

ROBERT SCHAEFER,
Appellant,

v.

**Secretary, DEPARTMENT OF NATURAL
RESOURCES, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

RULING

Case No. 95-0179-PC

This is an appeal of a position classification decision. The following findings are based on information in the case file and information provided by the parties, appear to be undisputed, and are made solely for the purpose of reaching this ruling.

FINDINGS OF FACT

1. Effective June 17, 1990, as the result of a classification survey of engineering and related positions, appellant's position was reallocated to the Water Supply Engineer-Advanced 1 classification. Appellant did not file a timely appeal of this reallocation decision with the Commission.

2. On June 13, 1991, appellant, with four other employees, filed an appeal with the Commission related to the 1990 reallocation decision. This appeal was assigned Case No. 91-0099-PC. A prehearing conference was conducted on July 29, 1991, in relation to this appeal and the conference report stated as follows under the heading "Further Proceedings:"

It was agreed that this appeal will be dismissed with the understanding that following the further review of the positions in question, as outlined in the July 12, 1991, memo from Mr. Braun to Mr. Pellitteri, appellants will have the right to file an appeal of this transaction if dissatisfied with the results.

3. The memo referenced in this quotation from the report was dated July 12, 1991; was directed to Joseph Pellitteri, Deputy Secretary, Department of Employment Relations, from Bruce Braun, Deputy Secretary, Department of Natural Resources; and stated as follows, in pertinent part:

I was pleased with the discussion we had last Monday. Your offering to review all of the DNR engineer positions which were originally placed at the Advanced 1 level upon implementation of the survey, for potential classification at the Advanced 2 level, is very important to the survey's overall fairness and equity among state agency positions. . . .

If you upgrade the positions to the Advanced 2 level based upon the position description used in the survey, it is my understanding that the effective date will be retroactive to the date the survey was implemented. If changes have occurred since the implementation of the survey, which would justify reclass at this time, the salary increase will not be retroactive. . . .

4. During the time period that the classification of his position was being reviewed pursuant to the agreement reached at the prehearing conference described in finding 2, above, appellant, in 1994, filed a request for the reclassification of his position to the Advanced 2 level. In a memo dated August 4, 1995, it was concluded by classification staff for DNR and DER that essentially no change had occurred in the duties and responsibilities of appellant's position since 1990 and, since logical and gradual change is required in order for a position to be reclassified, reclassification was not justified. However, the memo went on to analyze the duties and responsibilities of appellant's position and concluded that these duties and responsibilities did not qualify for classification at the Advanced 2 level. On August 30, 1995, appellant filed an appeal of this classification decision with the Commission. This appeal was assigned Case No. 95-0179-PC.

5. A prehearing conference was conducted on October 26, 1995, in relation to Case No. 95-0179-PC, at which the parties agreed to the following hearing issue:

Whether respondents' joint decision denying reclassification of appellant's position from Water Supply Engineer-Advanced 1 to Water Supply Engineer-Advanced 2 was correct.

6. The parties appeared as scheduled on February 6, 1996, for the hearing in Case No. 95-0179-PC. In the course of off-the-record discussions, the hearing examiner explained that the decision which would be reviewed in the course of the hearing was the classification decision embodied in the August 4, 1995, memo, not the original 1990 reallocation decision, although there would, of course, be significant overlap since it appeared to be undisputed that the duties and responsibilities of appellant's position had not changed significantly since that time. After further discussion, the parties reached an agreement. The hearing was formally convened for the purpose of recording this agreement. Essentially, the parties agreed as follows:

- a. The respondents would conduct a re-review of the 1990 reallocation decision relating to appellant's position.
- b. This re-review would include a written questionnaire directed to appellant and certain of his colleagues and a group meeting.
- c. Once this re-review was completed and regardless of the outcome, Case No. 95-0179-PC would be dismissed.
- d. Appellant waived his right to appeal the results of this re-review.

7. In a letter to respondents dated March 4, 1996, appellant and certain other employees stated as follows:

Mr. David Vergeront requested that we send a letter to you indicating that we intend not to appeal the anticipated reallocation decision of June 17, 1990. As indicated at my reclassification appeal hearing on February 6, 1996, we will not appeal the final reallocation decision. However, please understand that we do not agree with this decision but in the spirit of cooperation we will abide by the final outcome of the review. We do appreciate that this process will take a little time but hopefully not too much since we have been waiting for this review since June of 1991.

8. In a memo dated March 24, 1998, respondents communicated to appellant the results of the re-review which concluded that appellant's position was appropriately classified at the Advanced 1, not the Advanced 2 level.

9. In a letter to appellant dated April 15, 1998, Chairperson McCallum stated as follows:

I was recently notified that the classification re-review of your position has been completed. I assume, in view of the agreement reached by you and respondents on February 6, 1996, that it would now be appropriate to dismiss the above-referenced appeal. [Case No. 95-0179-PC] As a result, I will recommend to the Commission that this appeal be dismissed at the Commission's next meeting on April 24, 1998, unless I hear from you to the contrary prior to that date.

10. In a letter received by the Commission on April 20, 1998, appellant indicated that he "wished to appeal the most recent decision" by DNR and DER regarding the classification of his position either through Case No. 95-0179-PC or through a newly docketed appeal.

Appellant does not appear to dispute the fact that he waived his right to appeal the results of the recently completed re-review of the classification of his position through the agreement he entered into on February 6, 1996. Appellant appears to be contending that he should not be held to the agreement since it took respondents so long to complete the re-review. Although two years may seem like a long time, the agreement by the parties did not specify a deadline for the completion of the re-review; appellant acknowledged in his letter of March 4, 1996, (see finding 7., above) that it was anticipated that the re-review would take some time; and it is not apparent from the information that has been provided that the passage of two years would be so unreasonable as to justify voiding the agreement. Even though appellant did not file a timely appeal of the 1990 reallocation of his position, he has essentially received two classification reviews of his position's duties and responsibilities which, it appears, have not changed significantly since that time. In exchange for the most recent re-review, appellant agreed to the dismissal of Case No. 95-0179-PC and agreed to give

up his right to appeal the results of the re-review. It would be unjust to permit appellant to avoid his obligations under the agreement after respondents have met theirs. (See, *Garner v. SPD*, 88-0015-PC, 88-0183-PC-ER, 8/11/93) As a result, it is appropriate to dismiss Case No. 95-0179-PC; and to find that appellant has waived his right to appeal the recent re-review decision, and the letter he filed on April 20, 1998, will not, as a result, be docketed as a new appeal.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. As the moving parties, respondents have the burden to show that this case should be dismissed, and that appellant has waived his right to file an appeal of the 1998 classification re-review.
3. Respondents have sustained this burden.


ORDER

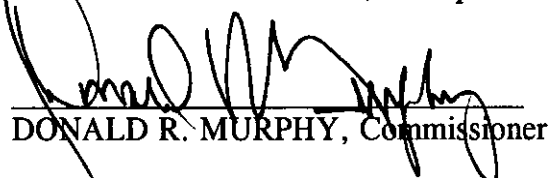
Case No. 95-0179-PC is dismissed. The letter filed by appellant on April 20, 1998, will not be docketed as an new appeal by the Commission since appellant has waived his right to appeal the subject matter of that letter.

Dated: June 3, 1998

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STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


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 (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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