

STATE OF WISCONSIN

PERSONNEL COMMISSION

**WENDY SWALLOW (THOMPSON),**  
*Petitioner,*

v.

**Secretary, DEPARTMENT OF**  
**CORRECTIONS,**  
*Respondent.*

**FINAL DECISION AND**  
**ORDER**

Case Nos. 97-0125-PC, 98-0074-PC-ER

The Commission, as noted herein, made changes to the proposed decision to reflect the legal rationale of the full Commission. Credibility was not a factor in any of the changes made. The changes are highlighted for the parties through use of alpha footnotes.

A hearing was held in the above-noted case on November 12, 1998. The post-hearing briefing schedule was delayed at petitioner's request first so she could obtain copies of the hearing tapes and later to accommodate her attorney's litigation schedule. A brief was filed on behalf of the petitioner by letter dated March 8, 1999. Respondent filed a reply by letter dated April 9, 1999. Petitioner's reply brief was due by April 19, 1999, but no reply brief was filed.

The parties agreed to the following statement of the hearing issues at a prehearing conference on April 20, 1998 (see Conference Report dated April 21, 1998):

Case No. 97-0125-PC

Whether respondent's failure to hire appellant for the position in question constituted an illegal act or an abuse of discretion.

Case No. 98-0074-PC-ER

Whether respondent retaliated against complainant in violation of the Whistleblower law or the WFEA with respect to the aforesaid failure to hire.

#### FINDINGS OF FACT

1. Ms. Swallow married after she filed these cases. Her married name is Thompson. She is referred to in this decision as the petitioner.

2. The basis for the petitioner's whistleblower claim is described in this paragraph. The petitioner began working for respondent in September 1995, at Oakhill Correctional Institution in a Nursing Consultant 2 position. On Monday, February 24, 1997, she and Pam (another nurse working at Oakhill) asked for a meeting with Sharon Zunker, respondent's Director of the Bureau of Health Services (hereafter referred to as "Director Zunker.") Also at the meeting was Cynthia Schoenike, respondent's Assistant Administrator of the Division of Adult Institutions. Ms. Schoenike supervised Director Zunker. The petitioner and Pam discussed at this meeting their concerns about their supervisor at Oakhill, Linda Kleinsteiber; including questions about timesheets, training approvals and the potential of contraband at the institution. Respondent decided to investigate some of the allegations and such investigation resulted in dismissal of Ms. Kleinsteiber in or around April 1997. Director Zunker was briefed on the outcome of the investigation and she was involved in the decision to dismiss Ms. Kleinsteiber. By letter dated March 13, 1997, the petitioner filed a "Whistleblower Complaint Form" with Scott Peterson, respondent's Executive Assistant in the Office of the Secretary (see, Exh. C-1), the cover letter of which contained the following text (with same emphasis as appears in the original document):

Enclosed please find a *Whistleblower Complaint Form*. The attached 11 pages of notes were given to Sharon Zunker on Wednesday, 26Feb97. Supporting documentation for the above referenced pages was also given to Ms. Zunker on above date. Sharon Zunker and Cynthia Schoenike requested this documentation on Monday, 24Feb97 at 1700 when Pam and I met with them at the DOC office on E. Wilson Street, Madison, WI.

We fear retaliation, including harassment, at our job site once this information source becomes known. We also seek protection in the unlikely event that these problems are not corrected and we need to go beyond the DOC people we've already spoken with.

Please contact us should you require any additional information or have any questions . . . ^

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<sup>^</sup> The changes made in ¶2 of the Findings of Fact were made to clarify that the "complaint" filed by the petitioner's letter dated March 13, 1997, was filed within DOC (as opposed to a formal filing with the Personnel Commission). The paragraph also was changed to provide the text of the letter.

3. After Ms. Kleinsteiber was discharged, Elaine Wheeler (on a half-time, temporary basis) assumed some of the duties previously performed by Ms. Kleinsteiber. Ms. Wheeler had known that the petitioner's husband-to-be transferred to the new correctional center in Prairie du Chien. In September 1997, Ms. Wheeler told the petitioner that a vacancy existed at the Prairie du Chien correctional center for a Nursing Consultant 1 (NC1) position. Ms. Wheeler told the petitioner that the petitioner would be an excellent candidate for the position. The petitioner applied for the NC1 vacancy. She later heard that interviews would be held yet she had not been contacted for an interview. She followed up and was advised by Beatrice Chatman that respondent could not locate her application. She submitted a second application (Exh. R-127) and was interviewed for the position.

4. Three candidates were interviewed for the NC1 position, including the petitioner, Mary Meisch and Margaret Frank. All interviews were held on October 31, 1997. .

5. Respondent decided to fill the NC1 position shortly after a decision was made to contract for services at the Prairie du Chien institution. The vacant position was to be filled by a registered nurse (RN) whose main responsibility would be to monitor contract performance and compliance. Further delay existed in the hiring process until a decision was made that Director Zunker would supervise the vacant position.

6. Director Zunker reviewed the position description for the vacant NC1 position and worked with respondent's personnel office on recruiting. Director Zunker wrote the interview questions and related benchmarks without help from anyone. She set up the interview panel. She conducted reference checks after the interviews were completed and she made the hiring recommendation to Ken Sondalle and Cindy Schoenike who together were considered as the hiring authority for the position.

7. The individuals who served on the interview panel were James LaBelle, Robert Cohen and Director Zunker. At the time of interviews, Mr. LaBelle was respondent's Health Services Sector Chief at the Racine Correctional Center. Mr. Cohen was the Assistant Director of respondent's Bureau of Health Services. Director Zunker was aware of the petitioner's

participation the activities noted in paragraph 2 above<sup>B</sup>, whereas Mr. LaBelle and Mr. Cohen were not.

8. The interview questions and benchmarks are shown in the table below (Exh. R-109). One point was given for each benchmark mentioned in a candidate's interview. The questions and benchmarks were related to the duties of the vacant position.

Question	Benchmarks
1. You have had an opportunity to review the Position Description for this position. What training and education have you had which you believe has prepared you for this position.	<ul style="list-style-type: none"> <li>• Nursing Associate Degree</li> <li>• Nursing Diploma</li> <li>• BSN</li> <li>• MSN</li> <li>• PhD</li> <li>• Continuing education specific to assessing, evaluating, and/or completing audits.</li> <li>• Statistical classes</li> <li>• Research</li> <li>• Other</li> </ul>
1a. What experience have you had which you believe has prepared you for this position?	<ul style="list-style-type: none"> <li>• Nursing for               <ul style="list-style-type: none"> <li>-less than 3 years</li> <li>-3-5 years</li> <li>-6 years or more</li> </ul> </li> <li>• Actual audit/monitoring experience for               <ul style="list-style-type: none"> <li>-less than 1 year</li> <li>-1-3 years</li> <li>-4-6 years</li> <li>-6 or more years</li> </ul> </li> <li>• Additional:               <ul style="list-style-type: none"> <li>-Report Writing</li> <li>-Research</li> <li>-Statistics</li> <li>-Corrections</li> <li>-Other</li> </ul> </li> </ul>
2. If you were developing a form to record the results of an audit of the functioning of a Health	<ul style="list-style-type: none"> <li>• Title</li> <li>• Facility</li> <li>• Date of Report</li> <li>• Audit members</li> <li>• Who the form was completed by</li> </ul>

<sup>B</sup> This sentence was changed to simply refer to the activities noted in ¶2 of the Findings of Fact, rather than to characterize them as whistleblower activities.

<p>Services Unit, what would that form contain?</p>	<ul style="list-style-type: none"> <li>• Questions(s) to be answered by audit</li> <li>• Method of audit (chart review, interviews of inmates, interviews of health staff, interviews of other staff.)</li> <li>• Listing of screens or issues</li> <li>• Listing findings of each method used</li> <li>• Method of scoring or rating</li> <li>• Name of reviewer of audit</li> <li>• Other</li> </ul>
<p>Q3.<sup>1</sup> Construct a complete audit form on the standard of credentialing (licensure, certification and registration requires for enumerated health-care professionals).</p>	<ul style="list-style-type: none"> <li>• Check written policy and procedure present and current</li> <li>• Records kept of licensure and for certification of each practitioner</li> <li>• Listing of all licenses/credentials needed</li> <li>• Record checks</li> <li>• Interview with person designated to check credentials</li> <li>• Check of restrictions/disciplinary action</li> <li>• Other</li> </ul>
<p>Q4.<sup>2</sup> Construct a complete audit form for a multidisciplinary Health Services Unit for the standards of: Daily handling of non-emergency medical requests and sick call.</p>	<ul style="list-style-type: none"> <li>• Checked policy and procedure covering:             <ul style="list-style-type: none"> <li>• Chart review</li> <li>• Inmate interview</li> <li>• Health staff interview</li> <li>• Correctional staff interview</li> <li>• Method of request</li> <li>• How often sick call is held                 <ul style="list-style-type: none"> <li>- inmate requesting medical assistance daily</li> <li>- inmate requests are documented</li> <li>- requests received, triaged, and acted on by qualified health care professionals</li> <li>- when health care professionals are not available, health trained correctional personnel ensure timely access to health care</li> </ul> </li> </ul> </li> <li>• How often and long physician on site</li> <li>• Triage occurs within 24 hours</li> <li>• Evidence evaluation and treatment occurs within 48 hours (72 on weekends)</li> <li>• Referral and evaluation by physician within one week</li> </ul>

<sup>1</sup> Question 3 is paraphrased and summarized in the chart due to its length.

<sup>2</sup> Question 4 is summarized and paraphrased in the chart due to its length.

	<ul style="list-style-type: none"> <li>• Sick call 2 times-came complaint-refer to Dr.</li> <li>• Check of complaints concerning sick call</li> <li>• Check of hospital emergency room visits</li> <li>• Adequate Dr. hours/100 clients</li> <li>• Other</li> </ul>
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9. Each candidate was taken to a work area and was given one hour to develop written responses to the third and fourth questions. The written responses were reviewed by the interview panel.<sup>c</sup>

10. The scores given by each interview panelist for the petitioner (P) and Ms. Meisch (M) are shown in the chart below.

Question	Cohen Scores <sup>3</sup>	LaBelle Scores <sup>4</sup>	Zunker Scores <sup>5</sup>
1.	P- 1 point M- 4 points	P- 1 point M- 6 points	P- 1 point M- 6 points
1A.	P- 2 points M- 6 points	P- 2 points M- 7 points	P- 2 points M- 9 points
2.	P- 2 points M- 1.25 points	P- 1 point M- 2 points	P- 1 point M- 2.25 points
3.	P- 2 points M- 0 points	P- 2 points M- 0 points	P- 2 points M- 0 points
4.	P- 2 points M- 8 points	P- 2 points M- 6 points	P- 2 points M- 7 points

11. Ms. Meisch did not answer the third interview question. The interviewers did not know whether she ran out of time or inadvertently failed to respond. Ms. Meisch scored sufficiently high enough on the questions she did answer that she was the top-ranked candidate. Ms. Meisch testified at hearing that she recognized the fourth interview question but not the third one. It is most likely that she inadvertently failed to respond to the third question.

<sup>c</sup> This finding was revised for the purpose of clarifying the record.

<sup>3</sup> See exhibit R-121 for the petitioner's scores and exhibit R-118 for Ms. Meisch's scores.

<sup>4</sup> See exhibit R-122 for the petitioner's scores and exhibit R-117 for Ms. Meisch's scores.

<sup>5</sup> See exhibit R-120 for the petitioner's scores and exhibit R-116 for Ms. Meisch's scores.

12. On November 4 or 5, 1999 (2 or 3 working days after the interviews) Director Zunker recommended that Ms. Meisch be hired because she scored significantly higher (64.5) on the interview questions than the petitioner (24.0) and Ms. Frank (19.0).

13. Benchmark points were given only for information disclosed by a candidate during the interview. For example, a candidate would be given benchmark credit for being a nurse but only if the candidate disclosed at the interview that she was a nurse. This was true even though the interviewers knew that each person being interviewed was required to be a nurse. This approach was taken to avoid giving an unfair advantage to candidates known by the interviewers. Only Ms. Frank was unknown to any of the interviewers. Candidates were told at the start of the interview that they should respond to questions as if the interviewers did not know the candidates.

14. It was discovered at hearing that interviewers LaBelle and Cohen made inadvertent errors in scoring. The petitioner's total score still would have been significantly lower than Ms. Meisch's score even if the errors had not occurred.

15. A degree of confusion existed in regard to the benchmarks for question 1a, as described in this paragraph. The confusion relates to the benchmarks for the criteria of "Nursing" and "Actual audit/monitoring experience." Both criteria had benchmarks based on the candidate's length of experience, as shown below:

Criteria	Benchmarks
Nursing	<ul style="list-style-type: none"><li>• Less than 3 years</li><li>• 3-5 years</li><li>• 6 years or more</li></ul>
Actual audit/monitoring experience	<ul style="list-style-type: none"><li>• Less than 1 year</li><li>• 1-3 years</li><li>• 4-6 years</li><li>• 6 or more</li></ul>

The confusion favored the petitioner and worked against Ms. Meisch. For example, Ms. Meisch told the interviewers she had 6 or more years of experience in nursing. Director Zunker took the correct approach and gave Ms. Meisch 3 total points for the answer (one point for meeting each of the nursing benchmarks). Mr. Cohen and Mr. LaBelle incorrectly

gave Ms. Meisch only one point for her nursing experience. Ms. Meisch would have received four additional points for the nursing criteria if Mr. Cohen and Mr. LaBelle had understood the correct procedure. Ms. Meisch would have received five additional points for the audit/monitoring criteria if Mr. Cohen and Mr. LaBelle had followed the correct procedure. The petitioner, on the other hand, would have received only one additional point for the nursing criteria from Mr. LaBelle.

16. The petitioner overheard conversations at the Oakhill Correctional Institution, which made her suspect the interview process was flawed. She reported her suspicions to the Department of Employment Relations (DER) by letter dated November 13, 1997 (Exh. R-102), which was after the interviews were held, after Director Zunker made her hiring recommendation and prior to respondent informing the petitioner that she was not hired for the NC1 position. DER reported back to the petitioner that her concerns were investigated but no improprieties were found. The alleged improprieties are discussed in the following paragraphs.

17. By letter dated November 13, 1997, the petitioner reported the following incident to DER:

In HSU medication room (at Oakhill) on AM of 31Oct 97, I was pondering aloud what the interview questions might be with an LTE (Oakhill) RN, Barb Anderson, when she replied - "Why don't you ask Mary Meisch. She prepared the interview questions." I was very shocked as Mary Meisch (RN LTE) was also one of the job applicants and interviewees!

Ms. Anderson may have made the reported comment but it has no basis in fact. Ms. Meisch had no role in developing the interview questions and she did not see them prior to the interviews.<sup>6</sup>

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<sup>6</sup> This factual finding is based on the following record testimony. First, Ms. Anderson denied making the alleged statement. Second, Ms. Meisch denied involvement in writing the interview questions. Third (most persuasive) Director Zunker credibly testified that she prepared the interview questions by herself at home a few days before the interview. She further described the chain-of-custody for the interview questions, which demonstrated that it would have been highly unlikely for any candidate to have access to the questions prior to the interviews. The testimony of Steve O'Neil and Sanger Powers supported Director Zunker's chain-of-custody testimony.



18. By letter dated November 13, 1997, petitioner reported the following incident to DER:

On or about Wednesday, 05Nov97, I overheard Mary Jane Bean, RN, NC2 (at Oakhill) speaking with Mary Meisch on the phone and said words to the effect of, Is that public knowledge yet? I suspected that Meisch told Bean that she had the consultant job. Mary Jane Bean may have information about the situation.

As reflected by the above-noted comment, Ms. Meisch found out on November 4<sup>th</sup> or 5<sup>th</sup>, either that she had been recommended for the position or that she was offered the position. The incident further established that Ms. Meisch told some co-workers that she had been selected.

19. By letter dated November 13, 1997, the petitioner reported the following incident to DER (Exh. R-102):

On Friday, 07Nov97, I reported to work at 11AM. While working in the medication room, I overheard Barb Anderson speak to Pam Bartels, RN (nurse in charge of Prairie DuChien Institution HSU) on the telephone, saying, "I wanted to let you know that Mary Meisch will be looking over your shoulder." After Barb finished speaking with Bartels, Mary Meisch spoke with (Bartels) next. I overheard Mary Meisch respond to Bartels words to the effect - I've been around long enough to know some of the angles to get around things, so, don't worry.

The petitioner provided additional information at hearing, which was not included in her letter to DER. Specifically, she said that after Ms. Anderson got off the phone, Ms. Anderson told the petitioner that Ms. Meisch got the job and Ms. Anderson was sorry the petitioner had to hear it from her. As reflected by the above-noted comment, Ms. Meisch found out on November 4<sup>th</sup> or 5<sup>th</sup>, either that she had been recommended for the position or that she was offered the position. The incident further established that Ms. Meisch told some co-workers that she had been selected.

20. The following allegation was raised by the petitioner at hearing but was not included in her letter to DER. The petitioner said Ms. Meisch told her that Mr. Cohen had called Ms. Meisch "at the last minute" asking Ms. Meisch to interview so there would be a sufficient number of candidates. The petitioner either misunderstood what Ms. Meisch said or

Ms. Meisch provided incorrect information to the petitioner. Ms. Meisch was not contacted at the last minute for an interview. Her name was included with the initial certification list (Exh. R-104), whereas Ms. Frank's name was added on September 8, 1997, and the petitioner's name on October 21, 1997. Furthermore, there is no requirement to interview at least 3 candidates.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over case number 97-0125-PC pursuant to §230.45(1)(a), Stats.
2. It is the petitioner's burden of proof to show that respondent's failure to hire her for the NC1 position was an illegal act or an abuse of discretion.
3. The petitioner failed to meet her burden under #2 above.
4. The Commission has jurisdiction over case number 98-0074-PC pursuant to §§230.45(1)(b) and (g), Stats.
5. It is the petitioner's burden of proof to show that respondent did not hire her for the NC1 position because of her participation in activities protected under the Fair Employment Act (FEA) and/or under the Whistleblower Law.
6. The petitioner failed to meet her burden under #5 above.

### OPINION

#### I. Case Number 98-0074-PC-ER

##### A. **FEA Retaliation**

The analytical framework for retaliation cases was laid out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). This framework provides that the burden is first on the petitioner to show a prima facie case; that this burden then shifts to respondent to rebut the prima facie case by articulating a legitimate, non-discriminatory reason for its action; and that the burden then shifts back to petitioner to show that respondent's reason is a pretext for discrimination.

The petitioner may establish a prima facie case of FEA Retaliation by showing that she engaged in a protected activity, that the employer subsequently took an adverse action against

her and that a “causal link” exists between the protected activity and the adverse action. *Acharya v. Carroll*, 152 Wis.2d 330, 340, 448 NW2d 275 (Ct. App. 1989). The petitioner failed to establish a prima facie case because there is no indication in the record that she participated in an activity protected under the FEA.

### **B. Whistleblower Retaliation**

The petitioner may establish a prima facie case of Whistleblower Retaliation by showing: 1) she participated in an activity protected under the Whistleblower Law<sup>7</sup> and the alleged retaliator was aware of that participation, 2) disciplinary action occurred<sup>8</sup> and 3) a causal connection exists between the first and second elements of the prima-facie case. *Smith v. UW-Madison*, 79-PC-ER 95, 6/25/82 and *Sadlier v. DHSS*, 87-0046 and 0055-PC-ER 3/30/89.

The Commission had some questions about whether a protected disclosure occurred because the initial disclosure was made orally to Director Zunker rather than in writing as required under §230.81(1), Stats., and it appears complainant provided some written documentation in support of her oral disclosure to Director Zunker. The petitioner later filed a written letter with Mr. Peterson, but the initial oral disclosure had been made already and the focus of the letter to Peterson was the petitioner’s fear of retaliation. In any event, respondent did not dispute that the petitioner established the first and second elements of the prima facie case. The remaining analysis, accordingly, presumes that the petitioner did engage in a protected activity.<sup>D</sup>

It further is presumed for purposes of this analysis that the third element of the prima facie case was established by the presumption created in §230.85(6), Stats., the text of which is shown below in relevant part:

- (a) If a disciplinary action occurs or is threatened within the time prescribed under par. (b), that disciplinary action or threat is presumed to be a retaliatory action or threat thereof. The respondent may rebut that presump-

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<sup>7</sup> Pertinent to this inquiry are §§230.80(2) and (5), Stats.

<sup>8</sup> Pertinent to this inquiry is §230.80(2), Stats.

<sup>D</sup> This portion of the legal analysis was changed to reflect the Commission’s rationale.

tion by a preponderance of the evidence that the disciplinary action or threat was not a retaliatory action or threat thereof.

- (b) Paragraph (a) applies to a disciplinary action under s. 230.80(2)(a) which occurs or is threatened within 2 years, or to a disciplinary action under s. 230.80(2)(b), (c) or (d) which occurs or is threatened within one year, after an employe discloses information under s. 230.81 which merits further investigation or after the employe's appointing authority, agent of an appointing authority or supervisor learns of that disclosure, whichever is later.

Respondent's decision to hire someone other than the petitioner is not a disciplinary action enumerated in §230.80(2)(a), Stats. It also appears that the respondent decided to investigate based on the petitioner's oral discussion with Director Zunker, rather than upon the petitioner's later written letter to Mr. Peterson. Accordingly, a question exists whether it is appropriate to apply the statutory presumption at all. The statutory presumption is applied here despite the noted concerns, because resolution of those concerns is unnecessary to the disposition of this case.

The respondent has indicated that the petitioner was not hired because she was less qualified than the person hired as evidenced by the interview scores. The petitioner's first argument of pretext is comprised of the comments she overheard at the Oakhill Correctional Institution which lead her to suspect that Ms. Meisch had been pre-selected for the NC1 vacant position. The petitioner reported some of those comments in her letter to DER dated November 13, 1997 (see ¶¶16-19 of the Findings of Fact.) The remaining comments are in the record through the petitioner's testimony at hearing (see ¶¶19 and 20 of the Findings of Fact.) However, the record does not support the petitioner's view of the incidents. The preponderance of evidence established that Ms. Meisch did not help prepare the interview questions and did not see them prior to her interview. The preponderance of evidence also established that Ms. Meisch was not added at the last minute as a candidate for the vacant position. Respondent established by a preponderance of the evidence that the conversations overheard by the petitioner on November 5, 1997 (¶18 of the Findings of Fact) and on November 7, 1997 (¶19 of the Findings of Fact) showed that Ms. Meisch was offered the job either on November 4 or 5, 1997, and she shared this information with some co-workers.

The petitioner's second argument of pretext relates to various aspects of the interview process. Respondent established by a preponderance of the evidence that the one person who was aware of the petitioner's protected activity was Director Zunker whose scores for the petitioner were essentially the same as the other interviewers who did not know of the petitioner's protected activity. Respondent showed by a preponderance of the evidence that all interview questions were related to the duties of the vacant position. At hearing, the petitioner's representative extensively probed each panelist's interview scoring and was able to establish only inadvertent errors (some of which worked in petitioner's favor) which, if corrected, would not change the conclusion that Ms. Meisch was hired because she scored significantly higher than the other candidates.

Respondent established by a preponderance of the evidence that whistleblower retaliation played no part in respondent's decision to hire Ms. Meisch rather than the petitioner.

## II. Case No. 97-0125-PC

The question here is whether respondent committed an illegal act or abuse of discretion when it decided to hire Mary Meisch rather than the petitioner for the vacant NC1 position. The Commission concluded above that no FEA or Whistleblower Retaliation occurred. No other theories of illegality were raised by petitioner or suggested by the record. The remaining question is whether an abuse of discretion occurred.

The Commission, in *Lundeen v. DOA*, 79-0208-PC, 6/3/81, discussed the meaning of the term "abuse of discretion" as shown below:

An abuse of discretion has been defined in *Murray v. Buell*, 74 Wis. 14, 19 (1889):

The term "abuse of discretion" exercised in any case by the trial court, as used in the decisions of courts and in the books, implying in common parlance a bad motive or wrong purpose, is not the most appropriate. It is really a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.

See also *Black's Law Dictionary* (4<sup>th</sup> Edition), p. 25:

A discretion exercised to an end or purpose not justified by and clearly against reason and evidence.

The Commission cannot conclude on this record that there was an abuse of discretion. Respondent established that Ms. Meisch was hired for the vacant NC1 position because she was more qualified than the petitioner, as shown by the interview scores.

ORDER

These cases are dismissed.

Dated: June 30, 1999.

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Parties:

Wendy Swallow  
105 Park St  
Wauzeka WI 53826

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
JUDY M. ROGERS, Commissioner

Michael J. Sullivan  
Secretary, DOC  
149 E. Wilson St., 3<sup>rd</sup> Fl.  
P.O. Box 7925  
Madison, WI 53707-7925

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