

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
FRED MOTT,  
Appellant,  
v.  
Secretary, DEPARTMENT OF  
ADMINISTRATION,  
Respondent.  
Case No. 89-0119-PC  
\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(d), Wis. Stats., of the failure of respondent to hire the appellant for an Administrative Assistant 3 position following certification.

FINDINGS OF FACT

1) This appeal involves the selection process used to fill an Administrative Assistant 3 position (Working title - Transportation Services Assistant) in the Department of Administration, Division of State Agency Services, Bureau of General Services, Transportation Services Section.

2) The position being filled reports to the Chief, Transportation Services Section. This position has a working title of Transportation Director.

3) In May, 1989, the respondent put out the following job announcement.

ADMINISTRATIVE ASSISTANT 3 -  
TRANSPORTATION SERVICES ASSISTANT - MADISON

Department of Administration (DOA); Division of State Agency Services; Madison. Start at \$11.219 per hour. Under the general direction of the Transportation Director, provide paraprofes-

sional support in the operation of the state's vehicle and property programs, including state vehicle sales and auctions, redistribution and disposal of surplus property, and auditing state agencies to ensure rule compliance. KNOWLEDGE REQUIRED: Motorized vehicles; basic marketing principles; storeroom and shipping procedures; inventory control; bookkeeping; use of office equipment, including work processing; coordination skills; interpersonal relations; auction procedures; advertising techniques; new and used property; rule and regulation interpretation; and oral and written communications skills. Apply with a cover letter and resume to Mary Becker (608) 266-0058; DOA; Personnel Office; P.O. Box 7869; Madison, WI 53707-7869. Deadline date for receipt of cover letters and resumes is May 15.

4) Persons who applied for the position were sent an Achievement History Questionnaire (AHQ). An AHQ consists of a series of questions designed to solicit more detailed information about an applicant's background in areas relevant to the position.

5) The AHQ's were rated by a panel and the results converted to a numerical civil service score. A register was established (Respondent's Exhibit #3) which listed the candidates on the basis of numerical score from highest to lowest. The appellant had a rank of 11 while the candidate who was selected had a rank of 6.

6) The actual certification list of persons eligible to be considered for the position consisted of eleven names. The candidate's names were listed in alphabetical order and did not contain the scores of the candidates. The eleven names represented the top 5 candidates (based on numerical scores), 2 candidates who were certified for consideration based on the addition of veteran's preference points, 3 candidates who were certified for consideration under the expanded certification program for women, and 1 candidate who was certified for consideration under the handicapped expanded certification program.

7) The appellant's name was included on the certification list for consideration as a result of the addition of 10 veterans preference points to the numerical score he received on his AHQ. The resulting final score (numerical score plus 10 points) was higher than the lowest score of the top 5 candidates certified making appellant eligible for consideration, in addition to any other names certified, under the state's veteran preference system.

8) The successful candidate (initially ranked #6 on the register) was added to the list of candidates after one of the top 5 candidates (based on numerical score) withdrew from consideration based on a lack of interest in the position, in order to provide the employing agency with a complete certification of the 5 top candidates (based on numerical score) who are interested in the position.

9) The candidates were interviewed by a 3-member panel comprised of Ms. Carol Hemersbach, Director, Bureau of General Services; Mr. Jeffrey Knight, Chief, Transportation Services Section; and Mr. Gary Schwartz, Procurement Manager in the Transportation Services Section.

10) Interview questions were developed by Jeffrey Knight and reviewed by the agency personnel office and determined to be appropriate and job related. All the candidates were asked the following questions.

1. In your most recent position, please describe three (3) of your more important accomplishments. What obstacles were you required to overcome and what did you learn in the process?

2. This position involves assisting in the purchase of approximately 1,000 new and used vehicles for the State each year. Please describe your experience or knowledge regarding developing bid specifications that resulted in a coherent document for wide distribution to prospective vendors?

3. The major responsibility of this position requires coordination of ten (10) weekend auctions around the state each year. Please describe your experience or knowledge regarding the

auction processes and your willingness to work a shift weekend schedule.

4. A second major responsibility is coordinating the State Surplus Property Program. Please outline your experience and background in the disposition of used goods and equipment or your familiarity with applying standard procedures to accomplish same.

5. A related aspect of disposition is providing public information through advertising and promotion. Please describe your experience and/or knowledge in this area.

6. Because the State is so large, much of our activity is delegated to other agencies thereby requiring audits to monitor and insure compliance. Please describe your background or knowledge in auditing and evaluating procedures.

7. A key element in the procurement and disposition of State equipment is design and maintenance of an accurate data base. Please describe your experience and knowledge of computerized inventory control systems.

8. Why are you interested in this position?

9. Are you aware of anything that will prevent you from carrying out the requirements of this position?

10. If we were to offer you this position, how soon would you be available?

11. Do you have any questions you wish to ask?

11) The interview panel members only rated the candidate's responses to the first eight questions. All responses were rated separately by each panel member on a scale of 1 (lowest) to 8 (highest). The candidate who received the highest overall score (total of the scores given individually by each panel member for each question) was offered the job after references were checked by Mr. Knight.

12) The candidate selected had the highest numerical score. The scores received during the interview were the only basis used to determine the candidate to be offered the job. References of the candidates were not checked

as a part of the evaluation process, but only after a determination had been made as to who should be offered the job.

13) The appellant has 40 years of experience in the car business (retail and wholesale) of which 18 years involved serving as a sales manager with responsibility for purchasing vehicles. Appellant also served as property book officer in the National Guard during which he was subject to monthly audits, as well as an annual federal audit.

14) The candidate selected for the position had been employed from 1984 to the time of his hire (5 years) as Executive Director of Senior Citizens, Inc. Between the time he served as a member of the Wisconsin Assembly (1967 - 1973) and 1984, he served as a member of the Milwaukee County Board (4 years), was employed as an Account Executive for the Greater Milwaukee Re-employment Corporation, owned and operated a bar and restaurant, and worked as a salesman in the automobile and insurance business.

15) The appellant and the candidate hired for the position received the following composite scores for each question (sum of the scores given by each panel member).

<u>QUESTION #</u>	<u>APPELLANT</u>	<u>CANDIDATE SELECTED</u>
1	17	18
2	15	17
3	17	17
4	9	17
5	12	17
6	15	19
7	9	18
8	<u>10</u>	<u>17</u>
TOTAL	<u>104</u>	<u>140</u>

16) The major reasons for the differences in the scores given by the individual panel members relate to the answers given by the appellant and the candidate selected for the position to questions 4, 5, 6, 7 and 8. Each panel

member rated the responses from the candidate selected as superior (except in one instance) to the appellant's responses based on the following:

a) Question 4 (Coordinating state surplus property program)

CANDIDATE SELECTED: Had been responsible for acquisition and disposal of surplus property in his role as Executive Director of Senior Citizens, Inc. Also had experience with disposal of surplus county property.

APPELLANT: No experience with disposal of surplus property. Some exposure to property management in his National Guard activities in that he was housed in the same building as the property manager and was aware of the items on the inventory list.

b) Question #5 (Providing public information through advertising and promotion)

CANDIDATE SELECTED: Had experience promoting and marketing employment services provided by Senior Citizens, Inc., developing and placing advertisements for the bar and restaurant he owned, and issuing press releases as a candidate for public office.

APPELLANT: Had experience developing and placing advertisements related to the sales of cars.

c) Question #6 (Auditing and evaluating procedures)

CANDIDATE SELECTED: Responsible for auditing and monitoring diverse programs/funding sources for Senior Citizens, Inc., in which he was required to respond to the federal government, the county, and the private sector.

APPELLANT: National Guard position as property book officer required that he have an internal monthly audit of his books and an annual audit by the federal government.

d) Question #7 (Computerized inventory control)

CANDIDATE SELECTED: Developed case management system for Senior Citizens, Inc. to track clients entering their system. Also involved in developing a computer system to track a \$2 million inventory for a wine company.

APPELLANT: Used a computerized system to order/purchase cars from manufacturer. No experience in the development of a data base or operating system.

e) Question #8 (Why interested in this position)

CANDIDATE SELECTED: Gave extensive answer regarding his interests in the job and in public service.

APPELLANT: Stated briefly that his background was a perfect fit for the job, and that he would like the job because it was right down his alley.

17) On an overall basis, the panel members rated the candidate selected higher than the appellant, because the responses given by the candidate selected were more thorough and comprehensive than those of the appellant.

18) The interview questions used by respondent were related to the job functions, and form a reasonable basis for the hiring decision.

19) Appellant filed a timely appeal of the hiring decision.

### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to s.230.44(1)(d), stats.
2. The appellant has the burden of proving by a preponderance of the evidence that the failure to appoint him to the position in question was illegal or an abuse of discretion.
3. The appellant has not sustained his burden of proof.
4. The failure to appoint him to the position in question was not illegal or an abuse of discretion.

### DISCUSSION

In an appeal pursuant to §230.44(1)(d), stats., the standard to be applied is whether the appointing authority's decision was "illegal or an abuse of discretion." The appellant did not specifically allege any illegality under Chapter 230 of the statutes, but he did make a statement that politics may have played a part in the decision because the successful candidate worked for 2 state legislators which could make reference to the political discrimination provisions under §230.18 stats.

The record does show that in response to certain of the questions (particularly #5) the panel members indicated that the candidate selected made reference to running for political office. The allegation made by appellant that "politics may have played a part" was not elaborated upon on the record as to how he knew that the successful candidate had worked for 2 state legislators or how the panel members may have been influenced by this knowledge or any other political consideration. The panel members each testified at the hearing and were not asked or did not offer any testimony that political affiliation or consideration entered into or influenced their decision.



The record also does not indicate whether the panel had access to the resumes of the candidates at the time they were being interviewed, or just how much the panel members knew about the background of candidate selected. Based on this, and the fact that the hiring decision was based entirely on the panel members' individual scoring of the candidate's response to the job related interview questions, the Commission concludes that the respondent did not act illegally when it failed to hire appellant for the AA-3-Transportation Services Assistant position. The remaining issue to be addressed is whether respondent's action was an abuse of discretion.

The term "abuse of discretion" has been defined as ". . . a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." Lundeen v. DOA, Case No. 79-208-PC (6/3/81). The question before the Commission is not whether it agrees or disagrees with the appointing authority's decision, in the sense of whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Rather it is a question of whether, on the basis of the facts and evidence presented, the decision of the appointing may be said to have been "clearly against reason and evidence." Harbort v. DILHR, Case No. 81-74-PC (1982).

The appellant inquired several times concerning the experience the candidate selected had in the car business. It is undisputed on the record that appellant had extensive experience in selling and managing car sales (40 years) while the candidate selected had only an unspecified (but presumably much more limited) amount of experience in the sale of cars. Appellant contends that based on his extensive and indepth experience with cars he is a

better candidate for the position than someone who has very limited experience in car sales.

These arguments might be more persuasive if the position being filled were involved only in dealing with cars. However, as noted from the job announcement, the position is also responsible for the redistribution and disposal of surplus property and for auditing state agencies to ensure they comply with rules concerning the vehicle and surplus property program. The knowledge required portion of the job announcement also identifies a number of areas other than just motorized vehicles, e.g. new and used property, marketing principals, and inventory control.

Based both on the announcement and the questions used for the interview, the department was not only looking for an employee with experience working with vehicles and surplus property but also for someone who had hands on experience in advertising and promotional activities, developing computerized data bases, developing bid specifications, and in monitoring and auditing programs. Certainly, the appellant had relevant experience in advertising and promotion, purchasing of vehicles, and in auditing and evaluating programs for compliance with rules and regulations. He did not, however, have the diversity of experience of the candidate selected.

Specifically, the candidate selected had experience and knowledge in developing bid specifications, developing a computer data base and maintaining a computer system, auditing and monitoring program in both the public and private sector, and acquiring and disposing of surplus property. In addition, the experience of the candidate selected was more comprehensive in some areas than appellant, e.g. operating and developing computer system, ad-

vertising and promotional activities, and auditing and monitoring of programs and funding sources. (See Finding #16)

Appellant's contention that holding one job is better than jumping from job to job was not a consideration in the hiring process. Rather, the candidate selected, based on his experience, could provide more detailed and comprehensive answers to the interview questions in all areas related to the position responsibilities. This does not downplay the experience of appellant or in any way indicate that he did not have some of the experience and knowledge that the department was seeking in a person filling this position. Rather, it is indicated that the person hired was selected because their experience and knowledge more closely matched all of the areas which the department had determined were important in performing the functions of the position.

Based on the record in this case, it can not be said that the respondent's decision not to hire the appellant was "clearly against reason and the evidence." The respondent developed a series of questions which were related to the functions to be performed by an individual filling the position. All candidates were asked the same questions, and their responses were rated separately by each panel member. The resulting scores from all the panel members were combined and the candidate obtaining the highest score was offered the position after first checking references.

The Commission cannot find any impropriety or inconsistency in the procedure used. While the appellant argues that a different result could or should have been reached, there is nothing in the record to show that the decision made by respondent was an abuse of discretion. Further, it is not the prerogative of the Commission to superimpose its judgment over that of the respondent as to whether or not the Commission would make the same decision.

Rather, on an appeal of this nature, the decision must be sustained if it has a reasonable basis.

Therefore, based on the above analysis, and the record established in this case, the Commission finds the respondent's decision not to hire appellant was not illegal or an abuse of discretion.


ORDER

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

Dated: December 13, 1990      STATE PERSONNEL COMMISSION

  
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GFH/gdt/1

  
DONALD R. MURPHY, Commissioner

  
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