

KATHERINE J. OTIS,
Appellant,

v.

**Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,**
Respondent.

**RULING
ON
ISSUE FOR
HEARING**

Case No. 00-0176-PC

This matter was filed as an appeal from a civil service examination. The parties disagree as to the issue for hearing.

The letter of appeal reads, in part:

It was determined that I was ineligible for the "Insurance Examiner-Entry" position. I don't agree with this determination. My ineligible status was based on not meeting the "equivalent experience or training" criteria regardless of my five years of experience at the Office of the Commission of Insurance. The decision to disqualify my prior experience with the office as not meeting the "equivalent experience or training" criteria is the basis of my appeal and one which I am requesting you to investigate. . . .

Therefore, my five years prior work experience with OCI combined with my completed course work should qualify as meeting the "equivalent experience or training" criteria.

The Commission convened a prehearing conference on January 10, 2001. The Commission representative who conducted the conference proposed the following statement of issue:

Whether the assessment of applicants for Insurance Examiner-Entry (and specifically the respondent's conclusion that appellant was ineligible based on her experience and education) was conducted in accordance with §230.22, Stats, and ch. ER MRS 8, Wis. Adm. Code. If not, what is the remedy?

The parties were given an opportunity to indicate disagreement with the proposed issue. Respondent did so by letter dated January 19, 2001. Respondent proposed the following issue:

Whether the assessment of the Appellant's examination materials for the Insurance Examiner-Entry; Market Regulation exam (and specifically the Respondent's conclusion that Appellant was not minimally qualified/ineligible based on her experience and education) was conducted in accordance with §230.22, Wis. Stats., and ch. ER-MRS 8, Wis. Adm. Code.

Respondent argues that its proposal more accurately reflects the fact that the exam raters relied only on the "examination materials that were submitted by each applicant, not on what they knew about the applicants themselves."

The Commission notes that appellant is representing her own interests in this matter.

Respondent's proposed language would unnecessarily restrict the scope of the hearing. It may be that the evidence produced at hearing shows that the raters only considered the examination materials and did not consider additional information they may have known about the applicants. However, respondent's proposal assumes this as fact, instead of providing an opportunity for the parties to present evidence on this point. The Commission does not perceive a benefit to so limiting the scope of the hearing.

Respondent also contends that it is not necessary to include any reference to remedy in the hearing issue, because "remedy is implicit in all cases." Absent some stipulation by the parties, the question of remedy *is* present in all cases before the Commission. However, there is certainly no harm in specifying it in issue, especially in light of respondent's continuing assertion that "the remedy the Appellant seeks is not available to her through the appeal process." By including a reference to remedy in the issue for hearing, the Commission is providing explicit notice to the parties that they must present all evidence and arguments regarding the remedy question during the hearing and in any post-hearing arguments. In the absence of such a reference, the

parties might assume that the remedy portion of the case would be addressed in a subsequent hearing or in subsequent arguments.

ORDER

For the reasons set forth above, the Commission rejects the respondent's proposal and adopts the following statement of issue for hearing:

Whether the assessment of applicants for Insurance Examiner-Entry (and specifically the respondent's conclusion that appellant was ineligible based on her experience and education) was conducted in accordance with §230.22, Stats, and ch. ER MRS 8, Wis. Adm. Code. If not, what is the remedy?

Dated: February 23, 2001 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, Commissioner