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BRENDA BELL-WHITE,

Complainant,

v.

Secretary, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES [DOC],*

Respondent.

Case No. 89-0009-PC-ER

* * * * *

DECISION
AND
ORDER

After reviewing the Proposed Decision and Order and the objections thereto, and after consulting with the hearing examiner, the Commission adopts the Proposed Decision and Order with the following additions and modifications for the purpose of clarification and to better reflect the record:

I. Finding of fact 11 is amended to read:

The preliminary exchange between Kuehn and complainant, during the interview, included a thorough explanation by Kuehn of the job requirements, the extensive travel and the heavy interview schedule; and a story about a female judge in Madison, who was married and had several children. Kuehn gave each interviewee materially the same thorough explanation of the extensive travel requirements of the job.

II. Paragraph 3 on page 4 is amended to read:

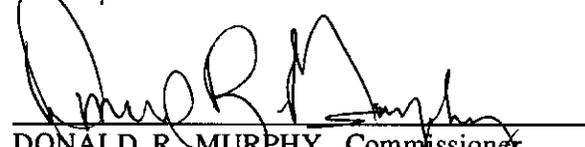
The commission does not agree with complainant that remarks made by Kuehn at the interview to her about work and family responsibilities were discriminatory. Since complainant has a specific recollection of such remarks and since Mr. Kuehn does not dispute making such remarks, the Commission concludes that such remarks were made. However, they may have been precipitated by complainant's resume (Appellant's Exhibit #3) which provides: "Available for assignments involving some travel." Also, there is no evidence that complainant's response to these remarks was considered when scoring complainant's answers to the three interview questions which Mr Kuehn used as the basis for evaluating the candidates' interviews.

III. Paragraph 4 on page 4 is amended to read:

Finally, Kuehn testified that he viewed the interview process as a means of discharging his responsibility to the department regarding the panel's choice for the position, by making sure the department head had the benefit of his view of the top candidate. He said that he satisfied himself that he shared the panel's view with respect to the number one candidate and that he did not rank the other interviewees. Also, complainant, who ranked second prior to the interview, presented no evidence establishing that she should have been ranked number one as a result of the interview, and thus did not make any showing of this type of pretext.

Dated: April 30, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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Patrick Fiedler
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*Pursuant to the provision of 1989 Wis Act 31 which created the Department of Corrections, effective January 1, 1990, the authority previously held by the Secretary of the Department of Health and Social Services with respect to the position(s) that is the subject of this proceeding is now held by the Secretary of the Department of Corrections.

NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Pctition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for

the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

* * * * *

BRENDA BELL-WHITE, *

Complainant, *

v. *

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES [DOC],* *

Respondent. *

Case No. 89-0009-PC-ER *

* * * * *

PROPOSED
DECISION
AND
ORDER

This matter is before the Commission on an Initial Determination finding of probable cause that complainant was discriminated against on the basis of marital status by respondent when it failed to appoint her to the position of Parole Board Member in September 1988. The following findings, conclusions of law, discussion and decision are based on a hearing on the merits.

FINDINGS OF FACT

1. Complainant is a married woman with children.
2. Respondent is a state agency. One of its units was the Parole Board. Currently, it is called the Parole Commission and is a unit of the Department of Corrections.
3. The Parole Board was comprised of eight civil service staff and an unclassified chairperson. It was responsible for making parole recommendations to the department head and preparing executive clemency reports requested by the governor.
4. In February 1988, respondent announced a Parole Board Member vacancy and complainant submitted the required Achievement History Questionnaire (AHQ) in application for the position.

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5. Complainant was one of the twenty examinees certified for this position and interviewed by a panel of four people

6. After the first interview, the panel ranked the top ten candidates. Complainant was ranked number two.

7. In late September 1988, the top ten candidates were interviewed by Mr. Charles Kuehn, the chairperson of the Parole Board.

8. The interviews were conducted in identical fashion. Prior to the interview, each candidate was given a letter and a Parole Board schedule — information for his/her second question. At the beginning of the interview Kuehn would tell each candidate something about himself. Then he would give the candidate an opportunity to respond with some information about him or herself. After these preliminaries, Kuehn would begin the actual interview process. The same three questions were asked each candidate. The questions were:

1. A Parole Board Member must be able to work cooperatively with other members, yet work independently. Describe your successes and failures in working with others, your approach in resolving a difference of opinion with a colleague or another person, and the variety and complexity of independence that you experienced in work and volunteer capacities
2. Please comment on the material contained in a letter and attachment you read immediately prior to this interview.¹
3. Identify the reason(s) you should be selected as a member of this Parole Board.

Follow up questions were asked as needed. This completed the interview and then Kuehn would make some exit comment.

9. After Kuehn completed the interviews of the ten candidates, he determined that Jeanne Huibregtse was the person he would recommend to the agency head for appointment. Subsequently Huibregtse was appointed.

10. Jeanne Huibregtse was a single woman, without children. Previously, she had been ranked number one by the first interview panel, consisting of four people.

¹ Neither the attachment nor the letter or copies of same were presented as exhibits.

11. The preliminary exchange between Kuehn and complainant, during the interview, included a thorough explanation by Kuehn of the job requirements, the extensive travel and the heavy interview schedule; and a story about a female judge in Madison, who was married and had several children.

12. Mr. Kuehn, also, asked complainant how she would manage the job requirements of extensive travel and heavy interview schedule.

13. Complainant's resume included a statement that she was "[a]vailable for assignments involving some travel."

14. Mr. Kuehn in deciding to recommend Jeanne Huibregtse never ranked the other nine candidates.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant §230.45(1)(b), Stats.

2. Complainant has the burden to prove she was discriminated against by respondent on the basis of marital status in violation of the Fair Employment Act in connection with her nonappointment to the subject position.

3. Complainant has failed to sustain this burden.

4. Complainant was not discriminated against by respondent as alleged.

DISCUSSION

The issue here before the Commission is, whether respondent discriminated against complainant because of her marital status in violation of the Fair Employment Act, §§111.32-111.395 Wis. Stats., with relation to its decision not to appoint her to the Parole Board.

Wis. Stats §§111.321 and 111.322 prohibit an employer from refusing to hire a person on the basis of marital status. "Marital status" is defined in §111.32 Stats. as: "The status of being married, single, divorced, separated or widowed."

Complainant is a married woman with children and respondent concedes, under the approach for analyzing a discrimination case expressed in McDonnell-Douglas Corp v. Green, 93 S. Ct. 1817 (1973), complainant established a prima facie case. However, respondent stated, through its witness Mr. Kuehn, it selected a person other than complainant because of that

person's qualifications. Consequently, the burden of proof remains with complainant to establish she was discriminated against because of her marital status.

Complainant's principle argument is that, unlike other interviewees, Mr. Kuehn gave her an "elaborate" description of the job requirements — travel involved, told her a story about a female judge in Madison, married with several children and asked her how she would handle the heavy Parole Board schedule, forcing her to defend her ability to perform the job in view of her marital obligations of husband and children.

Mr. Kuehn testified that every interviewee was given a "thorough" description of the job requirements, that he did not recall the particular event, but did not challenge complainant's statements. However, he testified, if he did ask complainant, how she managed work and her family responsibilities, her answer was satisfactory, otherwise he would have pursued it and that exchange would have stood out in his mind. Kuehn also testified he evaluated each interviewee on the basis of the answers each one gave to the same three examination questions. He testified that other comments made by him to various interviewees were not a part of the evaluation.

The Commission does not agree with complainant that remarks made by Kuehn at the interview to her about work and family responsibilities were discriminatory reconcile with Finding of Fact 11. First, it is not clear that Kuehn made such remarks. Second, assuming he did make them, they may have been precipitated by complainant's resume (Appellant's Exhibit #3) which provides: "Available for assignments involving some travel." Also, there is no evidence that complainant's answer was considered when scoring complainant's answers to the three interview questions. Also, complainant, who ranked second prior to interview, presented no evidence establishing that she should have been ranked number one, as a result of the interview.

Finally, Kuehn testified that he viewed the interview process as a means of discharging his responsibility to the department regarding the panel's choice for the position, by making sure the department head had the benefit of his view of the top candidate. He said that he satisfied himself that he shared the panel's view with respect to the number one candidate and that he did not rank the other interviewees.

Regarding remarks made by Kuehn to complainant about work and family responsibilities, complainant offers little more than that as an explanation for failure to be ranked number one. This evidence by itself is insufficient to establish that Kuehn's remarks, were discriminatory.

Complainant also asserts, unlike other interviewees, Kuehn asked her how she would handle a disagreement between her and the chairperson. In response, Kuehn testified that he did not recall asking that question, that it could have been a follow up question. He said that Wisconsin, unlike most states, gives the Parole Board chairperson sole authority to make final board decisions.

Assuming complainant's testimony about this second allegation is true, it appears neutral in regards to the issue of discrimination. Clearly the question was job related. Complainant failed to show a connection between this alleged variance in the interview and her claim of being discriminated against because she was married and had children. Consequently, it is reasonable to conclude there was none.

In summary, complainant has shown some variances in her interview with Kuehn, but has failed to establish these variances were motivated by an unfavorable bias toward her marital status and resulted in her failure to gain the top ranking for the position of Parole Board member.

ORDER

Complainant's charge of discrimination is dismissed.

Dated: _____, 1992 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM/gdt/2

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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