

AIR MANAGEMENT SPECIALIST, OBJECTIVE

Positions allocated to this level include Air Management Specialists. Positions at this level typically are responsible for more varied work assignments. This includes independently coordinating and implementing various program elements in accordance with standard procedures. Work may be reviewed to determine soundness of scientific judgment and progress of the work. Positions at this level differ from positions in lower levels in that many work assignments are generally long-term and are stated in broad general terms; both routine and difficult assignments are completed without specific direction; and the supervisor reviews the work after it is completed to determine completeness and adherence to policy. Positions at this level continually make more decisions under general supervision.

Representative Position

Air Quality Data Specialist - This position is responsible for the acquisition, maintenance, storage, review, and reporting of air quality monitoring data; the evaluation of continuous air quality monitoring data in compliance with quality assurance procedures and standards; and managing the air quality standard exceedance tracking and reporting system.

Appellant's position description (Respondent's Exhibit 2) reflects the following position summary:

Evaluate air contaminant sources within the district subject to the requirements of the appropriate state rules and regulations; and where noncompliance is found insure that compliance is achieved. Provide assistance to affected facilities, other governmental units and the general public in understanding the state's air management program.

Much of appellant's case concerned position comparisons. Following the completion of the entire case, it became apparent that these comparisons have very little bearing on the outcome of this case, and they will not be addressed here. The record reflects that most, if not all, of the PD's in this classification are written in a way so that they can be used to encompass all the levels in this series, which is administered as a progression series as defined in §ER 1.02(32), Wis. Adm. Code:

"Progression series" means a classification grouping whereby the class specifications or position standards specifically identify an entry and full performance objective level. The full performance objective level within a progression series means the classification level that any employe could reasonably be expected to achieve with

satisfactory performance of increasingly complex duties or the attainment of specified training, education, or experience.

These AMS positions can be filled at different class levels, depending on whether an employe posts for lateral transfer or whether, as in the case of appellant, a position is filled by competition at the entry level (or, under the prior classification, Environmental Specialist 1). In fact, in appellant's PD the box for "classification title of position" simply had "Environmental Specialist 5, 4, 3, 2, 1" typed in, with the appropriate class level circled.¹

The key distinctions between the entry, developmental and objective levels for purposes of this case are the related factors of degree of independence and level of supervision. The testimony of Ms. Steinmetz, the DNR survey coordinator, relied on these factors as opposed to other criteria contained in the class specification to support the decision to reallocate appellant's position to the entry level. In the Commission's opinion, the outcome of this case turns on the resolution of the parties' dispute about these factors, and specifically, the level of supervision appellant was receiving as of the time of the reallocation.

Ms. Steinmetz testified that she based the reallocation of appellant's position to the entry level on the recommendation of appellant's immediate supervisor, Linda Wiese. Ms. Wiese testified at some length about the nature of her supervision of the appellant, and summarized it as close supervision consistent with the entry level. Appellant testified that she worked quite independently. Mr. Burkholder, another AMS, testified that appellant appeared to work independently in certain areas, but he was not in a good position to evaluate the level of her supervision.

In her post-hearing brief, appellant relies heavily on the assertion that when Ms. Wiese was asked which specific tasks appellant performed under close supervision, she only identified enforcement action, which was 10% of appellant's overall job. However, close scrutiny of Ms. Wiese's testimony leads to the conclusion that her answers to this line of inquiry were not incompatible with her overall assessment of close supervision.

Ms. Wiese testified that "with the inspections I would say there was still some supervision that was given to how the inspections were performed and

¹ The same PD was in place when appellant's position subsequently was reallocated through the developmental and objective levels.

what needed to go into them." This is somewhat ambiguous concerning level of supervision. In consideration of the fact that appellant has the burden of proof² and of Ms. Wiese's overall assessment of close supervision, the Commission cannot resolve this testimony in favor of limited or general supervision. Ms. Wiese further testified that "[a]s far as enforcement actions, I think it was very close supervision, on determining what are the appropriate violations, on getting that documentation out to the facilities." With respect to stack tests, she testified that "the stack test review was under pretty close supervision for reviewing the review results." With respect to appellant responding to requests for information or assistance from the regulated community, the public and other agencies, she testified as follows:

I guess it's my understanding that your following through with them depended I guess on the nature of the request, it may or may not have had close supervision. I mean if the request came in for information, on say, on prevention of significant deterioration, you probably would have had closer supervision, gotten information from other people on it, but I guess from the day to day on what do we need to comply, do we need to be say on the inventory, or how do we report on emissions, I would say you would have been following through with those under limited supervision.

While Ms. Wiese confirmed that appellant was working more independently in a number of other areas, on balance the Commission concludes that appellant has not sustained her burden of proof on this issue.³

A related issue in this case is DNR's reliance at the time of the reallocation on length of service. In an April 7, 1992, memo to the DNR district directors and division administrators with science professionals (Respondent's Exhibit 4), Ms. Steinmetz laid out a proposed chart for converting the prior classifications within DNR to the new classifications based on length of service of the incumbents in positions. She testified that these guidelines were in fact followed during the survey reallocation process, but were subsequently replaced with more flexible criteria.

Since these length of service criteria were not included in the AMS class specification, the language in the class specification would control in

² See, e.g., Tiser v. DNR & DER, 83-0217-PC (10/10/84) (appellant must establish requisite facts by a preponderance of the evidence).

³ While appellant argues that Ms. Wiese's recollection of the time period in question was poor, Ms. Wiese obviously relied heavily on reliable contemporaneous documents, appellant's three and six month evaluations.

case of any conflict between length of service and the criteria in the class specification. That is, if appellant had established that she had worked under limited or general supervision, this would have prevailed over the length of service criterion of one year for a developmental classification. However, as discussed above, appellant did not satisfy her burden of proof on this issue.

Furthermore, the record does not reflect that Ms. Wiese was confused or unduly influenced by the length of service criteria. Ms. Steinmetz testified she had discussed Ms. Wiese's survey reallocation recommendations with her prior to the promulgation of these criteria. Ms. Wiese's hearing testimony appeared to be based primarily on what appellant's three and six month evaluations reflected with respect to appellant's degree of independence and level of supervision.

ORDER

Respondent's action of reallocating appellant's position to AMS Entry is affirmed and this appeal is dismissed.

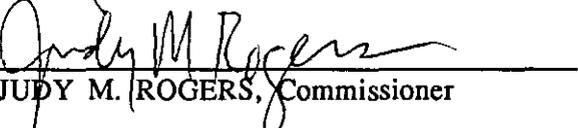
Dated: July 24, 1995

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95