

* * * * *

MATTHEW KRUEGER,

Appellant,

v.

Secretary, DEPARTMENT OF
ADMINISTRATION, and
Administrator, DIVISION OF
MERIT RECRUITMENT AND
SELECTION.

Respondents.

Case No. 92-0196-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on appellant's appeal of respondent's decision not to certify appellant for oral interview for an Administrative Assistant 4 - Supervisor position. Appellant claims that a portion of the examination for the AA4 - Supervisor Central Printing position was not conducted in accordance with §§ 230.16(4) and (5), and applicable administrative rules. The appeal was brought pursuant to § 230.44(1)(a) Stats., and heard under the provisions of § 227.46(3)(a) Stats., which authorized final decision making authority in the designated hearing examiner.

An expedited hearing, at appellant's request, was held April 8, 1992, before Donald R. Murphy, Commissioner, the designated hearing examiner. At the conclusion of appellant's case, respondent moved for dismissal on the argument that appellant failed to meet his burden of proof. Respondent's motion was granted from the bench for reasons as follows.

Appellant testified that on March 2, 1992, he contacted respondent and, subsequently, on March 6, 1992, received an application form and experience questionnaire for the position of Administrative Assistant 4 - Supervisor in Central Printing. The application and questionnaire were in a packet, which included a cover letter, instructions and a Training and Experience Affidavit. Appellant read the instructions, signed the affidavit, certifying his questionnaire responses were true to the best of his recollection and completed the

application and questionnaire. He mailed these materials to respondent on March 6, 1992, and they were received, as required on March 9, 1992.

By letter from respondent, dated March 16, 1992, appellant was advised that he passed the examination with a score of 88.72 and ranking of 8. Also, he was advised that only candidates who ranked in the top six, and those eligible under other certification criteria would be called for a personal interview. The Commission adopts the foregoing as its findings of fact.

On April 2, 1992, appellant filed an appeal with the Commission.

Appellant testified that one of five choices of answers for questions 25-48 in the questionnaire was unclear, causing him to respond to these questions in a way which resulted in a lower examination score. No other witness was called to testify.

Appellant contends that answer choice c: "I have been responsible for performing this task or activity", was unclear and respondent failed to send the examination soon enough to obtain clarification.

Sections 230.16(4) and (5), Wis. Stats., provides:

(4) All examinations, including minimum training and experience requirements, for position in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

(5) In the interest of sound personnel management, consideration of applicants and service to agencies, the administrator may set a standard for proceeding to subsequent steps in an examination, provided that all applicants are fairly treated and due notice has been given. The standard may be at or above the passing point set by the administrator for any portion of the examination. The administrator shall utilize appropriate scientific techniques and procedures in administrations and in determining the relative ratings of the competitors.

Other than his testimony, which in substance is stated above, appellant presented no evidence showing respondent was in violation of § 230.16, Stats. Nor did appellant point to other applicable administrative rules he believed the evidence established respondent violated.

The provision of the civil service code which is most relevant to appellant's claim is the provision in § 230.16(5), Stat., that: [t]he administrator shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations and

in determining the relative ratings of the competitors." Appellant presented no evidence other than his own opinion that the examination was not conducted in accordance with these requirements other than his own opinion that one of the parts of the questionnaire was unclear. This is not apparent from the face of the item, and there is no basis upon which to conclude its use violated § 230.16(5) Stats., and the examiner must conclude there was no violation of 230.16, stats. or of any other applicable legal provision. Therefore, it was the examiner's belief, that appellant's evidence was insufficient to establish appellant's claim and call on respondent to answer it. Accordingly, the examiner decided in favor of respondent. The following is an order in accordance with the bench decision.

ORDER

Respondent's motion to dismiss appellant's case for failure to present a prima facie case is granted. Respondent's actions with respect to appellant's examination are affirmed and this appeal is dismissed.

Dated: May 22, 1992 STATE PERSONNEL COMMISSION

DRM:rlr


DONALD R. MURPHY, Commissioner

Parties:

Matthew Krueger
22 Craig Ave
Madison WI 53705

Robert Lavigna
Administrator DMRS
137 E Wilson St
P O Box 7855
Madison WI 53707

James Klauser
Secretary, DOA
101 S Webster St
P O Box 7864
Madison WI 53707

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.