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DIANE MOREAU,

Appellant,

v.

Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,

Respondent.

Case No. 93-0043-PC

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DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a decision by respondent not to include appellant's name on a list of candidates certified as eligible for a position. A hearing was held on June 2, 1993, before Laurie R. McCallum, Chairperson.

FINDINGS OF FACT

1. On or around January 25, 1993, respondent published a Current Employment Opportunities Bulletin which included a job announcement for the position of Administrative Officer 2-Supervisor-Regional Director, Southeastern Regional Office, Milwaukee (AO 2 position). This position was located in Milwaukee and was included within the Bureau of Public Health, Division of Health, Department of Health and Social Services. This bulletin contained the following information:

HOW CAN I IDENTIFY THE GEOGRAPHIC AREAS WHERE I WANT TO WORK? Vacancies may occur throughout Wisconsin or only in certain areas of the state. We will only consider you for jobs in the locations where you state you will work. Question #18 on the Application for State Employment form asks you to identify the areas where you will work. We have divided the state into 31 geographic areas. The map on page 4 of the application shows these areas. **PLEASE DO NOT INDICATE THAT YOU WILL WORK IN AN AREA UNLESS YOU ARE SURE THAT YOU WILL ACCEPT A JOB THERE. IF YOU ARE OFFERED A JOB, AND TURN IT DOWN, WE MAY HAVE TO REMOVE YOUR NAME FROM THE EMPLOYMENT LIST.** If that happens, you

will not be considered for that job anywhere in the state (see "SUSPENSION FROM THE EMPLOYMENT LIST" below).

2. Question #18 on the Application for State Employment form states as follows:

EMPLOYMENT AREAS (See map on page 4) (Check all areas in which you will accept employment for these titles)

Below these statements, the form includes boxes numbered 01 through 31 which correspond to the 31 geographical areas into which the state of Wisconsin was divided as indicated on the map on page 4 of the application form.

3. Question #19 on the Application for State Employment form states as follows:

PRIMARY SOURCE OF INFORMATION (See page 2 for instructions) Check only one box.

Below these statements, the form includes boxes numbered 01 through 10 which correspond to a listing of possible sources from which information regarding available state jobs could be obtained.

4. The Application for State Employment form includes the following statement on the first page of the form:

APPLICATION POLICY STATEMENT:

It is our policy to use only the information provided in this form. We do not accept responsibility for interpreting or correcting provided information. Incomplete or inaccurate information may result in you not being scheduled for exams, examined or referred to vacancies. **You will not be scheduled for exams if any of the following information is omitted: last name, social security number or written request for a nine-digit number, complete mailing address, or job announcement codes as well as civil service title.** Misdirected applications will be forwarded to the correct location, *but may be received late for the announced application deadline.* We are not responsible for late, lost, misdirected or damaged mail.

5. On or around February 19, 1993, appellant completed an Application for State Employment form for the subject AO 2 position. In response to Question #18 on this form, appellant checked boxes 01 (Racine/Kenosha), 02 (Rock/Walworth), 03 (Green/Lafayette/Iowa), 06

(Washington, Waukesha, Ozaukee), 07 (Dodge/Jefferson), 10 (Calumet/Manitowoc, Sheboygan), 11 (Winnebago/Fond du Lac), 15 (Door/Kewaunee/Brown), and 17 Marathon/ Wood/Portage). Appellant did not check box 05 (Milwaukee).

6. In response to Question #19, appellant checked two boxes on her completed form.

7. On her completed form, appellant listed the civil service title of the position for which she was applying as "Adm Officer 2 - Supervisor/Regional Director SE Regional Office" and correctly specified the job announcement code number for this position. On her completed form, appellant indicated that she wanted to take the civil service examination for this position in Milwaukee.

8. At the time of the subject recruitment, appellant was serving in an acting capacity in the subject AO 2 position.

9. The certification list for the subject AO 2 position was created by respondent at 9:22:03 a.m. on March 12, 1993.

10. On March 13, 1993, appellant received notice that she had been ranked number 5 on the examination for the subject AO 2 position.

11. On March 15, 1993, appellant was notified by her supervisor that her name did not appear on the certification list he had received for the subject AO 2 position.

12. On March 24, 1993, appellant contacted respondent to inquire as to the absence of her name from this certification list. Appellant was advised that her name did not appear because she had not indicated on her application form that she wanted to be considered for vacancies in the Milwaukee area, i.e., that she had not checked box 05 in response to Question #18 on her application form.

13. On March 24, 1993, appellant notified respondent that she had intended to check box 05 in response to Question #18 on her application form and requested that the change be made. Appellant received notice from respondent on March 29, 1993, that this change had been made.

14. It is respondent's policy to give only prospective effect to changes in application forms requested by applicants. Respondent has consistently applied this policy and has not permitted any exceptions to this policy. As a result of the application of this policy, respondent did not alter or

rescind the certification list created for the subject AO 2 position on March 12, 1993.

15. It is respondent's policy and consistent practice to give retroactive effect to the extent practicable to any changes in the application process or certification process necessitated by discovery of errors for which respondent is responsible.

16. It is respondent's policy and consistent practice not to attempt, through the interpretation of information supplied by an applicant on an application form, to fill in information not supplied by an application on an application form.

17. Some individuals fill in application forms for particular positions without checking the box for the geographical area in which the position is located for the purpose of acquiring the experience of taking the examination for the position without interviewing for the position or actually being considered for the position.

18. Of the 21 applicants for the subject AO 2 position, only appellant failed to check box 05 in response to Question #18 on the application form.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(a), Stats.

2. Appellant has the burden to prove that, in deciding not to include appellant's name on the certification list for the subject Administrative Officer 2 position, respondent violated §230.25, Stats., Ch. ER-Pers 12, Wis. Adm. Code, or Ch. 232 of the Wisconsin Staffing Manual.

3. Appellant has failed to sustain this burden.

OPINION

Section 230.25, Stats., provides as follows, in pertinent part:

(1) Appointing authorities shall give written notice to the administrator of any vacancy to be filled in any position in the classified service. The administrator shall certify, under this subchapter and the rules of the administrator, from the register of eligibles appropriate for the kind and type of employment, the grade and class in which the position is classified, the 5 names at the head thereof if the register of eligibles is less than 50. . . .

* * * * *

(2) Unless otherwise provided in this subchapter or the rules of the administrator, appointments shall be made by appointing authorities to all positions in the classified service from among those certified to them in accordance with sub. (1).

Chapter ER-Pers 12, Wis. Adm. Code, contains provisions essentially restating the general certification provisions of §230.25, Stats., and provisions setting forth the required order of preference in creating certifications and the requirements for promotional registers, selective certifications, use of related registers, use of expanded certification and additional certifications for handicapped candidates, and confirmation of appointment.

Appellant has not specified which requirement of §230.25, Stats., Ch. ER-Pers 12, Wis. Adm. Code, or Ch. 232, Wis. Staffing Manual respondent allegedly violated here and none is apparent to the Commission.

It appears that appellant's primary argument is that respondent's policy regarding the finality of the information provided (or not provided) by an applicant on an Application for State Employment form vis-a-vis a certification already created violates the spirit of the civil service law that the recruitment and selection process be open and accessible by failing to take into account and accommodate human error. This argument raises questions relating to the scope of the Commission's authority and the scope of the issue for hearing.

These questions aside, the relevant portion of the statement of policy in §230.01(2), Stats., provides that "[i]t is the policy of the state and the responsibility of the secretary and the administrator to maintain a system of personnel management which fills positions in the classified service through methods which apply the merit principle, with adequate civil service safeguards." Although openness and accessibility should be goals of any merit-based recruitment and selection system, such goals need to be tempered by considerations of administrative efficiency, certainty, and closure. Any system that processes thousands of applications yearly has to have in place procedures which are applicable over a wide range of situations to allow for uniform and efficient processing, policies which provide for few if any exceptions to introduce certainty into the process for all applicants, and strictly enforced deadlines to allow for final closure so that vacancies can be filled on as timely a basis as possible. To adopt appellant's posture in this case would require that, each time an applicant notified respondent that he or she

had made an error in filling out an application for a position, any existing certification list for that position would have to be cancelled or revised. Such a policy would create administrative chaos and would impede the ability of the state to fill vacant positions. The Commission does not conclude that respondent's policy of prospective alteration of applications violates the spirit or intent of the civil service system.

Appellant also argues that it should have been apparent to respondent that she was applying for the Milwaukee position and, therefore, unnecessary for appellant to have checked the Milwaukee area box in response to Question #18. Respondent has a policy which they have consistently applied and which they explain in the Application for State Employment form (See Finding of Fact 4) that they will not try to extrapolate from information provided by an applicant in order to fill in information not provided by the applicant. Appellant fails to argue or show how this policy violates any statutory or rule requirement or policy and none is apparent. Consistent with respondent's policy, it is clearly the applicant's responsibility to read the application instructions and to provide the information necessary to complete the application. To require that respondent assume or share that responsibility would introduce guesswork into a process which requires specificity and certainty in order to function successfully. As an aside, it should be noted that Question #18 was clearly phrased and was clearly understood and properly answered by the other 20 applicants for the position. This demonstrates that the requirement that appellant accurately and completely answer Question #18 was not unreasonable or unduly burdensome.

Finally, appellant argues that she was serving in a dual capacity at work during the time of the subject recruitment and the additional stress resulting from doing two jobs may have caused her failure to carefully read or re-read the application instructions and/or Question #18. It is obvious from the record that appellant did not carefully read either Question #18 or Question #19 where she checked two boxes even though the instructions required the applicant to check only one. However, why appellant feels that it is respondent's responsibility to tailor their policies to the state of mind or state of fatigue of an applicant eludes the Commission.

It is certainly regrettable from the human perspective for an individual serving in an acting capacity in a position not to be able to interview for that position. However, in this case, the reason for this occurrence was within the

individual's control. Although appellant feels her failing was an insignificant one when viewed in the broader perspective of the application and exam process, she was not able to articulate what distinguishes an insignificant failing from a significant one. The record shows that respondent has clearly articulated and has consistently applied policies and practices which are reasonably related to the multiplicity of goals sought to be achieved by the civil service merit recruitment and selection process. The record shows that the application of certain of these policies and practices to appellant's failure to properly complete her application for the subject position resulted in her name not being placed on the certification list for the position. The Commission concludes from this record that appellant has failed to show that the policies and practices respondent followed in this regard violated any statutory or administrative rule requirement or policy.

ORDER

Respondent's action is affirmed and this appeal is dismissed.

Dated: August 11, 1993 STATE PERSONNEL COMMISSION

LRM:rcr


DONALD R. MURPHY, Commissioner


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.