

* * * * *

BRAD A. KILDOW,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0582-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on the following issue:

Whether respondent's decision to reallocate appellant's position to the Forester-Objective classification rather than the Forester-Senior classification was correct.

A hearing on this appeal was held on January 26, 1994, before Adam C. Korbitz, designated hearing examiner. The parties chose not to file briefs.

The appellant was reallocated to the Forester-Objective level as the result of a survey reallocation that was effective April 19, 1992. The appellant filed a timely appeal.

The appellant works out of the Department of Natural Resources' area office in Eau Claire. Steven Edge, a Forester-Senior, is his lead worker and Randy L. Schott, Natural Resource Supervisor 4, is the appellant's first-line supervisor.

According to the appellant's position description (which the appellant testified at hearing he had reviewed and found to be accurate), the major goals of his position include:

Implement the timber management program on the Eau Claire County Forest including timber production, reforestation, intermediate cultural activities at the direction of the county liason forester. Carry out the total forest mangement program on the Augusta Wildlife Area. Assist CFM forester in providing forest management services to private woodland owners and promoting forestry to the general public.

The appellant's work goals and time allocations are as follows:

- 50% A. Timber Sale Establishment
- 15% B. Timber Sale Administration
- 8% C. Cultural Projects
- 13% D. Reforestation Projects
- 8% E. Provision of technical forestry assistance to private land owners in Eau Claire County.
- 6% F. Provision of Technical Assistance in the Prevention and Suppression of Wildfire in the Intensive Area of Eau Claire and Chippewa Counties.

For comparison purposes, the appellant introduced at hearing the position descriptions of the following employees, all of whom are classified at the Forester-Senior level: Neil Ambourn, Richard Matlack, William Volavka, and Sue Brisk. The appellant also introduced the position description of Terry Tappon, who, like the appellant, is classified as a Forester-Objective. The respondent introduced the position descriptions of Steven Edge and Blair Anderson, both of whom are classified at the Forester-Senior level.

The appellant's own position description indicates that the majority of his duties -- sixty-five percent -- are devoted to timber sale establishment and timber sale administration, broken down as follows:

- 50% A. Timber Sale Establishment
 - A1. Interpret and update compartment reconnaissance data.
 - a. Maintain compartment reconnaissance files
 - b. Maintain "tract/sale" map and database.
 - A2. Locate and delineate sales areas.
 - A3. Cruise, appraise and map sales.
 - A4. Mark timber as necessary for sales establishment.
 - A5. Prepare sales prospectus, cutting notice, and tract/sale folder.
- 15% B. Timber Sale Administration
 - B1. Inspect sales and document progress and contract compliance.
 - B2. Take corrective action to assure contract compliance on state lands.

- a. Report sale problems on county lands to immediate supervisor or county forest supervisors.
- B3. Scale cut forest products, collect "Ticket System" tickets, and collect stumpage fees.
- B4. Complete and file reports as necessary.
- B5. Remit stumpage payments according to handbook standards.
 - a. Maintain sale journal and ledger books.
- B6. Close out timber sales, determine performance bond withholdings (if any) and file related reports.

The appellant testified that, of the position descriptions he introduced at hearing, that of Neil Ambourn (Forester-Senior) is the one most similar to his own. Ambourn's position description, which Ambourn himself testified at hearing was "ballpark" accurate, indicates that the majority of his duties are similar to the majority of the appellant's duties. According to Ambourn's position description, approximately sixty percent of his duties involve forest management activities in various designated areas. Those forest management duties involve responsibilities very similar to those of the appellant and, generally, concern the establishment and administration of timber sales.

Both parties introduced the position description of Terry Tappon, who, like the appellant, is currently classified as a Forester-Objective. The appellant argued that Tappon's position is not comparable to his own; the respondent argued that it is comparable to the appellant's position. However, Tappon's position description indicates that the majority of his duties, like those of the appellant and Ambourn, involves the establishment and administration of timber sales.

An examination of the position descriptions of the appellant, Ambourn and Tappon reveals that, in relation to most of their duties, they are involved primarily in the supervised implementation of forest management activities (including, but not limited to, timber sales), as opposed to the independent implementation, planning or development of such activities. (At hearing, Sue Steimetz, a classification specialist with the DNR, reviewed Ambourn's position description and testified that she could not say why Ambourn had been reallocated to the Forester-Senior level; she testified that, while information other than the position description may have been considered in that decision, it concerned her that Ambourn was currently classified at the Senior level.)

The position descriptions of Matlack, Volavka, Brisk and Anderson (all of whom are classified at the Senior level) indicate that the establishment and administration of timber sales does not constitute the majority of their duties. Further, all four are responsible for the independent implementation, or the planning and development of, a wider range of duties than the appellant, Tappon, and Ambourn. For example, Matlack and Volavka supervise all or part of the forest tax law program in Douglas and Bayfield counties, respectively. A full thirty percent of Brisk's duties involve the administration of tax law programs, and she is also responsible for developing forest management plans for private land in Jackson County. Anderson, who of these four is the best example of a Forester-Senior, provides administration and supervision for all aspects of the forest fire control program in his designated area. Another thirty-five percent of Anderson's duties involves initiating, planning and then implementing all aspects of forest management in designated areas of Sauk and Iowa counties.

Steven Edge, a Forester-Senior, functions as the appellant's leadworker. Edge's position description indicates that his duties are more in the nature of developing, planning and monitoring forest management programs rather than implementing those programs. In addition, the appellant accepts his work assignments from Edge. According to the appellant's testimony at hearing, Edge at least reviews documents generated by the appellant that relate to the establishment and administration of timber sales, a responsibility that constitutes a majority of the appellant's duties. The appellant also testified at hearing that he is responsible for one-fourth to one-third of the forest tax law work in his area. (This duty is not reflected in the appellant's position description.) However, on cross-examination, the appellant also testified that it is actually Edge who is *in charge* of the tax law program in their area.

The class specifications for the Forester series includes the following language:

FORESTER, OBJECTIVE

This is objective level professional forestry work. Positions allocated to this level perform a full range of work assignments, and typically function as a forester responsible for the *implementation* of the complete forestry program within an assigned geographic area or area of expertise. Positions at this level differ from the lower level in that most work objectives are longer-term in relation to the position's total

assignments; broad guidelines are available, but may not be specific; and both routine and difficult assignments are completed without specific direction. Positions at this level and all subsequent levels may be responsible for guiding and reviewing the work of technicians, limited term and volunteer staff. Positions at this level differ from those at the Forester, Senior level in that the work responsibilities are narrower in scope and complexity and do not reflect the range of responsibilities reflected at the higher levels. These positions are at the full performance level, and function under general supervision. [Italics added]

* * *

FORESTER, SENIOR

This is senior level professional forestry work. Positions at this level develop and follow broadly defined work objectives with extensive authority in carrying out the assigned responsibilities. This involves independently implementing the assigned duties and may have area/program-wide expertise. The work performed at this level requires a high degree of interpretation and creativity in exercising independent forestry expertise in performing the complete range of responsibilities. Positions allocated to this level typically function as: (1) a senior forester responsible for *developing, administering and evaluating* the forestry program in the assigned geographic area; or (2) a senior forester responsible for *developing, administering and evaluating* a major portion of the forestry program being implemented districtwide; (3) a senior central office forester responsible for serving as the assistant to a higher-level forester/supervisor having responsibilities for a major aspect of a program; or (4) as a program specialist responsible for the implementation of a program which is smaller in scope and complexity and does not have the interaction and policy development that is found at higher levels. In order to be designated at this level, positions must be differentiated from the objective level by their depth and extent of program involvement, the number and complexity of the program(s) managed, and the complexity and uniqueness of the program in the assigned area. [Italics added]

Some overlap between two or more job specifications in describing a given position is not unusual. However, once a factual determination has been made as to the specifics of an incumbent's job, they must be applied to the various specifications. The specification providing the "best fit" is determined by the specification reflecting job duties and activities within which the employe routinely spends a majority of his time. DER & DP v. PC (Doll), Dane County Circuit Court, 79-CV-3860 (9/21/80).

The evidence adduced by both parties at hearing indicates that the appellant's position is appropriately classified, or is a "best fit," at the Forester-Objective level. The appellant did testify at hearing that his position had expanded to include some duties not indicated on his position description. For example, the appellant's forest tax law work is not indicated on his position description, nor is the fact that he is a credentialed law enforcement officer. These duties are certainly significant, and they do increase, to a limited degree, the scope and complexity of of the appellant's duties. However, the majority (sixty-five percent) of the appellant's duties, like the majority of Tappon's and Ambourn's responsibilities, involves the establishment and administration of timber sales. That major responsibility is narrower in scope and complexity than the wider range of responsibilities that comprises the major responsibilities of the positions occupied by Matlack, Volavka, Brisk, Anderson and Edge. The majority of the appellant's duties involves the supervised implementation of forest management activities, whereas the positions of Matlack, Volavka, Brisk, Anderson, and Edge involve primarily the planning, development or independent implementation of such activities.

While it is true that there are many similarities between the appellant's position and that of Ambourn (who is classified at the Forester-Senior level), respondent's classification specialist testified at hearing, after reviewing Ambourn's position description, that she was concerned that Ambourn had been reallocated to the Senior level. She also testified, however, that information other than Ambourn's position description may have been considered in the reallocation decision. While evidence other than Ambourn's position description may have been considered in the decision to reallocate Ambourn to the Forester-Senior level, the preponderance of the evidence in the hearing record in this case supports the conclusion that the Ambourn position is not correctly classified. If Ambourn's position was incorrectly classified, to reclassify the appellant's position because another comparable position was inappropriately classified would compound an error and ignore the requirement that a position meet the class specifications. Augustine & Brown v. DATCP [& DER], 84-0036, 0037-PC, 9/12/84. The differences between the appellant's position and the five other Forester-Senior positions presented at hearing (Matlack, Volavka, Brisk, Anderson and Edge) are apparent.

ORDER

The respondent's decision to reallocate the appellant's position to the Forester-Objective level is affirmed and this appeal is dismissed.

Dated: July 7, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

ACK:rulings/orders:Kildow

Parties:

Brad A. Kildow
Department of Natural Resources
2004 Highland Avenue
Eau Claire, WI 54701-4346

Jon E. Litscher, Secretary
Department of Employment Relations
P.O. Box 7855
Madison, WI 53707-7855

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.

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.)