

the position and that her letter was returned by the post office as undeliverable. The only copy of the Interview Letter received by Ms. Morgan was a copy sent by Ms. Georgi sometime after the telephone conversation on June 22, 1993.

4. Wendy Norberg with MMHI was the person who sent Ms. Morgan the Interview Letter on May 26, 1993. The Interview Letter recited a deadline of June 3, 1993, for Ms. Morgan to contact Ms. Norberg if Ms. Morgan was interested in scheduling an interview. Ms. Norberg mailed the letter to the address Ms. Morgan had written on her application form, as shown below:

Emily W. Morgan
306 N. Brooks Street
P.O. Box 108
Madison, WI 53705

5. Interviews were conducted for the position on June 11, 1993. A person was selected on or before June 16, 1993, and started work in the position on June 27, 1993.

6. Ms. Morgan would like an opportunity to compete for the position she applied for: Social Services Supervisor 3 - Unit Chief, Area 8 MMHI. The Commission could not grant this request without removing the individual already hired.

7. The Commission received Ms. Morgan's appeal on June 28, 1993. Ms. Morgan listed her address on the appeal letter as shown below:

Emily W. Morgan
306 N. Brooks Street
P.O. Box 108
Madison, Wisconsin 53715

8. On July 2, 1993, the Commission mailed the parties a letter to inform them of a prehearing conference scheduled for July 27, 1993. The Commission mailed Ms. Morgan's copy to the address she listed on her appeal. The post office returned Ms. Morgan's copy to the Commission on July 9, 1993, as undeliverable.

9. On July 22, 1993, Ms. Morgan called the Commission and was informed incorrectly by Commission staff that the Commission had no record of her appeal. Ms. Morgan went to the Commission the same day at which time she was given an opportunity to review her file.

10. The prehearing was held on July 27, 1993. Ms. Morgan appeared personally and respondent was represented by Patricia Lynch, paralegal. These appearances were recited in the Conference Report mailed to the parties on July 29, 1993.

11. Ms. Morgan stated in her final brief (received by the Commission on September 7, 1993), that she thought Ms. Lynch was an attorney who appeared at the prehearing as counsel for Ms. Morgan. No statements were made by the Commission or Ms. Lynch at the prehearing conference or in written correspondence or at all to the Commission's knowledge which would have lead Ms. Morgan to conclude incorrectly that respondent DHSS (or any state agency) would provide Ms. Morgan with counsel. Nor has such representation been provided to appellants in the past. Instead, appellants either represent themselves or make their own arrangements to hire an attorney from the private sector.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to s. 230.44(1)(d), Stats.
2. The relevant facts are undisputed and this matter is appropriate for summary judgment.
3. The appellant has the burden to show by a preponderance of the evidence that respondent's actions were illegal or an abuse of discretion, and that the Commission has authority to grant the relief she seeks.
4. The appellant failed to show that respondent's actions were illegal or an abuse of discretion, or that the Commission has the authority to grant the requested relief.

DISCUSSION

Ms. Morgan's appeal has the potential issues noted below.

Whether the respondent committed an illegal act or an abuse of discretion in failing to interview or in failing to appoint Ms. Morgan to the vacant position.

Even if the foregoing issue is answered in Ms. Morgan's favor, does the Commission have authority to remove the incumbent to provide Ms. Morgan with an interview opportunity?

The Commission found no violation of law in respondent's actions. Respondent attempted to contact Ms. Morgan for an interview and mailed the Interview Letter to the address Ms. Morgan herself provided. Such procedure is not contrary to the civil service code, is not illegal and is not an abuse of discretion.

Even if a violation had been found, the Commission lacks authority to provide the relief requested by Ms. Morgan. Section 230.44(4)(d), Stats., provides as follows:

The commission may not remove an incumbent or delay the appointment process as a remedy to a successful appeal under this section unless there is a showing of obstruction or falsification as enumerated in s. 230.43(1).

Section 230.43(1), Stats., provides as follows:

- (a) Any person who willfully, alone or in cooperation with one or more persons, defeats, deceives or obstructs any person in respect of the rights of examination or registration under this subchapter or any rules prescribed pursuant thereto, or
- (b) Who willfully, or corruptly, falsely marks, grades, estimates or reports upon the examination or proper standing of any person examined, registered or certified, pursuant to this subchapter, or aids in so doing, or
- (c) Who willfully or corruptly makes any false representations concerning the same, or concerning the person examined, or
- (d) Who willfully or corruptly furnishes any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any persons so examined, registered or certified, being appointed, employed or promoted, or
- (e) Who personates any other person, or permits or aids in any manner any other person to personate him or her in connection with any examination, registration, application or request to be examined or registered, shall for each offense be guilty of a misdemeanor.

Respondent's use of the mailing address provided by Ms. Morgan cannot be stretched by imagination or any other means as constituting obstruction or falsification, within the meaning of s. 230.44(1) and 230.44(4)(d), Stats.

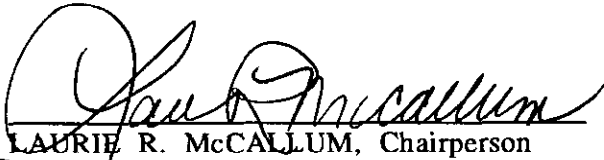
This decision would be the same even if the address provided by Ms. Morgan had been the correct address yet delivery failed due to post office error. In short, the Commission would lack authority to remove an incumbent even under those circumstances.

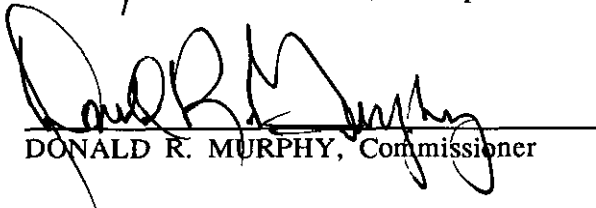
ORDER


Respondent's actions are affirmed and this appeal is dismissed.

Dated: September 24, 1993 STATE PERSONNEL COMMISSION

JMR


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Emily W. Morgan
306 N. Brooks Street, #108
Madison, WI 53715

Gerald Whitburn
Secretary
DHSS
P.O. Box 7850
Madison, WI 53707-7850

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.