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CHARLES C. RHODES,

Appellant,

v.

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

Respondents.

Case No. 96-0024-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission as an appeal from the respondents' decision to deny the request to reclassify the appellant's position from Regulation Compliance Investigation Supervisor (RCIS) 2 to RCIS 3. The parties stipulated that the effective date of the decision was July 24, 1994.

The appellant in a reclassification case has the burden of proof and must establish by a preponderance of the evidence that the respondents' decision was incorrect. Miller v. DHSS & DER, 92-0840-PC, 1/25/94. The Commission is not limited to reviewing the information that was before respondents when the reclassification decision was made, but may consider all admissible relevant evidence presented at the hearing, regardless of whether it had been available to respondents at the time of the initial decisional process. The appellant's position description is entitled to some weight but is not conclusive and the Commission may consider additional evidence concerning the duties performed by the appellant's position. Bluhm v. DER, 92-0303-PC, 6/21/94.

The RCIS position standard provides, in part:

REGULATION COMPLIANCE INVESTIGATION SUPERVISOR 2

This is supervisory work in a regulation compliance investigation program. Employees in this class typically supervise a staff of Regulation Compliance Investigators and other employees and are involved in program management activities. Work is performed under the general supervision of higher level program supervisors.

Representative Positions:

Under general direction, supervises a staff of Consumer Specialists and Regulation Compliance Investigators in a regional consumer protection office in the Department of Agriculture, Trade and Consumer Protection. In addition, employe also directs the regional weights and measures program of the department, supervising several Weights and Measures Inspectors.

Under the direction of an Assistant Attorney General, organizes and manages the Department of Justice's statewide consumer protection program. Supervises and trains a staff of Regulation Compliance Investigators, as well as conducts the most complex investigations.

REGULATION COMPLIANCE INVESTIGATION SUPERVISOR 3

This is supervisory work in a regulation compliance investigation program. Employes in this class typically supervise a staff of Regulation Compliance Investigators and other employes and have significant involvement in program planning, implementation and evaluation activities. Work is performed under the direction of higher level program supervisors.

Representative Positions:

Under general direction of a Section Chief, position supervises, directs and coordinates the statewide investigation and inspection program regulating motor vehicle manufactures [sic], distributors, dealers, mobile home dealers, and related areas through the supervision of two regional supervisors and a central office staff.

Under the general direction of an Assistant Attorney General, supervise either the Madison or Milwaukee Regional Medicaid Fraud Control Units in the Department of Justice. Positions supervise a staff of Regulation Compliance Investigators, Auditors and related staff in the investigation of Medicaid Fraud cases.

The appellant was hired as a RCIS 2 in the subject position in DOT's Motor Vehicle Emissions Inspection Section, Bureau of Field Services, in July of 1991. At all relevant times, the appellant's supervisor has been Harold (Pat) Schachte, District Supervisor, who in turn has been supervised by Don Dean, Section Chief. Mr. Schachte's position is classified at the RCIS 3 level.

In 1993, appellant prepared a revised position description as part of an effort to reclassify his position. The position description was not signed by the

appellant until April of 1994.¹ The position summary includes the following language:

Under the general direction from the district supervisor of the Inspection/Maintenance Section, Division of Motor Vehicles, supervise, direct, coordinate, and train the waiver surveillance investigator/quality assurance function for the Inspection/Maintenance (I/M) Program. Duties are assigned by the district supervisor and are accountable to the district supervisor, and include first line supervision of four state waiver investigators, one quality assurance investigator, and one motor vehicle program specialist, and the oversee [sic] of all contracted waiver investigators. The work location is southeastern Wisconsin. Areas of supervision include the comprehensive waiver surveillance process for vehicles failing to pass an emissions inspection, activities and work schedules of assigned investigators, a quality assurance process to assure contractor compliance with the contract for vehicle testing operations and public service, a technical information and training program for auto repair technicians and the general public.

* * *

In the absence of the district supervisor, the incumbent is responsible for the Bureau of Field Service's Milwaukee Regional Phone Center, which has one lead worker, eight permanent employees, and occasional LTE's.

Also in the absence of the district supervisor, supervises the Complaint/Inquiry Section which consists of two Consumer Specialists and two Motor Vehicle Representative 2's.

The work is performed under general direction of the district supervisor and is reviewed through conferences and periodic reports and discussions of problem situations.

Where an appellant's position could plausibly be described by the definition statements of both of the classifications in issue, determination of the appropriate level rests primarily on the examples of work performed and a comparison to other positions in the series. Fay v. DER, 92-0438-PC, 7/7/94.

The only two position descriptions in the record are the 1991 and 1994 position descriptions for the appellant's position. Appellant offered no com-

¹The appellant implied that the position description he prepared in 1993 was not an entirely accurate description of his duties by July of 1994. However, the appellant did not specify the portions of the position description he contends were incorrect. Appellant did not provide a more accurate description of his duties.

parisons to other RCIS 2 or 3 level positions in an effort to justify the reclassification of his own position.

However, the appellant's own supervisor, Mr. Schachte, fills a position at the RCIS 3 level. Even though his position description is not of record, evidence reflects that Mr. Schachte directly supervises the Bureau's Regional Phone Center and the Complaint/Inquiry unit as well as serving as the second level supervisor, over the appellant, for the waiver and quality assurance functions.² Mr. Schachte's position clearly has significantly broader scope than the appellant's position. Mr. Schachte also reports to the section chief, while the appellant reports to the section chief's subordinate, the district supervisor.

Where, as here, the appellant's position falls within the general language of the RCIS 2 classification, the appellant has failed to identify any RCIS 3 positions that would tend to support classification of the appellant's position at that level, and appellant's immediate supervisor is classified at the RCIS 3 level, the appellant has not met his burden of proof.³

²The reclassification request "Justification," a portion of Resp. Exh. 3, describes the accountability of the appellant as follows:

The incumbent is responsible to the Section Chief, Inspection Maintenance, Bureau of Field Services for performance of the work described in this position description.

Incumbent, at his/her discretion, periodically reports progress to Section Chief towards problem resolution and/or court or Commissioner of Transportation action on investigative cases involving a number of issues, a number of complaint trends, pending cases, etc. Recommended statute or rule changes are reviewed by Section Chief.

This language is inconsistent with the supervisory function actually performed by Mr. Schachte. It is contrary to the testimony of Mr. Schachte, to the testimony of Donald Dean, Section Chief, and to the testimony of Doug Thompson, Deputy Bureau Director for the Bureau of Field Services. The record shows that the section considered changing the reporting relationship for the appellant's position, but that change was never effectuated.

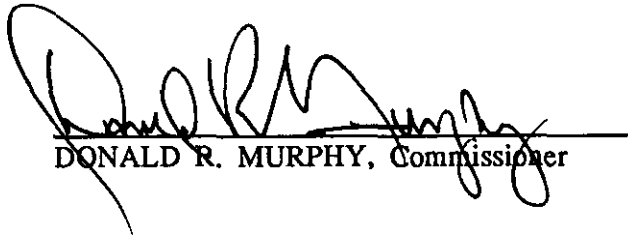
³One of appellant's witnesses, Gary Kastorff, testified that he felt the appellant's duties met the RCIS 3 classification level. Mr. Kastorff is currently employed as a RCIS 3 and previously worked in the vehicle emission and inspection program. However, Mr. Kastorff's opinion was premised on the information found in the justification for reclassification. As noted above in footnote 2, the justification does not reflect appellant's actual duties. Therefore, Ms. Kastorff's opinion is not entitled to any weight.

ORDER

The respondents' decision to deny the request to reclassify the appellant's position is affirmed and this appeal is dismissed.

Dated: August 5, 1996 STATE PERSONNEL COMMISSION

KMS:kms
K:D:Merits-reclass (Rhodes)


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. 2/3/95