

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
*
BRUCE MARKERT, *
*
Appellant, *
*
v. *
*
Secretary, DEPARTMENT OF *
INDUSTRY, LABOR AND HUMAN *
RELATIONS, and Secretary, *
DEPARTMENT OF EMPLOYMENT *
RELATIONS, *
*
Respondents. *
*
Case No. 89-0029-PC *
*
* * * * *

DECISION
AND
ORDER

This matter is before the Commission as an appeal of a denial of a reclassification request. At a prehearing conference conducted on April 12, 1989, the parties agreed to the following issue for hearing:

Whether respondent's decision denying appellant's request for reclassification of his position from Job Service Specialist 2 to Job Service Specialist 3 was correct.

A hearing was held but the parties declined to file post-hearing briefs.

FINDINGS OF FACT

1. At all times relevant to this appeal, the appellant has served as a Disabled Veterans Outreach Program (DVOP) representative in the Green Bay Job Service office operated by respondent Department of Industry, Labor and Human Relations (DILHR).

2. In support of his request to reclassify his position from the Job Service Specialist 2 to 3 level, the appellant prepared a revised position description, which included the following summary of his position:

Under the general supervision of local office management and the functional supervision of the LVER [Local Veterans Employment Representative], provide a full range of employment related

services to disabled veterans, Vietnam era veterans and other eligible veterans with priority to disabled veterans. Provide employment counseling to disabled veterans, Vietnam era veterans, and other eligible veterans with priority to disabled veterans to address employment barriers, labor market information, testing programs and extensive assessment. Conduct employer relations developing veteran job training OJT's and job developments. Function as a liaison and maintain working relationships with veteran organizations and community agencies.

Appellant's supervisor refused to sign the appellant's revised position description, contending that it inaccurately portrayed the appellant's duties, specifically as they relate to counseling. For the purpose of this decision, the Commission accepts the revised position description as accurately portraying the appellant's duties.

3. There are approximately 25 other DVOP representatives employed by DILHR. Six of those DVOPs have responsibilities which are substantially identical to those of the appellant, including counseling. The remaining DVOPs do not have counseling responsibilities. All of the DVOPs are classified at the Job Service Specialist 2 (JSS2) level.

4. The JSS position standard includes the following language:

ENTRANCE AND PROGRESSION THROUGH THE SERIES

Entrance into this series will typically be by competitive examination. Progression through this series will occur through reclassification from the entry level Job Service Specialist 1 to the objective level Job Service Specialist 2. Progression beyond the objective level Job Service Specialist 2 (Placement Specialist) will occur through a competitive examination for advanced level positions such as the Account Executive, Job Club Specialist, or Special Program Representative.

JOB SERVICE SPECIALIST 2

(PR 12-03)

This is the objective level for professional Job Service work in the State Job Service Program. Positions allocated to this level in the field: 1) are responsible for varied placement work such as a Placement Specialist or; 2 are responsible for a program specialty area such as Disabled Veterans Outreach Program, Refugee or, Wisconsin Employment Opportunity Program or; 3) are assigned a specialized program as a caseload manager. Work at this level requires independence of action, thorough knowledge of Job Service Programs, guidelines, procedures, and departmental policies that relate to the work assigned. A conscientious application of knowledge to the task assigned and the ability to anticipate and

alert management to a developing problem, are characteristic features of this classification. Positions at this level are distinguished from positions at the lower level by their increased program knowledge, accountability, complexity, and variety or occupational diversity of the clients served. Work is performed under general supervision.

JOB SERVICE SPECIALIST 3

(PR 12-04)

This is advanced and/or lead level professional Job Service work in the State Job Service Program. Positions allocated to this level in the field are responsible for: 1) leading placement specialists; 2) coordinating and directing the activities of a specialized program area that services a specific target group such as Local Veterans Employment Representatives or Special Program Representatives; or 3) providing a full range of informational and technical services to employers including the development and implementation of an individualized service plan for each assigned account and for participating in the local office market plan as an account executive; or 4) planning and implementing intensive group activities to assist target group participants in securing and retaining appropriate employment or perform fact finding and adjudication responsibilities in a specialized program; or 5) planning, coordinating, and providing a comprehensive community wide labor exchange service including a community based employer relations program. Work is performed under general supervision.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellant has the burden of proving that respondents erred in denying his request for reclassification from JSS2 to JSS3.
3. Appellant having failed to sustain his burden, it must be concluded that the decision to deny reclassification of his position from JSS2 to JSS3 was not incorrect.

DISCUSSION

There is some dispute between the parties as to the appropriate description of the appellant's duties. When he submitted his reclassification request,

the appellant prepared a revised position description which included references to certain counseling duties. Appellant's supervisor declined to sign the revised position description. Appellant's previous position description is not in evidence. In addition, the respondent has failed to offer specific language which it feels would more accurately describe the appellant's duties. Therefore, for the purposes of this decision, the Commission has accepted the revised position description as accurately portraying the appellant's duties.

There is no dispute that the appellant serves as one of approximately 25 DVOP representatives statewide and that all of the DVOPs are currently classified at the JSS2 level. There is also no dispute that the Local Veterans Employment Representative [LVER] in the Green Bay office provides functional supervision of the appellant's position. The JSS2 position standard specifically includes positions which "are responsible for a program speciality area such as Disabled Veterans Outreach Program." The JSS3 position standard specifically includes positions which are responsible for "coordinating and directing the activities of a specialized program area that services a specific target group such as Local Veterans Employment Representatives," such as the position in the Green Bay office which provides functional supervision over the appellant's position.¹ The various position descriptions which were introduced into the record indicate the respondents have followed the specific allocations set forth in the position standards when classifying positions in the JSS series.

In order to grant the appellant's request to be reclassified to the JSS3 level, the Commission would have to ignore the very specific allocation for DVOP positions that is found in the JSS2 position standard, and would have to create a new allocation in the JSS3 position standard which would include at least certain DVOP positions. The Commission has previously held that it must apply existing class specifications and position standards and that it lacks the authority to reclassify a position or regrade an employee merely on a theory that such an action would compensate for problems or inequities in the class specifications. Kennedy et al. v. DP, 81-0180,etc-PC, 1/6/84. Also, Zhe et al. v.

¹The Commission has revised this sentence of the proposed decision and order by more clearly tying the JSS3 position standard to the LVER position which provides functional supervision for the appellant's position.

DHSS & DP, 80-285-PC, 11/19/81; affirmed by Dane County Circuit Court, Zhe et al. v. PC, 81-CV-6492, 11/2/82.

The appellant is one of approximately six DVOPs who perform counseling duties. Appellant's revised position description indicates these duties constitute approximately 20% of his total time. Appellant points to the similarity of his counseling duties with the responsibilities of a Job Service Counselor 3, a classification assigned the same pay range as the JSS3 classification. However, the counseling responsibilities have not caused the respondent to redesignate the appellant's position as something other than a DVOP. In addition, the counseling responsibilities do not represent a majority of the appellant's time. If they did, they would still not justify reclassification to the JSS3 level, which does not reference counseling responsibilities, but it would at least raise the issue of possible classification in the Job Service Counselor series.

The Commission also recognizes that certain of the appellant's responsibilities are similar to those of positions classified at the JSS3 level. For example, all DVOP positions have certain account executive functions relating to the DVOP program. Account executives are specifically allocated to the JSS3 level in allocation 3) of the JSS3 position standard. However, the appellant is still performing the full range of duties associated with the program specialty area of the Disabled Veterans Outreach Program which is specifically identified at the JSS2 level. Because there has been no change in the position standard² and because no other DVOP positions are classified at the JSS3 level, the

²The sole issue before the Commission is whether the reclassification decision was correct. At several points during the hearing, the appellant referred to the reallocation process. The terms "reclassification" and "reallocation" are distinct terms and are not interchangeable. As they relate to this proceeding, their definitions read as follows:

"Reallocation" means the assignment of a position to a different class . . . based upon: (a) A change in concept of the class or series; (b) The creation of new classes; (c) The abolishment of existing classes; (f) A logical change in the duties and responsibilities of a position; . . . § ER 3.01(2), Wis. Adm. Code.


"Reclassification" means the assignment of a filled position to a different class . . . based upon a logical and gradual change to the duties or responsibilities of a position . . . §ER 3.01(3), Wis. Adm. Code.

appellant is unable to establish that his position is improperly classified at the JSS2 level.


ORDER

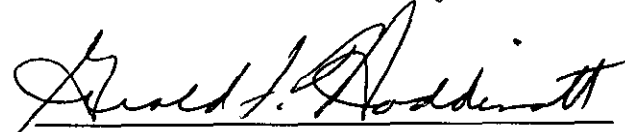
The respondents' decision denying the appellant's request to reclassify his position is affirmed and this appeal is dismissed.

Dated: June 29, 1989 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Bruce Markert
DILHR Job Service Div.
P.O. Box 1388
Green Bay, WI 54305

John Coughlin
Secretary, DILHR
P.O. Box 7946
Madison, WI 53707

Constance Beck
Secretary, DER
P.O. Box 7855
Madison, WI 53707