

appeal from Schmidt v. DHS, 88-0131-PC, 6-4-93

WINNEBAGO COUNTY CIRCUIT COURT BR IV STATE OF WISCONSIN

KATHY SCHMIDT

Petitioner,

(court's decision)

vs.

93 CV 654

WISCONSIN PERSONNEL COMMISSION

Respondent.

Before the HON. ROBERT A. HAWLEY
Judge presiding

Oshkosh, WI

April 28, 1994

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PERSONNEL COMMISSION

APPEARANCES: (BY SPEAKERPHONE) MS BILLIE PIRNER GARDE,
Attorney at Law, 230 N.
Morrison, Appleton, WI 54911
for petitioner

MR. STEPHEN M. SOBOTA, Asst
Attorney General, WDJ
123 West Washington Ave
P O Box 7857
Madison, WI 53707-7857

1 THE COURT: Well, in looking at the
2 Commission's decision here, too, Mr. Sobota, I find
3 the Commission has made a number of findings of fact
4 here which do support their position as well; I
5 don't find completely devoid here of any finding of
6 factual findings which would not support their
7 particular position as far as exercising their
8 decision. I have to affirm the agency's decision
9 here in this particular case. In reviewing the law I
10 have to agree with Mr. Sobota, Miss Garde certainly
11 supports that, that there has to be some sort of
12 abuse of discretion here and Miss Garde is saying
13 that abuse of discretion here is that the decision
14 that the Commission came up with is not based upon
15 any findings of fact by the greater weight of--
16 substantial credible evidence, rather, to support
17 their view, that the Commission had no facts that
18 they found in which to use its discretion and it is
19 by its nature abuse of discretion; and in looking at
20 the facts they did find in their decision here which
21 are enumerated in the voluminous decisions, and I
22 find that upon all the records and proceedings here
23 that they have found a number of facts which support
24 their position as far as exercising their discretion
25 in this particular case. I would also agree with

1 Sobota during the trial in front of the Commission
2 they did make a specific finding that petitioner did
3 not meet her burden of proof here in this instance
4 and because of that I would have to respectfully
5 deny the request by petitioner then to set aside the
6 Wisconsin Personnel Commissions' findings and would
7 ask Mr. Sobota to prepare a brief order in support
8 of the court's position.

9 MR SOBOTA: I would be happy to
10 do that. If I could make a request of the court
11 reporter I would like for the Commission's purpose
12 if I could get a copy of the Judge's--not the oral
13 arguments, just the court's oral decision on the
14 record.

15 THE COURT : Sure, that is fine, he
16 is nodding his head.

17

STATE OF WISCONSIN)
)
COUNTY OF WINNEBAGO)

SS

CERTIFICATE

I hereby certify that the above mentioned transcript is a true and accurate transcription of my original shorthand (Stenograph) notes, and the whole thereof.

Dated at Oshkosh, WI this 28th day of April, 1994.



Richard L. Karr
Court Reporter
Winnebago County, WI