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STEVEN MAYER et al.,
 (David Barnabo, Bill Becker,
 Tim Farrelly, and Seth Newman),

Appellants,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 and Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondents.

Case No. 95-0002-PC

* * * * *

DECISION
 AND
 ORDER

This case involves the effective date of a reclassification from RCT 1 (Resident Care Technician 1) to RCT 2. Preliminarily, of the five appellants who pursued this appeal through the last prehearing conference, only one (David W. Barnabo) appeared at the hearing, and he did not have authority to represent the other appellants. The others neither appeared nor contacted the Commission. Therefore, this appeal will be dismissed as to them for failure of prosecution.¹

Mr. Barnabo began employment at CWC (Central Wisconsin Center) as an RCT 1 in 1992. He transferred to MMHI (Mendota Mental Health Institution), along with a group of other RCT 1's, on April 24, 1994. His position was reclassified, and he was regraded, to RCT 2 with an effective date of January 22, 1995. Appellant asserts that he should have received this reclassification with an effective date of October 24, 1994. This would have been at the end of his six months of permissive probation which had been required when he transferred to MMHI, and also after the completion of two years of employment as an RCT 1, including his service at both CWC and MMHI.

The RCT classification series is a progression series. Thus, movement from RCT 1 to RCT 2 depends on the satisfaction of certain training and

¹ This decision is being issued initially as a proposed decision. If any of the absent appellants want to contend there was good cause for neither appearing at the hearing nor contacting the Commission, they must submit same in writing within 20 days of the date of the letter accompanying this proposed decision.

experience criteria as set forth in the class specifications. Furthermore, the civil service code provides that an employe may not be regraded until he or she "has performed the permanently assigned duties and responsibilities for a minimum of 6 months." §ER 3.015(3), Wis. Adm. Code.

While the RCT class specifications were not made a part of the record, there are enough ancillary documents related to this classification series (including RCT model position descriptions used at MMHI) and testimony from which it can be concluded that the major difference between the two levels is that the RCT 1 functions under direct supervision (close or limited) while the RCT 2 has progressed in terms of knowledge and competence to the point that he or she functions under general supervision. Reclassification/regrade to RCT 2 requires a minimum of 24 months as an RCT 1. However, movement to the RCT 2 level is not automatic; it requires that the employe have completed the necessary training and be functioning at an adequate level of performance. Also, pursuant to §ER 3.015(3), Wis. Adm. Code, the employe must have completed six months at this level (this can include the last six months of the 24-month period).

If appellant had remained at CWC and had continued to have made satisfactory progress as an RCT 1, he probably would have been reclassified/regraded to RCT 2 at CWC after the completion of 24 months in the RCT 1 classification. However, there are significant differences between MMHI and CWC in terms of their patient populations and programs, and the demands placed on RCT's. For example, RCT's at MMHI are required to intervene more frequently with patients than is the case at CWC, and they receive special training in these and other areas which is not performed at CWC. Therefore, the transferees from CWC to MMHI were required to complete approximately 5 weeks of new employe orientation classes² combined with unit observation, and approximately seven weeks of on-the-job training under direct supervision, before they were given regular assignments -- i.e., under general supervision. Following the completion of six months of satisfactory performance of duties under general supervision, as required by §ER 3.015(3), Wis. Adm. Code, reclassification/regrade to RCT 2 was approved with an effective date of January 22, 1995.

² They were not required to repeat material covered at CWC.

Appellant has the burden of proof and must establish by a preponderance of the evidence the facts needed to show that the agency's handling of the reclassification transaction, as outlined above, was incorrect. Appellant did not produce any evidence that DHSS acted inappropriately under either the civil service code or the RCT classification requirements discussed above.

When appellant transferred to MMHI, he filled a job which, due to the different programs and patient population characteristics at MMHI was not the equivalent of the job he had left at CWC. It was reasonable for DHSS not to count the initial 12 weeks spent in new employe orientation and on-the-job training as part of the six months required performing higher level duties prior to reclassification, because appellant was not performing under general supervision during this time period.

Appellant asserted that he was advised by someone in management after he had started work at MMHI that he would receive his RCT 2 reclassification after he passed his six months permissive probation. His supervisors denied having said this. Even if a supervisor had given him this information, it would not affect the outcome of this case. Such a statement would have been inconsistent with the agency's policies, and could not have nullified that policy.

If appellant had asserted that he had been advised when he interviewed for transfer that he would be reclassified when he passed probation, and that he had relied on this representation in deciding to accept the transfer, this would be a starting point for an argument that the agency should be prevented from relying on its policy in handling his reclassification/regrade.³ However, appellant did not assert that the agency gave him misinformation when he interviewed, but rather that it was unfair for the agency not to have told him at that time that, if he transferred, his reclassification/regrade would not occur at the same time he could have expected had he remained at CWC. However, the law is clear that unless there is a specific provision in the civil service code requiring it with respect to a specific type of transaction, an agency is not otherwise required to advise an employe of his or her rights under the civil service code (as long as it does not

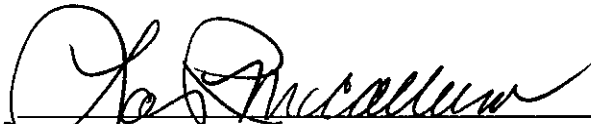
³ In other words, these alleged facts would provide a basis for arguing the existence of the legal principle of equitable estoppel.

actually misrepresent something upon which the employe relies to his detriment). See Jabs v. State Board of Personnel, 34 Wis. 2d 245, 250-51, 148 N.W. 2d 853 (1967).

ORDER

Respondents' actions establishing the effective date of Mr. Barnabo's reclassification as January 22, 1995, is affirmed, and this appeal is dismissed as to him on that basis. This appeal is dismissed as to the remaining appellants for lack of prosecution.

Dated: December 7, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Steven Mayer
3602 Packers Ave., #206
Madison, WI 53704

David Barnabo
2937 Fish Hatchery Rd.
Madison, WI 53713

Bill Becker
520 Yorktown Rd.
De Forest, WI 53532

Tim Farrelly
5601 Hempstead Rd.
Madison, WI 53711

Seth Newman
1157 Sherman Ave., #2
Madison, WI 53703

Joe Leann
Secretary, DHSS
P.O. Box 7850
Madison, WI 53707

Jon Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707

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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