

THOMAS A. VAN BEEK,
Appellant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

FINAL
DECISION
AND ORDER

Case No. 97-0102-PC

This matter is an appeal pursuant to §230.44(1)(b), Stats., of a decision by the respondent Department of Transportation (DOT) to deny a request for reclassification of appellant's position from Engineering Technician Transportation 3 (ET Trans 3) to Engineering Technician Transportation 4 (ET Trans 4).¹

A Proposed Decision and Order (PDO) was mailed to the parties on June 4, 1999. The appellant filed written objections to the PDO. The Commission considered the arguments raised in the post-hearing briefs, as well as appellant's written objections to the PDO. The Commission agrees with the hearing examiner's assessment of witness credibility. As its final decision, the Commission adopts the PDO with footnotes used to explain why changes were made.

I. Background²

Appellant's workplace is the Central Office Sign Manufacturing Facility (Sign Shop) in respondent's Office of Traffic, Bureau of Highway Operations. Appellant first started with respondent in December 1988 in this same unit as an Engineering Aide.

¹ The statement of the hearing issue was amended to comport with the name of the classification specifications at issue. This change resulted in other changes to the decision where the terminology used was inconsistent with the terminology used in this amendment

Following a 1990 survey of Engineering Technician positions, appellant's position, with others in the Sign Shop, was reallocated to ET Trans 1. In late 1992 or early 1993 appellant requested reclassification of his position to ET Trans 2. Respondent denied the request, but later reclassified the position to the 2 level after appellant filed an appeal with the Commission. As an ET Trans 2, appellant worked primarily in two of five operational areas of sign production: stenciling and carpentry. Appellant spent the majority of his time producing reports and charts required by the production of signs, and investigating methods to improve the sign production process. Appellant utilized the computer and various software programs (Lotus, WordPerfect and Harvard Graphics) to produce the reports and charts.

In early 1994, computer equipment was installed in the Sign Shop which uses a software program called CADDs (Computer Aided Design and Drafting Systems) to replace manual drafting of sign drawings. Appellant learned to use the CADDs computer drafting system to produce standard sign drawings, stencils and die-cut letters for sign production. Appellant's position description was amended twice in 1994 to reflect his increased use of CADDs in his work.

As a result of his use of CADDs, appellant in 1995 requested reclassification of his position into either the Engineering Specialist - Transportation or the CADDs Specialist classification series. Respondent denied the request but acknowledged appellant's newly acquired CADDs skills and reclassified the position to ET Trans 3. A good summary of the reason for this decision is included in this excerpt from respondent's memorandum (Exh. R-6) dated January 9, 1996³:

The classification specifications for the Engineering Technician Transportation 3 level state that, "this is a developmental level and a journey level classification within a technical engineering function . . . the position performs technical work in . . . traffic marking or signing work . . . this level requires more technical knowledge for successful performance of the tasks assigned to the position and the employe performs the tasks with greater independence than the previous level . . ."

² Headings were added as reading guides.

³ Respondent's reasons for denying the request were added as background information.

This position is clearly operating at a higher level than the Engineering Technician Transportation 2 level. Mr. VanBeek functions independently and under general supervision. He is fully responsible for the development of new standard sign drawings, non-standard message details, new designs for pavement marking and other fleet equipment. Mr. VanBeek's responsibilities and level of work require more technical knowledge for successful performance of the tasks assigned to the positions. In addition, Mr. VanBeek performs these tasks with greater independence than the previous level. The work being performed by Mr. VanBeek compares favorably to the level of other positions at the Engineering Technician Transportation 3 level.

Appellant appealed the decision to the Commission, but later withdrew it on the belief that his position would be open to competition if it were reallocated into either of the requested classification series. The Commission dismissed the appeal (Case No. 96-0072-PC) in July 1996.

On June 20, 1997, appellant's supervisor submitted a request for reclassification of appellant's position from ET Trans 3 to ET Trans 4. Respondent, by memorandum dated September 18, 1997, denied the request stating as shown below in pertinent part (with same emphasis as in the original document)⁴:

On the new position description, Goals A & B reflect the majority of the work. Goal A was increased from 15% to 50% and reads, Development of sign design." This includes reviewing sign orders, developing draft standard and non-standard sign designs, and, preparation of dimensioned drawings for sign production staff. This is technical signing work as referred to in the specifications at the Engineering Technician Transportation 2 level. Goal B is 30% and reads, "Coordinate production of sign message units." This includes reviewing sign orders and consulting guidelines for correct size and series of sign message letters/numbers. Again this is technical signing work as referred to in the specifications at the Engineering Technical Transportation 2 level.

Although Mr. VanBeek's position is closely identified at the Engineering Technician Transportation 2 level, the allocation pattern at Department of Transportation has been established at the 3 level. While Mr. VanBeek may have assumed a few additional activities, it is not

⁴ Respondent's reasons for denying the request were added as background information.

enough to change the level of the position and break the existing allocation pattern determined by the Engineering Survey.

II. Duties of Appellant's Position

Appellant's position description signed by him on June 20, 1997, and submitted by supervisor Chester Spang in his request for reclassification of the position to ET Trans 4 provided as follows:

TIME% GOALS AND WORKER ACTIVITIES

50% A. Development of sign designs.

- A.1 Review sign orders and develop draft standard and non-standard sign designs based on federal and state guidelines.
- A.2 Consult with districts to resolve message content and layout and prepare dimensioned drawings for sign production staff.
- A.3. Investigate and develop new and/or upgrade the existing library of standard highway signing detail plates including conversion to metric.
- A.4 Maintain computerized files and document the process used for storage of these sign detail plates.

30% B. Coordinate production of sign message units.

- B.1 Review district sign orders, consult with district and shop staff to gather information required to fabricate signs.
- B.2 Consult federal and state guidelines for correct size and series of sign message letters/numbers.
- B.3 Produce all message materials required to meet production needs.

15% C. Design and produce stencil layouts and screens for Stenciling Unit.

- C.1 Review district sign order and utilizing CADDs work station and plotter, design, layout and cut new paper stencils.
- C.2 Develop positives and Negatives for use in the production of permanent silk screens.
- C.3 Apply fabric to screen frames, coat fabric with photo emulsion solution, expose screens on a vacuum light table, wash out screens and place in inventory.
- C.4 Develop and maintain an inventory of all the permanent screens and monitor for repairs.
- C.5 Maintain inventory of all raw materials utilized in the photo emulsion screen production process and order replacement materials, as needed.

- 05% D. Investigation of traffic materials and application/production process.
- D.1 Research, obtain and compile technical data and specifications for new screen making processes and make recommendations to supervisor.
 - D.2 Attend seminars and prepare reports detailing findings for improving current sign production methods.
 - D.3 Visit other sign production facilities, share ideas and processes and report back to supervisor.
 - D.4 Train other shop staff on the utilization of the CADDs unit, wild flatbed plotter and the screen making production process.
 - D.5 Research and prepare special dimensioned details for the Pavement Marking Shop and the Electrical Shop.
 - D.6 Design and fabricate special requests for the districts, Central Office needs and other outside public agencies.
 - D.7 Maintain inventory of component machine pieces for the plotter system, research technology advances and order new material, as needed.⁵

Mr. Spang provided information with his reclassification request (Exh. A-9).

Excerpts are shown below:⁶

Provide any other information you believe supports a different classification for this position (i.e., less supervision, greater level of responsibility, increased discretion and independence). If the work is highway improvement project related, identify specifics that describe higher level projects (i.e., cost, bid items, traffic control, environmental issues, utility conflicts, etc.).

The employee has taken on a greater level of responsibility in dealing directly with the districts on sign request rather than always going through me. This was a gradual and logical progression as employee became more competent and knowledgeable about signing in general. The full time supervisor and shop coordinator positions were abolished in '95 so remaining employees have taken on greater levels of responsibility and adopted a team atmosphere to accomplish the work effort.

Reference and/or explain how the class specification language of the higher level classification describes the new duties.

⁵ The knowledge and skills section of the PD was omitted solely for the sake of economy.

⁶ Portions of this section were omitted solely for the sake of economy.

There are no class specs for the Tech 4 series in the sign fabrication area. One of the duties of the Const/Design Tech is to assist in preparation and completion of highway design plans and specifications. Tom's preparation of standard highway signing detail plates is a direct parallel since these plates are part of the highway design plan/contract. Details for a proposed intersection versus details for a sign layout. Details are details! (dimensioned drawings)

III. ET Trans Classification Specification⁷

The ET Trans classification specification, in pertinent part, provides as noted below. In all cited sections the bold type was added for emphasis.

I.A. INTRODUCTION

A. Purpose of This Classification Specification . . .

Positions allocated to this series perform duties ranging from the relatively simple routine and repetitive tasks with close supervision to responsible and complex technical work under general direction in the field of architecture or engineering in the planning, design, construction, operation or maintenance of transportation facilities. These facilities include, but are not limited to: state highways, bridges, rest areas and airports . . .

E. Classification Factors: Individual position allocations are based upon the general classification factors from the Wisconsin Quantitative Evaluation System (WQES) described below:

1. Knowledge Required . . .
2. Job Complexity . . .
3. Consequence of Error . . .
4. Effect of Actions . . .
5. Amount of Discretion . . .
6. Physical Effort . . .
7. Surroundings . . .
8. Hazards . . .
9. Personal Contacts . . .
10. Supervisory Responsibilities . . .

F. How to Use this Classification Specification: . . . In most instances, positions included in this series will be identified clearly by one of the classification definitions which follow . . . **How-**

⁷ This section was expanded to include more language from the classification specification.

ever, a position may evolve or be created that is not specifically defined by one of the classification definitions. In classifying these positions, it would be necessary to compare them to the classification definitions based on the factors described (above).

II. Definitions . . . [Includes definitions for Engineering Aid 1-2 and ET 1-6]

This classification specification specifically recognizes signing work (but without mention of a CADDs component) at the ET Trans 2 level, as noted below. The general definition is shown first, followed by the related allocation pattern.

ENGINEERING TECHNICIAN 2: This is a developmental and journey level classification within a technical engineering function. At this level, the position performs technical work in design, construction, analyzing traffic and/or land use patterns and problems, **marking or signing work**. Work is performed with limited to general supervision.

Examples of typical duties of positions at the Engineering Technician 2 level are listed below. Other examples of duties are provided under the higher levels of Engineering Technicians. For these positions, the Engineering Technician 2 level is considered to be developmental . . .

Central Office . . . Traffic . . .

Equipment and Manufacturing Technician: This position directs the assembly of large freeway guide signs under the direction for sign preparation from the shop coordinator; assigns and directs lower level aids or technicians; designs and completes the layout of the design of signs to be stenciled; directs the preparation of silk screens and other stencils/ cuts stencils/ organizes the work for the stenciling process.

The appellant's use of CADDs was recognized when his position was classified to the ET Trans 3 level. The ET Trans 3 definition is shown below, followed by the central office - transportation allocation pattern most similar to the appellant's position.

ENGINEERING TECHNICIAN 3: This is a developmental level and a journey level classification within a technical engineering function. At

this level, the position performs technical work in planning, design, construction, testing materials, inspection, **traffic marking or signing work**. This level requires more technical knowledge for successful performance of the tasks assigned to the position and the employee performs the tasks with greater independence than the previous level . . .

Examples of typical duties of positions at the Engineering Technician 3 level are listed below . . .

Central Office . . . Traffic . . .

Equipment Technician: This position constructs and repairs marking and signing equipment as required by the Districts; assists in the design of equipment and layout of components on new and rebuilt pavement markers; assists in the design of special equipment; constructs equipment such as furnaces, compressors, paint pump, air motors and other marker equipment.

The ET Trans 4 definition is shown below. There is no separate allocation pattern for central office – traffic. The example shown below is the closest to the duties performed by the appellant.

ENGINEERING TECHNICIAN 4: This is journey level engineering technician work in the planning, design, construction, maintenance and operation of transportation facilities. Positions allocated to this level differ from those allocated to lower levels by assignment of different duties; independence of work; and complexity of work.

Examples of typical duties of positions at the Engineering Technician 4 level are listed below.

These positions are located in the Construction and/or Design Sections or the Construction/Design pool performing construction-related activities and/or design-related activities. These positions assist the construction project manager or the design squad leader, occasionally function as the project leader for small construction projects or function as a design squad leader, or complete technical tasks in highway design and construction. **Specific construction duties include**: Direct foreman and superintendents of contractors and subcontractors on the larger highway construction projects . . . **Specific design duties include**: Assist

in preparation and completion of highway design plans and specifications; develop plans and other contract documents for proposed highway improvement project; lay out details for proposed intersections, roadway geometrics, and other design features; compute estimated construction quantities; instruct and direct other technicians; compute and plot information from field surveys for use in plan development of a design project; assist drafting personnel with the layout and draft of details, plan sheets and plats.

IV. Which Classification is the Best Fit?⁸

Once factual determinations have been made as to the specifics of an incumbent's job, they must be applied to the various specifications. The specification providing the "best fit" is used to determine the actual classification. The "best fit" is determined by the specification reflecting job duties and activities within which the employe routinely spends a majority of his/her time. *DER & DP v. Pers. Comm. (Doll)*, Dane Co. Cir. Ct., 79-CV-3860, 9/21/80; appeal settled, Ct. App., 80-1689, 2/9/91.

The Commission, for purposes of this analysis, accepts as true appellant's assertion that the ET-Trans classification specifications are unclear to the extent that the use of CADDs in certain tasks is not specifically addressed therein. Respondent recognized appellant's use of CADDs when his position was reclassified to the ET Trans 3 level. Since that time, the appellant's position has changed with increased sign-design tasks and decreased sign-construction tasks.

The appellant argues that his use of CADDs is a professional-level task and, as supporting evidence, he points to positions classified under the CADDs Specialist series. The appellant's testimony and that of his witnesses (Spang and Anderson) were able to equate the appellant's job with positions classified under the CADDs Specialist series only to the extent that the appellant and the incumbents of the other positions used CADDs and that, for example, CADDs directories and files were maintained. The witnesses, including the appellant, acknowledged that the CADDs Specialist

⁸ This section was changed to clarify the decision rationale.

positions used CADDs in different contexts than the appellant. For example, the position held by Creapeau uses CADDs to produce graphical files of new roadway alignments using COGO data and other information supplied by designers. The appellant does not use CADDs to develop roadway plans. The position held by Creapeau also uses CADDs to create and update construction details and roadway typical sections – a use of CADDs not expected of the appellant’s position. In essence, the appellant is asking the Commission to recognize any use of CADDs as a professional-level task without consideration of the context in which CADDs is used.

The appellant’s argument is similar to claiming that any job using a computer word-processing program should be classified at the same level regardless of the context in which it is used. For example, the appellant’s argument would not take into consideration whether the computer program were used by a secretary to create scheduling letters or by a hearing examiner to write a decision after hearing. His approach is invalid as it fails to take into consideration that the context in which the computer program is used impacts on the knowledge required to perform the job, the complexity of the job, the consequence of error and other WQES factors.

The appellant argues that his duties are described in the ET-Trans 4, Construction/Design Technician position as, “[a]ssist[ing] in preparation and completion of highway design plans and specifications . . . and other design features.” Again, the appellant is asking the Commission to ignore the context in which the ET-Trans 4 position operates. While a sign design may be a component of a highway design plan, the appellant does not lay out details for proposed intersections, compute estimated construction quantities or similar level of work.

Two ET-Trans 4 PDs are in the record. The position described in Exh. A-20 (Allyn Page PD), uses CADDs, CEAL and EWS programs to perform the duties reflected by the Position Summary section of the PD, as shown below:

Exh. A-20: Under general supervision, and as part of the Right of Way Plat Area, in accordance with district policies and the FDM, this individual prepares real estate plats for unit projects, reviews plats prepared

by others, performs plat revisions and prepares legal descriptions. This individual also provides the Real Estate Section with plat information and legal descriptions necessary to complete the property management process and also provides services to other relating to real estate matters.

The position summary portion of the PD marked as Exh. A-21 (Dennis Dettman PD), is shown below:

Under the supervision of a District Project Development Supervisor, the major responsibility of this position is to assist in the investigation, development and design of highway and bridge construction plans for contract letting under the direction of the Project Designer or Design Squad Leader. The position is responsible for assisting in the development of routine to complex roadway plans, layouts and special detail drawings, preparing basic miscellaneous engineering computations, and checking and reviewing the correctness of technical work done by others.

Both positions described above require knowledge which is not required of the appellant's position. Both positions described above are more complex than appellant's design and/or construction of highway signs.

The appellant is the only ET Trans 3 in his office who primarily works in designing highway signs using CADDs. He contends this means his work is more complex than his co-workers' and, accordingly, he should be at a higher classification. His position may be more complex than his co-workers' positions. However, it is not uncommon for two positions to be somewhat different in terms of their levels of responsibility, etc., and yet be classified at the same level when the degree of difference is insufficient to justify classification at the higher level. *See Miller v. DHSS & DER*, 92-0840-PC, 1/25/94. The appellant must show entitlement to the higher classification level by a preponderance of the evidence. *See Ellingson v. DNR & DER*, 93-0057-PC, 5/28/96, where the Commission observed that it is appellant's burden to show that his position is correctly classified at the higher level. Here, the appellant failed to establish that the duties of his position are at a similar level of complexity and similar in terms of the other WQES factors contemplated at the ET Trans 4 level.

Appellant testified that an ET Trans 3 position held by pavement marking technician James Emmons was recently reclassified to the 4 level. The problem is that the record does not include a description of the work performed by Mr. Emmons at the time his position was reclassified to the 4 level. The most recent PD in the record for Mr. Emmons is Exh. A-24, at the ET Trans 3 level. The duties described therein are consistent with the classification specification allocation pattern for an "equipment technician" at the ET Trans 3 level. There is no indication that Mr. Emmons' advancement to the 4 level was based upon the same duties as he performed at the 3 level. As a comparison, the duties performed by Mr. Dettman at the ET-Trans 3 level were the same as performed when his position was reclassified to the 4 level, as shown by box 6 on the first page of his PD where the "3" was crossed out and a "4" written in with an effective date.

ORDER

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

Dated: August 31, 1999.

DRM:rjb:970102Adec2

STATE PERSONNEL COMMISSION


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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