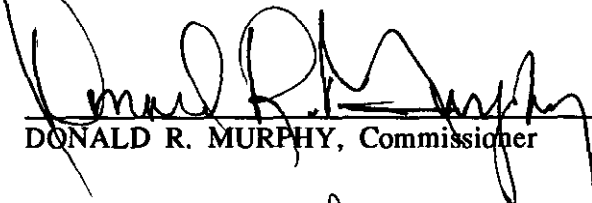


Dated: April 19, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

John Bernier
62910 County G
Mercer, WI 54547

George Meyer
Secretary, DNR
P.O. Box 7921
Madison, WI 53707

Jon Litscher
Secretary, DER
P.O. Box 7855
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 per-

sonally, 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.)

* * * * *

JOHN A. BERNIER,
 Appellant,

v.

Secretary, DEPARTMENT OF
 NATURAL RESOURCES, and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondents.

Case No. 92-0790-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

This matter is before the Commission on a timely appeal of respondent's decision regarding the effective date of the reclassification of appellant's position from Forest Fire Control Assistant 1 (FFCA 1) to FFCA 2.

On October 9, 1990, the appellant, an employe of the Department of Natural Resources (DNR), drafted and signed an updated position description (PD) of his duties as a FFCA 1. By memorandum dated October 10, 1990, appellant made a written request to Chuck Adams, District Forestry Supervisor, Northwest District, DNR, for reclassification of his position from FFCA 1 to FFCA 2 and asked Adams to approve the request. A copy of the updated PD was attached.

During this same time, appellant had discussed his updated PD with his acting work unit supervisor, Marko Hanson. Hanson reviewed appellant's PD, signed it on November 5, 1990, and forwarded it to his supervisor, Walter Gylland. Appellant's PD moved through the district offices of supervisors and personnel managers to Sue Steinmetz, DNR's Classification Specialist. Steinmetz reviewed, signed and returned the updated PD to appellant. When appellant contacted Steinmetz regarding the progress of his reclassification request, after receiving it back from her, it was determined that appellant's reclassification request had not been directed to Steinmetz. Upon learning this, appellant sent Steinmetz a copy of the memorandum he sent to Chuck Adams requesting reclassification. Accordingly, Steinmetz went through the normal reclassification audit of appellant's position and discussed the position

with appellant's acting first line supervisor, Marko Hanson, and his district Forestry Program Supervisor, Chuck Adams. Ms. Steinmetz established June 30, 1991, as the effective date for reclassification of appellant's position from FFCA 1 to FFCA 2, based on Hanson and Adam's agreed determination that appellant started fully performing the FFCA 2 duties on January 1, 1991.

Appellant argues that his updated position description signed on November 5, 1990, by his acting immediate supervisor, Marko Hanson, is a binding agreement upon which the effective date of reclassification should be determined; and that if the reclassification request had not been lost, the effective date would have been no later than December 2, 1990, which was the start of the next pay period following November 18, 1990.¹

The Commission believes that appellant has failed to prove the effective date established by respondent was not correct. In Wentz v. DER, Case No. 84-0068-PC, like this case, an appeal of the effective date of reclassification of the appellant's position, the Commission said:

The question is one of when appellant was given total responsibility for and began performing the duties and responsibility of his position, not when Secretary Jackson confirmed it.

Also, Section ER-Pers 3.015(3), Wis. Adm. Code, provides:

Incumbents of filled positions which will be ... reclassified may not be regraded: (b) until the incumbent has performed the permanently assigned duties and responsibilities for a minimum of six months.

Here in this case, appellant's acting immediate supervisor, Marko Hanson, testified that he and the district Program Supervisor Chuck Adams, after discussing the matter, determined that appellant began fully performing FFCA 2 duties as of January 1, 1991. Therefore, the record in this matter supports a finding and conclusion that appellant's position was correctly reclassified from FFCA 1 to FFCA 2 effective June 30, 1991.

¹ The parties stipulated that, if this reclassification request were not lost, the earliest possible effective date appellant's reclassification from FFCA 1 to FFCA 2 could be effective was November 18, 1990.

ORDER

Respondents' action reclassifying appellant's position from FFCA 1 to FFCA 2 effective June 30, 1991, is affirmed and this appeal is dismissed.

Dated: _____, 1994 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM:jah

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

Parties:

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