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FAITH A. THOMAS,  
 Appellant,

v.

President, UNIVERSITY OF  
 WISCONSIN SYSTEM (Madison),  
 Respondent.

Case No. 89-0126-PC

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DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(d), Stats. of the failure or refusal of respondent to appoint appellant to a vacant position by denying her request for permissive reinstatement.

FINDINGS OF FACT

1. The position for which appellant applied was a part-time (50%) Program Assistant 2 (PA 2) in the Emergency Department of University of Wisconsin Hospital and Clinics (UWHC).
2. The PA 2 position had previously been full time and included responsibility for both the Emergency Department and Medcom Communication Center. Medcom was established in 1987 and involved the dispatching and coordination of the Helicopter transport crew and the Mobile Critical Care Unit. Based on concerns about the different roles and training requirements in each of the areas, respondent felt it was more appropriate to have each of the functions (Medcom and Emergency Department) staffed separately. Consequently, the position was divided into 2 positions and new position descriptions drafted in January, 1989.
3. The position summary for the PA 2 position (Respondent's Exhibit #1) states the following:

The Program Assistant II position (PA) in the Emergency Department (ED) places emphasis on the coordination of hospital services; patient registration in to the Emergency Department; charge document processing, maintenance of department/patient records, logs, and other clerical duties.

The Program Assistant II requires a thorough working knowledge of departmental and hospital policies, medical-legal issues, concept of medical triage and terminology, and data entry systems. He/she must understand authorization of ED visits for all managed health care plans and various government assistance programs. Skilled communication and interviewing techniques are also required, including the ability to speak calmly and clearly and the ability to establish and maintain effective co-worker and public relationships. In addition, the PA II must have a working knowledge of UWHC clinic system, including scheduling of clinic appointments. Must be aware of all current hospital policies on obtaining consent for treatment, including special cases (minors, legally incompetent, etc.).

The major goals and worker activities included on Respondent's Exhibit #1 are:

- A. Administrative Support Services (50%)
- B. Coordination of Hospital and Community Services (35%)
- C. Fiscal Responsibilities (15%)

4. The most important aspects of the PA 2 position involved Goals A and B where an incumbent would have to sort out by priority (triage) the patients and the calls coming into the Emergency Department. The incumbent would need to react quickly to determine where patients should go and to whom, and whether they need to be seen immediately by a physician or nurse. The incumbent of the position would also have to coordinate with other departments for services and appointments. The position requires knowledge of medical terminology, emergency care, and registration and insurance procedures. In filling this position, respondent was looking for a person with a background as a unit clerk, a medical technician, or an emergency medical technician (EMT).

5. According to appellant's resume (Respondent's Exhibit #3), appellant had approximately 20 years in state civil service. Appellant was employed for 2 1/2 years (1965-1968) in the Department of Industry, Labor and Human Relations as an account clerk in payroll and personnel, and for 17+ years at Central Wisconsin Center (CWC) as a Fiscal Clerk 3 in the business office.

6. Appellant voluntarily left Central Wisconsin Center in 1986 for employment in the private sector. Appellant had reinstatement eligibility at the time she applied for the Program Assistant 2 position in the Emergency

Department. Appellant's three years of reinstatement eligibility expired on October 22, 1989.

7. Appellant called the University of Wisconsin Hospital and Clinics (UWHC) Personnel Office in August 1989, as part of her efforts to be reinstated into state service as either a Fiscal Clerk 3 or a Program Assistant 2. Her call was referred to Ms. Sheila Thomack, who is a health care recruiter for the UWHC.

8. Ms. Thomack explained that work at the UWHC involved PM, night, holiday, and weekend shift work. Based on appellant's response that this type of work schedule was not a problem and the fact that appellant had reinstatement eligibility, Ms. Thomack told appellant to call a Ms. Colleen Ross in order to schedule an interview for the part-time Program Assistant 2 position.

9. Ms. Colleen Ross is a Nursing Supervisor 1 who is responsible for the daily operation of the Emergency Department, as well as for program development. Ms. Ross is responsible for supervision and hiring of staff in the Emergency Department including the Program Assistant (PA) 2 position for which appellant was interviewed. Ms. Ross has authority to make hiring decisions and was the only person involved in the selection decision for the PA 2 position.

10. Ms. Ross interviewed appellant on August 23, 1989. Before going to the interview, appellant stopped in Ms. Thomack's office and filled out an "Application for Employment" and a release to contact references provided by appellant. These two forms, along with a resume, were taken by appellant into the interview. This procedure is the one normally used for persons being interviewed.

11. Ms. Ross began the interview by asking appellant to summarize her background. Appellant was then shown the position description (PD), and Ms. Ross went through the PD with her. Ms. Ross then asked a question about appellant's interactions with staff in previous jobs, and how she handled conflict. Appellant and Ms. Ross then toured the facility, and Ms. Ross talked about the population base and what goes on in the Emergency Department, the high exposure to the public as an entry port into the hospital, and the special role staff have in dealing with the patients' first contact with the hospital.

12. Ms. Ross' notes on the "Initial Interview Form" (Respondent's Exhibit #4) indicate that appellant felt she had to juggle multiple priorities in her job at CWC and she had to deal with physicians on a limited basis. The final

entry on the form is "Personal Observation: question her 'chattiness' - confidentiality concerns."

13. The normal procedure after the interview is to have the applicant return the application and reference check release form to Ms. Thomack's office in order to contact the references provided by the applicant. In this case, Ms. Ross retained all the materials and indicated she would handle it.

14. Letters to check appellant's references were not initially sent out until September 6, 1989, after appellant called Ms. Thomack's office to inquire about whether she would get the job. The original application and reference check release form could not be located and Ms. Thomack used a xeroxed copy of the original that she got from Ms. Ross to determine to whom she should send reference check letters and forms.

15. A standardized letter and form was sent to the references identified by appellant. These references included Geri Gerstner of Malagold Kennels, Mr. Al Kohlman of Central Wisconsin Center (CWC), and Madison Area Technical College.

16. Mr. Kohlman's name was not legible on the copy of the reference check release form and the reference check letter and form was sent to the personnel office at CWC. A Mr. Floyd Becraft responded to the reference check (Respondent's Exhibit #5) and indicated that appellant's work was average, that she waited until the deadline to do daily work, and that a lot of time was spent on personal phone calls and business. Ms. Thomack informed Ms. Ross of this reference and indicated that it was not necessarily indicative of the appellant's ability to do the job.

17. Appellant continued to call to determine if references had been returned and whether a decision had been made. Ms. Thomack informed her that they were waiting for references before making a decision. Ms. Thomack did not state or imply that appellant was going to get the job.

18. During one of the telephone calls, appellant learned that Mr. Becraft had sent back a reference form. Appellant said she had wanted Al Kohlman contacted because she had worked for him for almost the entire 17 years at CWC, while she had worked for Mr. Becraft for only seven months (2/86 to 9/86). A second reference form was sent to Al Kohlman on September 21, 1989. Mr. Kohlman returned the reference form (Respondent's Exhibit #6) indicating that appellant was a good to excellent employee who was

"very good with handling vendors." Ms. Thomack also informed Ms. Ross of this reference.

19. The reference form from Geri Gerstner (Respondent's Exhibit #6) addressed appellant's cooperativeness and willingness to do extra work, and the thoroughness of her work. Respondent felt this was a character reference and the work experience was not directly related to the PA 2 job.

20. The last reference (Respondent's Exhibit #6) was dated September 27, 1989. Appellant began a series of calls on September 29, 1990, to Ms. Thomack and Ms. Ross. She did not get a return call until Ms. Ross called her on October 6, 1989, and left a message. Appellant could not return the call within the time frame specified by Ms. Ross. Appellant subsequently talked to Ms. Ross on October 9, 1989, and was informed that she had not been selected for the position. Appellant was not sent a letter of non-selection.

21. Ms. Ross indicated that appellant's past experience and references looked good, but that she (Ms. Ross) did not feel that appellant would be a good fit for the position. Ms. Ross' decision was based primarily on her evaluation of appellant's background and that it (the background) was not a good match for the job. Ms. Ross' concern about confidentiality and the differences between the two references from CWC were present, but her decision was based primarily on the appellant's lack of experience in areas relevant to the position.

22. As of January 1990, Ms. Ross had interviewed 3 applicants (including appellant) and the position remained unfilled.

23. Appellant filed a timely appeal of her non-selection with the Commission on October 16, 1989.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(d), Wis. Stats.

2. The appellant has the burden of proving by the preponderance of the evidence that the failure or refusal of respondent to appoint her to the Program Assistant 2 position in the Emergency Department of the University of Wisconsin Hospital and Clinics (UWHC) was illegal or an abuse of discretion.

3. Appellant has not sustained her burden of proof.

4. The failure or refusal to appoint appellant to the Program Assistant 2 position in the UWHC was not illegal or an abuse of discretion.

### DISCUSSION

The issue set for hearing in this case is:

"Whether respondent's refusal or failure to hire appellant for its vacant Program Assistant 2 position at University Hospital was illegal or an abuse of discretion."

The appellant has not specifically alleged any illegality in the respondent's action other than to state that she was qualified for the position. The respondent concurred that she was qualified for the following reasons:

1. Appellant had reinstatement eligibility to the Program Assistant 2 level pursuant to §230.31(1)(a), and
2. Appellant was not adverse to working PM, night, holiday, or weekend shifts.

The provision of §230.31(1)(a), Stats., provide:

230.31(1) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service without any delinquency or misconduct on his or her part but owing to reasons of economy or otherwise shall be granted the following considerations for a 3-year period from the date of such separation:

(a) Such person shall be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified.

Reinstatement is defined under ER-Pers. 1.02(29) as the "act of permissive re-employment without competition of an employe or former employe under §§230.31."

Clearly, the appellant was eligible for consideration for the Program Assistant 2 position. However, any consideration or action taken by respondent was permissive on their part. Respondent was not required to appoint appellant, and the Commission concludes that respondent's actions were not illegal.

The remaining issue to be addressed is whether respondent's action constitutes 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, 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 authority may be

said to have been "clearly against reason and evidence." Harbort v. DILHR, No. 81-74-PC (1982).

To this end, the appellant raises a number of issues. Appellant contends that she was encouraged to continue in the process to be considered for employment, and that her contacts with respondent led her to believe she had a good chance for the job. Specifically, appellant stated that Ms. Thomack's referral to Ms. Ross for an interview meant that she was qualified for the job. Ms. Thomack referred appellant to Ms. Ross because appellant had no aversion to shift work and was eligible for reinstatement. Ms. Thomack was not involved in the hiring process and made no recommendation to Ms. Ross about appellant's qualifications or suitability for the Program Assistant 2 position.

Appellant also argued that Ms. Thomack, in response to her telephone calls, told her things looked good and they were just waiting for references. To appellant, this appeared to imply that respondent was just going through some formal process before offering her the job. Other than appellant's statement and her interpretation of the telephone calls, there is nothing in the record to show that appellant was given any false expectations about being hired. Appellant talked only to Ms. Thomack prior to Ms. Ross telling her that she had not been selected. Ms. Thomack had no authority or involvement in the decision, and was involved only in processing the reference checks. While appellant may not have been aware of this distinction, Ms. Thomack was. While the problems associated with the reference checks may have impacted on the way she (Ms. Thomack) acted, the Commission concludes she did not act in any way which guaranteed (either implicitly or explicitly) that appellant would be hired, either by referring her for interview or in Ms. Thomack's telephone conversations with appellant.

Respondent indicated that while some of appellant's background was related to the position, the lack and/or level of medical experience and knowledge and the concern about confidentiality resulted in a determination that appellant was not well suited for the position. Appellant asked why questions regarding these items (medical experience and knowledge and confidentiality) were not included on the reference form or made part of the interview if these were such important considerations for the position. The reference form is a standard form that is used by UWHC for all employment reference checks. While it could be argued that the form could be tailored to each job, it is not an abuse of discretion to use a standard form for reference checks.

As it regards the interview, it appears that respondent did not use a structured interview. Rather, they asked appellant to summarize her background, and explained the job to appellant both through a review of the position description (PD) and a tour of the facility. Respondent reviewed appellant's answers and comments made during the interview, and looked at her resume. Based on this review, respondent determined that appellant's experience in a business office of an institution (even though appellant would have some exposure to medical staff and terminology) was not sufficient to prepare appellant to work in the Emergency Department of UWHC in a direct-line capacity. While appellant felt she could do the job, she presented no evidence at the hearing to show that she had the kind or type of medical experience and knowledge respondent was looking for.

As it relates to confidentiality, Ms. Ross' concern stemmed from the interview. This is an area where asking an applicant or even a reference might not result in meaningful information. It is highly doubtful that an applicant (or a reference) would admit that they (or the applicant) have a problem keeping matters confidential. While Ms. Ross made this personal observation, she made the decision not to hire appellant based primarily on the fact that appellant's experience and knowledge were not a match for the job.<sup>1</sup>

Appellant had several concerns about the process used by respondent. Particularly, she raised concerns about the reference form not being initially sent to the right person at Central Wisconsin Center, the lost original of the application and reference check release form, the time it took to get a decision, and not receiving a letter of non-selection. The delay in sending out reference check forms was caused in part by the fact that appellant's application was left with Ms. Ross (at her request) instead of being returned to Ms. Thomack's office. As a result, the original application was lost and Mr. Kohlman's name was not legible on the copy used to send out reference check forms. Appellant questioned why Mr. Kohlman's name was so legible now on the reference check release form. Ms. Thomack stated that she traced over the name after appellant provided it to her office. (See Finding of Fact #18) There is nothing in the record to show that respondent purposely lost the original application or sent a reference check form to the wrong person or place. Appellant implies that this caused her to get a "bad" reference and affected

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<sup>1</sup> The last two sentences in this paragraph in the proposed decision are deleted because they are unnecessary to decide this case.



her getting the job. The record shows, however, that the references did not contribute in any significant way to appellant's non-selection. Ms. Ross said appellant's past experience and references looked good. (See Finding of Fact #21) Appellant's non-selection was based primarily on her lack of experience and knowledge in areas directly related to the job.

Appellant also raised an issue about the length of time it took for her to get an answer (August 23 to October 9, 1989) and how close that was to the expiration of her reinstatement eligibility (October 22, 1989). Ms. Ross knew that appellant's reinstatement eligibility was about to end but she did not know the exact date. In any case, the decision not to appoint appellant was made prior to October 22, 1989.<sup>2</sup> There is nothing on this record to show that the delay was unreasonable or would otherwise constitute an abuse of discretion.

Appellant also argues that she should have gotten a letter in addition to being verbally notified of her non-selection. While a letter of non-selection is the more common practice, there are some extenuating facts in this case. First, a final decision has not been made on an appointment to the PA 2 position. Generally, letters of non-selection are sent out after a position is filled. Second, appellant was anxious to know if she would be appointed and called respondent a number of times. Respondent notified appellant verbally in response to these calls. Third, there is no dispute or confusion over whether appellant would be hired for the position. Given the facts in this case, the verbal notification of appellant of her non-selection appropriately informed appellant of her status. The fact that appellant did not get a letter does not cause the decision respondent made to become an abuse of discretion.

Based on the record, the Commission cannot say that the decision of respondent was "clearly against reason and evidence." While respondent felt the appellant had some exposure to the kinds of experience and knowledge required of the position they were filling, they determined that it was not sufficient based on their (respondent's) knowledge of what the position required, as outlined in the position description (Respondent's Exhibit #1). Some of the procedural aspects associated with processing the application and the reference checks understandably caused the appellant some concern. In addition, appellant wanted a better explanation of why she was not selected,

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<sup>2</sup> The last two sentences in this paragraph in the proposed decision are deleted because they run to the question of possible remedy and are not relevant to the issue of whether the length of time involved in making the decision constituted an abuse of discretion. The following sentence is added to clarify the decision.

other than to be told that she would not fit in the job. While the Commission may agree that the procedures used could be improved, there is nothing in what respondent did that would rise to the level of being an abuse of discretion. While the respondent could have reached a different decision, the Commission finds that the respondent's decision was substantially justified. Consequently, the Commission concludes that the decision reached by respondent does not constitute an abuse of discretion in that it is not clearly against reason and evidence.

ORDER

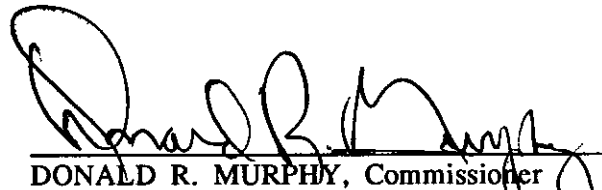
The action of the respondent in failing or refusing to appoint appellant to the Program Assistant 2 position at University Hospitals is affirmed and this appeal is dismissed.

Dated: August 22, 1990

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

GFH:gdt

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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