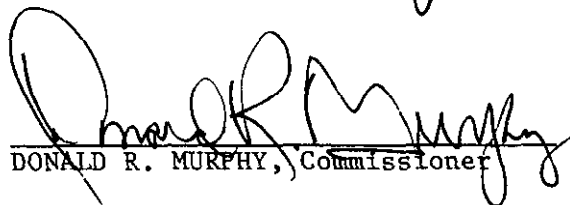
¹ "A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission."

ORDER

Respondent DHSS's motion to dismiss or objection as set forth in its brief filed January 20, 1988, is denied or overruled. Pursuant to appellant's consent, respondent DMRS is dismissed as a party - respondent.

Dated: May 5, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

AJT:akw
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LAURIE R. McCALLUM, Commissioner