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CLAUDIA C. ORVIS,

Appellant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 93-0119-PC

* * * * *

FINAL
DECISION
AND
ORDER

After having carefully considered the various arguments raised by the appellant in her objections filed on September 22, 1994, and after having consulted with the hearing examiner, the Commission adopts the attached Proposed Decision and Order as the final Decision and Order in the above matter, and makes the following modification:

The last paragraph on page 3, which continues onto page 4, is deleted, so as to eliminate any inference that the classification decision is premised upon the fact that the appellant was serving a probationary period, and is replaced by the following:

The language in the definition statements for the Journey and Senior levels very clearly differentiate positions in terms of the level of supervision they receive. The Journey level refers to positions under "limited to general supervision" and the Senior level refers to positions under "general" supervision. Shelagh Cullen, respondent's classification specialist, testified that she had not knowingly classified any positions at the Senior level that received other than "general" supervision. The testimony of Ms. Cullen and other witnesses called by the respondent made it very clear that the level of supervision received by the appellant was a limiting factor in terms of her classification.

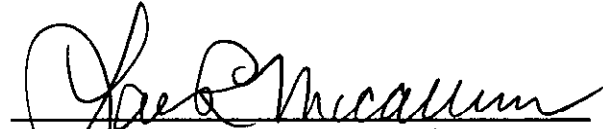
However, the *only* evidence in the record regarding the level of supervision provided to the appellant during the period in question is the appellant's position description (Resp. Exh. 2), signed by both the appellant and her supervisor, Kim Johnson on April 9, 1990. Despite the statement in the appellant's objections to the proposed decision that her "supervisor was never called to verify level of supervision,"¹ the appellant had the burden of establishing that her level of supervision was something other than as indicated in her signed position description. The appellant did call Ms. Johnson as a witness during the hearing, but failed to ask any questions relating to the level of supervision even though the level of supervision had been identified by respondent as a key factor in its analysis. There is no basis in the record on which the Commission could conclude that the appellant's stated level of supervision in her position description reflected some sort of initial training period and that Ms. Johnson had only expected appellant to be under "limited" supervision for a few weeks after she was promoted, and would then be provided "general" supervision. The appellant did not sustain her burden of proof on the question of her level of supervision.

The Commission has disregarded all information set forth in the appellant's objections to the proposed decision which was not presented during the hearing. The Commission must base its decision on the record created at

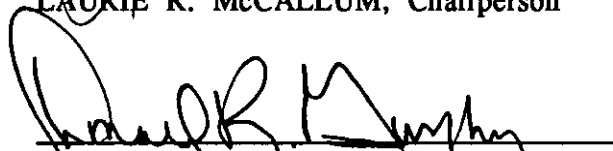
¹Even though the Commission is interpreting the appellant's comment as referring to "calling" appellant's supervisor as a witness at hearing, the context of the comment indicates the appellant intended to reflect her dissatisfaction with the fact that in reviewing the classification decision, respondents should have telephoned appellant's supervisor and talked to her about the level of supervision appellant received. The adequacy of the classification review process carried out by the respondents is not at issue before the Commission. The proceeding before the Commission is a hearing *de novo*. The Commission is not limited to reviewing the information that was before the respondents when the reallocation decision was made or re-evaluated. Bluhm v. DER, 92-0303-PC, 6/21/94. In an appeal of a reclassification decision, the Commission held that the procedure followed in reviewing the request need not be evaluated in order to resolve the appeal. Klein v. UW & DER, 91-0208-PC, 2/8/93. The fact that the respondents did not telephone complainant's supervisor (who had left state service shortly after the survey was completed) as part of their review of the appellant's classification level does not serve as a basis for rejecting the reallocation decision.

hearing, and the appellant has not established a basis for supplementing that record at this time.

Dated: November 3, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:kms
K:D:Cover order (Orvis)


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 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.)

sions" with respect to the classification level of appellants' positions that were appealable pursuant to §230.44(1)(b), Stats. The Commission noted that it was not concluding that the appellants could, in 1993, file appeals of the June 17, 1990, reallocations *per se*.

Respondent now suggests that the Commission lacks jurisdiction over the instant appeal because the appellant filed an internal appeal with DOT after the 1990 reallocation decision and subsequently withdrew that informal appeal. (Resp. Exh. 13, 14) This information has no bearing on the instant appeal, which is based on a decision made in 1993, as reflected in a letter to the appellant at that time. The appellant filed a timely appeal of that decision, and the fact that she withdrew an informal appeal of the 1990 decision is immaterial to the 1993 proceeding.

Merits

The key language of the Engineering Specialist class specifications reads as follows:

ENGINEERING SPECIALIST - JOURNEY

Positions allocated to this class perform a wide variety of difficult journey level engineering specialist assignments under the limited to general supervision of a higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor.

Examples of typical duties of Engineering Specialists at the Journey level are listed below:

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

Design

Design Squad Leader

At this level, the position directs assigned personnel in completing studies, reports, plans, documentation, and plans and specifications necessary for the planning, location, design and construction of highway improvement projects. Generally, the position is assigned only one project at a time and directs a small design squad of lower level engineering specialists or engineering technicians. The projects are generally the smaller roadway projects. Typical small projects include local road projects, intersections, small bridge replacements and safety projects. At this

level, the position may also act as assistant design squad leader for more complex projects.

* * *

ENGINEERING SPECIALIST - SENIOR

Positions allocated to this class perform complex engineering specialist assignments under the general supervision of a higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor.

Examples of typical duties of Engineering Specialists at the Senior level are listed below:

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

Design

Design Squad Leader

At this level, the position directs assigned personnel in completing studies, reports, plans, documentation, plans and specifications necessary for the planning, location, design and construction of highway improvement projects. The position directs one or more lower level specialists or technicians in the design activities for assigned projects. The projects at this level are medium to large projects and include reconditioning road projects with minimum to no right-of-way purchases with possibly the paving of shoulders and intersections. The large projects are usually less urban, may have environmental issues but have little controversy, and may involve a lot of grading and the alteration of an existing road. Employ may also review and coordinate consultant-prepared plans or outside agency plans of comparable size. Employe may also act as assistant design squad leader for large to reasonably complex road projects.

The specifications, as highlighted by testimony at hearing, differentiate Journey and Senior positions in the design area both in terms of the level of supervision received and the size/complexity of the design work performed.

The appellant's position description (Resp. Exh. 2) which described her duties during the relevant time period, specifically indicates that the appellant received "limited" rather than "general" supervision. This higher level of supervision is certainly reasonable in light of the fact that the appellant had just promoted into the position less than one month before the position description was signed and just three months before the effective date of the

reallocation decision. There was no evidence that the level of supervision was other than indicated on the position description. Shelagh Cullen, respondent's classification expert testified that she was not aware of any position classified at the Specialist - Senior level that worked under limited supervision.

The evidence also supports the conclusion that the appellant's design work during the period in question was on smaller projects than the key comparable position which was held by Jeff Kaarto. The testimony of Bob Stone, a design unit supervisor who was familiar with both the appellant's and Mr. Kaarto's projects, was convincing on this point.

The appellant's case was based on testimony of her supervisor that she and other supervisors in the design unit had concluded shortly before the survey that appellant and Mr. Kaarto were performing similar duties, and that they both should be classified under the new class structure at the Journey level. Mr. Kaarto's position was classified at the Journey level when the survey results were initially issued. However, management later agreed that Mr. Kaarto was performing his work under "general" rather than "limited" supervision at the time of the survey and respondent was also satisfied that the size of projects he was assigned met the requirements of the Senior level. Mr. Kaarto's classification was then changed to "correct an error." The appellant is not on the same factual footing as Mr. Kaarto in terms of supporting classification at the higher level. Her level of supervision clearly does not meet the requirements at the higher level and the size of the projects assigned to her also distinguish her position from Mr. Kaarto's. For both of those reasons, respondent's decision was correct.

ORDER

Respondents' decision allocating the appellant's position to the Engineering Specialist - Journey level, effective June 17, 1990, is affirmed and this appeal is dismissed.

Dated: _____, 1994 STATE PERSONNEL COMMISSION

LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Merits-reall (Orvis)

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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