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MARY ANN BARKUS,
 Appellant,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 and Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondents.

Case Nos. 91-0254-PC
 92-0205-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on appeal of the effective date of the reclassification of appellant's position. The following is based on a hearing on this matter before Donald R. Murphy, Commissioner.

FINDINGS OF FACT

1. Appellant Mary Ann Barkus has been employed as a classified civil service employe by the Department of Health and Social Services (DHSS) at its Central Wisconsin Center (CWC) since about 1973. In 1988 appellant began sharing a 1.00 FTE position with another employe and started working half-time.
2. Appellant was originally classified as an Aid 1 in a classification series where reclassification to the next higher level was based upon satisfactory attainment of specified education or experience. This kind of classification series is called a progression series.
3. In November 1989, appellant requested reclassification of her position from Aid 1 to Aid 2.
4. This reclassification request was rejected by letter, dated December 6, 1989, from respondent, stating that appellant had not met the specified training requirements for Aid 2 positions.
5. The Class Description for Aid 2 provided:

Training and Experience:

Two years of experience as an Aid 1 or equivalent, and; satisfactory completion of the required advanced aid training program* and demonstrated ability to provide a required level of rehabilitative and therapeutic services; or an equivalent combination of training and experience.

NOTE: In positions requiring special skills or knowledges, appropriate specialized training and/or experience may be required.

TYPICAL TRAINING PROGRAM*
for Advanced Aid - Therapeutic

<u>COURSE CONTENT</u>	<u>HOURS</u>
Introduction to Course	6
Human Growth and Development	12
Behavior Patterns	12
Aide-Patient Relationship	12
Group Dynamics. Processes and Theory	12
Organizing and Promoting of Social Activities	6
Remotivation Theory & Application of Group Processes	30
Clinical Assignment Conferences	<u>10</u>
TOTAL HOURS	100

6. In April 1990, the Department of Employment Relations abolished the Aid series and created the RCT series. The incumbents in these positions continued performing the same duties and were reallocated up one pay range.

7. Like the former Aid 1 and 2 positions, the newly established RCT 1 and 2 positions were in a progression series. Qualifying training requirements for RCT 2 positions set out in the Class Description were as follows:

The qualifications required for this classification will be determined on a position-by-position basis at the time of recruitment. Such determinations will be made based on an analysis of the objectives and tasks performed and by an identification of the education, training, work or other life experience which would provide reasonable assurance that the skills required to perform the tasks and the knowledge required upon appointment have been acquired.

8. On November 11, 1991, DCTF, with the support of BPER, issued a memorandum concerning criteria for reclassification from the RCT 1 to the RCT 2 level. The reclassification criteria were as follows:

- 1 Two year time in grade as an RCT 1.
- 2 Supervisory statement of employe's performance being at the objective level for at least six months prior to effective date of reclass.

3. Completion of prescribed training needed for performance at the objective level.

9. At all times during appellant's employment, CWC offered a training course of approximately 100 hours to meet the classification specifications training requirements for reclassification to the Aid 2 level and later the newly established RCT 2 level.

10. This training course was for three weeks, 2 days a week over a six-week period, and offered three times a year during paid work hours.

11. In 1978 CWC also began offering a training program called the "Challenge Process" and in 1989 self-study models as alternative ways of satisfying the RCT 2 training requirements.

12. The Challenge Process involved three steps:

1. An examination testing the knowledge of the taker relevant to RCT job duties.
2. Completion of assignments designed to demonstrate the employe's competence in clinical and record-keeping skills.
3. Satisfactory evaluation of clinical performance by supervisor.

13. Appellant first became aware of a course offered by respondent for reclassification from Aid 1 to Aid 2 during her first year of employment, 1973-1974.

14. At no time after appellant became eligible -- 1 year to 18 months on-the-job experience -- to participate in the reclassification training programs, did she request to enter any of these programs.

15. Appellant initially declined to attend Aid 2 training classes because she worked the P.M. shift and "it would have infringed on [her] personal life." Later, "[she] declined solely on principle."

16. In November, 1991, under the Division of Care and Treatment Facilities (DCTF) policy, all RCT 1 employes were required to receive 2 level training.

17. In early December 1991 appellant was advised by CWC that she was required to receive training for reclassification to the RCT 2 level or face possible discipline for violating the work rule of refusing to carry out an order.

18. On December 19, 1991, appellant filed an appeal with this Commission -- Case No. 91-0254-PC -- alleging respondent had denied reclassification of her position from RCT 1 to RCT 2 in violation of state civil service law.

19. While Case No. 91-0254-PC was pending, appellant took the Challenge examination, passed it with a score of 91, completed her RCT 2 training and was reclassified by respondent to the RCT 2 level on March 8, 1992.

20. On April 6, 1992, appellant appealed the effective date of her reclassification (Case No. 92-0205-PC) alleging that it should be retroactive to January 1, 1983.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)(b), Wis. Stats.

2. The burden of proof is on appellant to establish that her position should have been reclassified to the RCT 2 level effective January 1, 1983.

3. Appellant has failed to sustain that burden.

4. The procedure used by respondent DHSS to reclassify appellant's position was in conformance with state civil service law, policy and procedure.

5. Respondent's decision setting March 8, 1992, as the effective date for reclassifying appellant's position to Residential Care Technician 2 was correct.

DISCUSSION

This case is straight forward. There is no dispute of the substantive facts of this case. Appellant alleges that respondent incorrectly set March 8, 1992, as the effective date of reclassification of her position from Residential Care Technician 1 to Residential Care Technician 2. It is her position that the correct date of reclassification of the position to the 2 level is January 1, 1983.

Appellant does not dispute that during her employment at CWC, her position has been in a progression series requiring the attainment of specified training, education or experience for reclassification to the 2 level and that


respondent has made special inservice training available to its employes to meet these prescribed requirements. Nor does she dispute she did not make herself available for participation in any of these training courses prior to January 1992. Nor does she dispute that after completing a training course called the "Challenge Process" her position was reclassified to RCT 2 by respondent in conformance with the pertinent rules and procedures. Rather, appellant asserts that respondent's reclassification training requirements are unnecessary and that her work experience of 14 years at CWC is sufficient to qualify her position for reclassification to the 2 level effective January 1, 1983.

As in Pittz v. DHSS 79-116-PC (1981), the basic question before the Commission is whether appellant's position was reclassified in accordance with the applicable civil service laws and we conclude that it was. The arguments, proffered by appellant, asserting her claim of untimely reclassification have been considered by the Commission on several occasions. See Pittz v. DHSS, id., Webber v. DOT, Case No. 81-499-PC (1982), and Hayes v. DHSS & DP, Case No. 83-0039-PC. In each instance, the Commission has said that the employe must satisfy the specified training requirements for reclassification in order to gain reclassification. The facts of this case provide no distinction which would cause the Commission to come to a different conclusion. Accordingly, the Commission finds for respondent.

ORDER

Respondents' decision reclassifying appellant's position effective March 8, 1992, is affirmed and these appeals are dismissed.

Dated: June 25, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


JUDY M. ROGERS, Commissioner

Parties:

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

Petition 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.