

MELVIN YASICK, et al.,

Appellants,

v.

Secretary, DEPARTMENT OF  
TRANSPORTATION and  
Administrator, DIVISION OF  
MERIT RECRUITMENT AND SELECTION,

Respondents.

Case No. 89-0087-PC

DECISION  
AND  
ORDER

This matter is before the Commission on a timeliness objection raised by respondent Division of Merit Recruitment and Selection (DMRS). A briefing schedule was established and the relevant facts do not appear to be in dispute.

On July 26, 1989, appellants filed a letter of appeal with the Commission which stated:

On 03-18-89 a promotional examination was given for State Patrol Sergeant position. The exam process consisted of a written test, an essay question, and a training and experience portion included on the written test. Approximately half of the persons tested were called in for an oral examination.

Attached is an explanation of the scoring system used for the written test, essay, and training and experience portion that was sent to the applicants who were not called in for the oral examination. The 3 portions appeared to have been given equal weight in determining which applicants were called in for an oral exam. Yet, the type of training and experience required to obtain a high score on the exam is not uniformly available to each applicant.

Instead of taking a percentage of the bottom to the top score, a true raw score and rank should be used to determine eligibility for an oral exam or interview. The scoring process should be changed, and the training and experience portion should be restructured to ensure a fair and non-discriminatory promotional testing process.

The relief sought would be an elimination of the present scoring system, and possibly a retest to obtain a fair and true rank of applicants.

During a prehearing conference held on September 12, 1989, DMRS raised its objection based on timeliness and the appellants stipulated that "they had

received notification of the exam results in question before the beginning of June of 1989."<sup>1</sup> (Conference report dated September 15, 1989)

The time limit for filing appeals is established in §230.44(3), Stats., which states that an appeal "may not be heard" unless it "is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later." The Commission has previously ruled that this time limit is jurisdictional in nature. Richter v. DP, 78-261-PC, 1/30/79.

In their brief, the appellants list a variety of reasons in support of their contention that the appeal was timely filed. Those arguments are as follows:

1. We are not appealing either the timely receipt of the examination result notices or the scores and ranks they contained.
2. We are appealing the process used in applying those scores to the advancement of an applicant through the promotional process.
3. The information sent to the "not eligible" applicants was not the same as that sent to "eligible" applicants and neither explained adequately the score required on the written examination, the experience portion and the essay question required in order to advance to the oral examination.
4. No explanation was given as to how the grade on the "eligible" test result notice was calculated leaving those applicants to assume it was a composite of their raw scores until, by chance, they got a chance to observe the notices sent to the "non eligible" applicants.
5. All three appellants have made numerous efforts to obtain information regarding what the test results mean, if lack of experience, which was not uniformly available, by itself, excluded an applicant from promotion and what our raw scores were. We were told, in every case, that the only person who knew was Al Bell and he either was never available or would not give answers.

We sent a memorandum to Wisconsin State Patrol Sergeant Richard Swanson dated June 30, 1989 in which we requested information. He forwarded it to Lt. Van Buren who responded July 12, 1989 with a memo stating information could be obtained

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<sup>1</sup>In their brief, the appellants stipulated that received their test results "on or about May 24, 1989."

from Alan Bell at 608-266-1033 and that we could appeal to the Wisconsin Personnel Commission.

6. We filed an appeal with the Personnel Commission which was filed on July 26, 1989.

7. The first time we were told we could obtain the information we sought was during the prehearing conference call . . . .

The appellants' underlying complaint appears to be that the initial stage in the examination process included an assessment of whether the applicants had certain different types of training and experience as a State Patrol Trooper. Appellants contend that a trooper's opportunity to have gained that qualifying experience was not equally available throughout the various State Patrol districts in the state.

While the appellants contend that they are not appealing the exam scoring, it is clear that they are seeking to appeal conduct by the respondents which occurred prior to the time that the appellants were notified of the exam results. That conduct was effective no later than the issuance of the exam results. Even though at the time they received the results the appellants did not have a complete understanding of the process used in evaluating the applicants and apparently were unaware of their opportunity to file an appeal with the Personnel Commission, the notice included, by necessary implication, notification that a procedure had been used to score the exam. The Commission is unaware of any requirement that applicants be given notice of either the procedure or the standards used to score a written examination. Therefore, the 30 day appeal period in which to obtain review of the scores, the methods used to develop the scores and the "application" of the scores to the applicants commenced at the time the appellants received their exam results rather than at some later time. This result is consistent with the decision in Schleicher v. DILHR & DP, 79-287-PC, 8/29/80, where the Commission held that the appellant's receipt of a notice of exam results, which included the information that he had not been certified and that he was not eligible for further consideration, constituted adequate notice to trigger the 30 day time limit. The Commission rejected the appellant's arguments that the notice was ambiguous because the form stated that he was not eligible for further consideration because ten other candidates received higher scores, yet his rank was given as


tenth and the notice allegedly did not contain adequate information for "rational decision-making" about his "vital interests, rights and guarantees."

None of the arguments raised by the appellant act to make this appeal timely.

ORDER

This matter is dismissed as untimely filed.

Dated: October 25, 1989 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
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