

ROBERT POOLE,
Appellant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM,**
Respondent.

RULING
ON MOTION
FOR
SUMMARY
JUDGMENT

Case No. 99-0026-PC

This case is before the Commission on respondent's motion for summary judgment. The case arises from the respondent's decision not to select the appellant for a Custodian III vacancy. Both parties have filed written arguments. The Commission makes the following findings for the purpose of ruling on the respondent's motion.

FINDINGS OF FACT

1. Appellant is a Custodian 2 employed at UW-River Falls. He took a statewide Custodian 3 examination and ranked fifth, and was certified and interviewed at UW-River Falls.
2. There were two Custodian 3 positions open at UW-River Falls during the period in question, one in Housekeeping Services and one in Residential Services.
3. Appellant applied for the Housekeeping Services vacancy, but not the Residential Services position.¹

¹ Although there is no dispute the appellant did not compete for the Residential Services position, a comment in his letter of appeal should be noted. Appellant wrote that "when asked at the end of the interview if I would accept the job in Residential Services if offered, I said yes." Even if this statement was made, it does not indicate that the appellant was, in fact, considered for the Residential Services vacancy. Other statements in the letter of appeal, as well as an affidavit by the Human Resources Manager at UW-RF, make it clear that appellant had the opportunity to compete for the Residential Services position, but he only sought the Housekeeping Services position.

4. Appellant had the highest exam score of any of the candidates considered for the Housekeeping Services position. However, the interviewers were not informed of the candidates' test scores.

5. Tammy Britt was hired for the Housekeeping Services position. Her name was on the certification list due to expanded certification rather than for receiving one of the top five examination scores. She had been performing the duties of the Custodian 3 position in Housekeeping Services for six months while the position had been vacant and had two years of experience with respondent as a Custodian 2.

6. Appellant had worked from July, 1996, until March of 1999 as a Custodian 2 for respondent. He also had 10 years of experience as a heavy equipment operator, 17 years of experience as a foreman, and 3 years of experience as a Department Manager and Night Crew Manager at Walmart, Inc. Appellant informed the interviewers of this experience.

7. Appellant contends he was better qualified than Ms. Britt.

CONCLUSIONS OF LAW

1. The respondent has the burden of establishing there is no disputed issue of a material fact in this matter.

2. Respondent has failed to sustain its burden.

OPINION

The Commission uses the following standard in reviewing motions for summary judgment:

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgment the court does not decide the issue of fact; it decides whether there is a genuine issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt.

Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

Grams v. Boss, 97 Wis.2d 332, 338-339, 294 N.W.2d 473 (1980), citations omitted.

In a letter to the Commission dated May 17, 1999, the appellant states that his appeal falls within the scope of §230.44(1)(d), Stats:

(d) *Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

No issue for hearing has been established in this matter. However, appellant's allegations clearly include a claim that appellant was a better candidate for the Housekeeping Services vacancy than Ms. Britt and that respondent abused its discretion when it selected Ms. Britt rather than the appellant.

There is very little information in the materials submitted by the parties relating to respondent's motion for summary judgment that describes the information on which the selection decision was based. Presumably, respondent's selection decision was based upon the information presented during the candidate interviews. The respondent has submitted a copy of the "Interview Questions" for the vacancy. Other than the appellant's statement that he described his management experience to the panel, the Commission has no inkling as to the information provided by the candidates during the interviews. It is possible that Ms. Britt had superior qualifications to the appellant and that she clearly conveyed those qualifications to the interview panel. However, it is also possible that Ms. Britt's qualifications were significantly inferior to those of the appellant or that Ms. Britt failed to explain her qualifications or that she said something

else that should have undermined her candidacy. The Commission simply has insufficient information about the interview and decisional process to be able to definitively conclude that respondent did not abuse its discretion when it hired Ms. Britt rather than the appellant. There is a dispute between the parties as to relative qualifications of the appellant and Ms. Britt. Because of that dispute, summary judgment is inappropriate.

The Commission will contact the parties for the purpose of convening a pre-hearing conference in this matter. One purpose of the conference will be to establish an issue for hearing. Materials submitted by the appellant suggest that he may be seeking to raise an issue relating to the certification of candidates, including expanded certification. If that is the case, the Commission's authority to review the matter would presumably be based on §230.44(1)(a), Stats., rather than §230.44(1)(d), Stats:

(a) *Decision made or delegated by administrator.* Appeal of a personnel decision under this subchapter made by the administrator or by an appointing authority under authority delegated by the administrator under s. 230.05(2) [may be reviewed by the commission].

If appellant contends his appeal includes the certification action for the Housekeeping Services position, the Administrator of the Division of Merit Recruitment and Selection will have to be added as a party respondent.

ORDER


Respondent's motion for summary judgment is denied.

Dated: March 10, 2000.

KMS:990026Arul2

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner