

STATE OF WISCONSIN

PERSONNEL COMMISSION

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TANYA M. JOHNSON,

Appellant,

v.

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

Respondents.

Case No. 94-0442-PC

* * * * *

DECISION
AND
ORDER

This is an appeal pursuant to §230.44(1)(b), Stats. A hearing was held on June 27, 1995, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the briefing schedule was completed on October 13, 1995.

1. Effective January 25, 1993, appellant was appointed to a Real Estate Agent 1 position with respondent DOT in the Waukesha District. Appellant had no prior real estate experience.
2. The position description signed by appellant on January 25, 1993, described the range of duties performed by Real Estate Agent 1 positions in the DOT. As of April 1, 1994, appellant did not carry out this range of duties but was assigned duties only in the relocation area.
3. Between January 25, 1993, and April 1, 1994, appellant carried out routine relocation duties under limited supervision, but non-routine relocation duties under close supervision. During this period of time, although appellant may have performed under limited supervision a range of relocation duties such as field interviewing and other data-gathering, attending public hearings, and liaison activities with external agencies, these duties were performed in relation to the least complex relocation matters.
4. On April 1, 1994, appellant and her first-line supervisor, Margaret Zastrow, met to review Ms. Zastrow's evaluation of appellant's work

performance for calendar year 1993, and to set performance goals for calendar year 1994. One of the goals established for the upcoming year was to "be able to perform effectively at an Agent 2 level." At this meeting, appellant verbally requested the reclassification of her position to the Real Estate Agent 2 level. Ms. Zastrow indicated that she would support appellant's effort to have her position reclassified to the Real Estate Agent 2 level and, to that end, would *augment and strengthen her assignments*. Appellant also indicated to Ms. Zastrow that her position description was not accurate and Ms. Zastrow suggested that appellant prepare an updated position description and submit it to her. Appellant submitted an updated position description to Ms. Zastrow within a few weeks of the April 1, 1994, meeting.

5. A personnel management survey of real estate and related positions, including appellant's position, was completed effective June 26, 1994. Appellant's position was reallocated to the Real Estate Specialist-Entry classification as the result of this survey.

6. A new position description was signed by appellant on September 14, 1994. This position description stated as follows in the "Position Summary" section:

Primary duties in the area of relocation assistance. Preparing relocation plans and providing relocation assistance to residential and commercial occupants who are displaced by transportation projects. The agent must possess considerable knowledge and sound judgment in working with displacees in an urbanized district. Relocations are routine to moderately complex. This position is also responsible as the backup support for the district's L.P.A. duties. Provides input for real estate needs/activities for a project team from initial planning through construction phases as an ad hoc team member.

6. This position description, in box #12, also indicated that the work described had been performed by appellant since approximately January 25, 1993. The date that should have been stated in box #12 was November 1, 1994, the date of a planned reorganization. The January 25, 1993, date was stated on the position description as the result of an administrative error in the personnel unit of the Waukesha District.

7. The Real Estate Agent series is a progression series. Employees spend an average of 18 months to 2 years at the Real Estate Agent 1 level before earning reclassification to the Real Estate Agent 2 level. The length of time is dependent at least in part on the extent of previous real estate experience.

8. Appellant did not file a written request for the reclassification of her position with her first-line supervisor or with any other person or unit within DOT. During the relevant time period, the Waukesha district processed requests for reclassification from Real Estate Agent 1 to 2.

9. Appellant received a copy of respondent DOT's employee handbook on January 25, 1993, and a copy of certain revisions to the handbook on January 12, 1994. On and after August of 1993, this handbook stated as follows:

RECLASSIFICATION

If your position is reclassified, you will receive an increase in pay according to the provisions of the Compensation Plan and/or Wisconsin Administrative Code. A position may be reclassified if the following occurs:

1. Your duties and responsibilities change through a *gradual and logical outgrowth of the original job.*
2. The new duties and responsibilities are evaluated to be at a *higher or lower classification level.*
3. The new duties have been performed for at least 6 months.
4. The new duties are determined to be continuing in nature.

Your supervisor may request, through the appointing authority, that the Personnel Services Section review your position to see if a reclassification is warranted. The request will include the specific changes in duties and responsibilities of your position, and how those changes occurred. The effective date of the reclassification action is determined by the date it is received in the Personnel Office. If the reclassification is not appropriate, you will be informed, in writing, of the reasons the request is denied and your appeal rights.

In some situations, you may wish to initiate a request for review. This request should be made in writing to your supervisor and should clearly indicate that you wish to have your position reviewed for proper classification. Also include the details of how and when your duties changed. If your supervisor does not provide you with a written response within 30 days, or denies your request, you may submit a copy of the original request to the Personnel Services Section along with a statement requesting assistance in having the request reviewed.

10. The position standard for the Real Estate Agent series states as follows, in pertinent part:

Real Estate Agent 1

Class Description

Definition:

This is beginning level professional real estate work performed in connection with state improvement projects. Employees in this class are responsible for performing a variety of professional real estate activities associated with the appraisal and negotiation, lands management and/or relocation assistance programs. Work assignments at this level are designed to be both of a training and a productive nature, enabling the employe to handle increasingly more difficult and complex functions with a greater degree of independence. Work is performed under the direction of higher level agents or supervisors and is reviewed through observation and conferences with the employe.

Examples of Work Performed:

* * *

Gathers preliminary data for field appraisal work and assists in the preparation of field reports, relocation orders and estimates of acquisition costs.

* * *

Assists in the development of relocation assistance plans, including the preparation of relocation assistance cost estimates of housing needs, and making public relation calls and relocatee contacts.

Real Estate Agent 2

Class Description

Definition:

This is responsible professional real estate work performed in connection with state improvement projects. Employees in this class function at the full performance level in a major real estate program, such as appraisal and negotiation, lands management, and/or relocation assistance. Work at this level can be differentiated from that of the preceding level, by the variety and complexity of real estate activities performed and the independence of

action in performing these activities. The real estate functions are carried out in accordance with state and federal guidelines and the final product is generally subject to the review of a higher level agent and/or supervisor.

Examples of Work Performed:

* * *

Interviews and counsels individuals who must be relocated because of a state project and offers information and assistance relating to the housing alternatives available to the displacee.

Prepares relocation plans including cost estimates, and identifies relocatee needs and alternative solutions to meet these client needs.

* * *

Qualifications

Required aptitudes, Knowledges, Skills and Personal Characteristics

* * *

*Considerable knowledge of the resources, methods, techniques and practices used to provide relocation assistance to persons, farms, industries and other businesses displaced by land acquisition programs.

Considerable knowledge of federal and state administrative and technical policies and procedures relating to property acquisition, management and disposal, relocation assistance or other related areas of responsibility.

* * *

* Essential in newly-hired workers.

The issue to which the parties agreed is as follows:

Whether the respondent's action or nonaction was proper on appellant's request to be reclassified from Real Estate Agent 1 to Real Estate Agent 2.

It is difficult to ascertain from the manner in which the issue is framed whether the parties intended to limit the issue to the question of whether appellant filed a cognizable reclassification request with respondent DOT, or intended to include as well the question of the proper classification of appellant's position prior to the reallocation of June 26, 1994. In view of the fact that evidence relating to both questions was introduced by the parties at hearing and argued by the parties in post-hearing briefs, the Commission will proceed to answer both questions.

Respondent DOT's employee handbook specifies two procedures for requesting position reclassifications, i.e., a request initiated by a supervisor and a request initiated by an employee. The record here shows that Ms. Zastrow never initiated a request for the reclassification of appellant's position. The record also shows that appellant was never led to believe that Ms. Zastrow had filed a request for the reclassification of appellant's position. In fact, appellant concedes this by alleging that, in the April 1, 1994, meeting, Ms. Zastrow advised appellant that management had told Ms. Zastrow to hold off on any reclassification requests until the personnel management survey was completed. The record also shows that the reclassification request initiated by appellant, i.e., the verbal request appellant presented to Ms. Zastrow during their April 1, 1994, meeting, did not meet the requirements of respondent DOT's employee handbook. Appellant conceded at hearing that she never filed a written request for the reclassification of her position with anyone at DOT. Such a request was clearly required by DOT guidelines and, as a result, respondent DOT was justified in not processing appellant's verbal request for the reclassification of her position as a cognizable reclassification request.

The second aspect of the issue here relates to the proper classification of appellant's position at the time of her verbal reclassification request, i.e., April 1, 1994. Appellant argues that Ms. Zastrow conceded in their April 1, 1994, meeting that a reclassification of appellant's position to the Real Estate Agent 2 classification was justified at that time. However, such a conclusion would be inconsistent with the planning document that Ms. Zastrow had prepared for discussion that day which indicated that one of the goals for the upcoming year was for appellant to "be able to perform effectively at an Agent 2 level." Such a conclusion would also be inconsistent with the level of the duties and responsibilities appellant was assigned to perform at that time. Appellant failed to show that she was preparing non-routine relocation plans

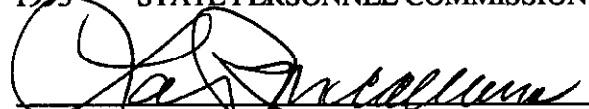
independently; and had considerable knowledge of the resources, methods, techniques and practices used to provide relocation assistance to persons, farms, industries and other businesses as required by the Real Estate Agent 2 classification specifications. The record shows that appellant, as of April 1, 1994, was independently carrying out some of the more routine parts of the relocation planning and assistance process for single-family dwellings and less complex business properties; but that the non-routine parts of relocation planning and assistance and those involving more complex businesses were performed by appellant under close supervision. A conclusion that appellant did not satisfy the requirements for classification at the Real Estate Agent 2 level is consistent with the fact that employees spend an average of 18 months to 2 years at the Real Estate Agent 1 level before earning reclassification to the Real Estate Agent 2 level, and the length of time is dependent at least in part on the extent of previous real estate experience. As of April 1, 1994, appellant had been employed by DOT as a Real Estate Agent 1 for a little over 14 months and had had no previous real estate experience.

The Commission concludes that appellant did not file a cognizable request for the reclassification of her position, and that her position was properly classified at the Real Estate Agent 1 level as of April 1, 1994.

Order

The action of respondents is affirmed and this appeal is dismissed.

Dated: November 27, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

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