

ANDREW TOMASZEWSKI,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS and Administrator,
DIVISION OF MERIT RECRUITMENT
AND SELECTION,**
Respondents.

**RULING ON
HARDSHIP AFFIDAVIT**

Case No. 01-0010-PC

The above-noted appeal was filed on February 9, 2001. The case arises from the appellant's application for the vacant position of Assistant Corrections Unit Supervisor. The examination responsibility was delegated from the Division of Merit Recruitment and Selection (DMRS) within the Department of Employment Relations to the Department of Corrections (DOC).

The appellant received a form entitled "Notice of Examination Results" from DOC indicating that he was "NOT ELIGIBLE." The term was defined on the form as noted below:

For this employment register, scores have been divided into "Eligible" and "Not Eligible" groups. For those candidates determined to be "Eligible", your name will be forwarded to the supervisor for further consideration. A status of "Not Eligible" means that you did not meet the minimum requirements of the position and your name will not be referred for employment consideration.

This case contests respondents' decision that the appellant was ineligible for the vacant position.

The facts recited below are made solely to resolve the matter presently before the Commission. The facts are undisputed unless specifically noted to the contrary.

FINDINGS OF FACT

1. The Commission received the appeal in this case on February 9, 2001. By letter dated February 14, 2001, the Commission advised the appellant that pursuant to §230.45(3), Stats., he was required to file either payment of a fifty dollar (\$50.00) filing fee or a hardship affidavit. The appellant was given 30 calendar days (until March 14th) to comply. A copy of the pertinent administrative law was enclosed with the letter, along with a form affidavit. The following information was included in the final paragraph of the letter:

A hardship affidavit may be filed in lieu of paying the filing fee if the conditions noted in §PC 3.02 (4), Wis. Adm. Code, are met. A form affidavit is attached for the convenience of those who qualify for and who wish to use the hardship affidavit option. The truthfulness must be sworn to before a notary public. It must be signed and dated in the notary's presence, and it must bear the notary's seal.

2. On February 19, 2001, the Commission received a fully executed form affidavit from the appellant wherein he averred that he read §PC 3.02(4), Wis. Adm. Code and determined that his circumstances met the hardship exception. He further averred that he was aware of the potential penalties for making a bad-faith affidavit as noted in §PC 3.02(4), Wis. Adm. Code.

3. On March 5, 2001, respondent wrote to the Commission questioning "the veracity of the hardship affidavit submitted by the Appellant."

4. The appellant has been employed by the Department of Corrections (DOC) since August 23, 1992, and is currently employed full-time as a Youth Counselor B earning \$15.463 per hour which is about \$32,000 per year. He has two children.

5. The appellant's wife was unable to work in 1987 and in 1989 due to lung cancer and the related medical problems. Many items associated with her medical treatment are not covered by the appellant's health insurance because her condition pre-dated his work for DOC.

6. The Commission wrote to the appellant by letter dated May 9, 2001, stating in pertinent part as noted below:

As you know, DOC has pointed out that you have been employed at Lincoln Hills School since August 23, 1992, and that your current salary is \$15.463 per hour (approximately \$32,000 per year). The question before the Commission is whether you qualify for the "hardship" exemption from the \$50 filing fee that is required by law, §PC 3.02(2), Wis. Adm. Code; §230.44(3), Stats. You are seeking a hardship exemption under §PC 3.02(4)(b)2., Wis. Adm. Code: "Similar circumstances [i.e., similar to §PC 3.02(4)(b)1., which incorporates the federal poverty level (\$17,650 for a family of four, *Federal Register*, Vol. 66, No. 33, February 16, 2001, pp. 10695-10697) and cash resources of less than one month's rent and food] exist which demonstrate that appellant is unable to pay the filing fee without suffering severe financial hardship."

In the Commission's opinion, extraordinary medical expenses could meet the "similar circumstances" criterion, but your April 19th letter does not provide the amount of those expenses. In order to evaluate your request for a hardship exemption, the Commission has decided it needs more specific information. This can be supplied by an itemized list of your medical expenses for 2000, as well as an itemized list of any other medical expenses you want the Commission to consider—i.e., medical expenses before or after 2000.

As you previously were advised in the conference report dated March 20, 2001, and my letter of April 12, 2001, the factual material you claim as support for the hardship is to be incorporated in an affidavit. This is required by the Commission's rules, §PC 3.02(5)(c), Wis. Adm. Code. In order to facilitate this process, I am enclosing an affidavit that you can use to incorporate an itemized list of medical expenses to be attached to the affidavit.

7. The appellant replied by letter dated May 23, 2001, providing the following additional information in letter but not in affidavit form:

- Since 1988 the family income was severely cut due to the health reasons. My wife was unable to hold a full time job, and as stated before I had a family to support.
- Medical expenses have been approximately \$3,000 to \$11,000 per year, this does not include, loss of wages.
- To date, medical expenses have been in excess of \$80,000.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.45(1)(a), Stats.

2. It is appellant's burden to show entitlement to filing a hardship affidavit in lieu of the required filing fee. He has failed to meet this burden.

3. The appellant did not falsify his hardship affidavit, within the meaning of §PC 2.02(4)(d), Wis. Adm. Code.

OPINION

This is a case filed under §230.44(1)(a), Stats., involving a decision delegated by the Administrator of DMRS to DOC. As such, the case is subject to the filing fee requirement of §230.45(1)(3), Stats. The Commission rules pertaining to the filing fee requirement are noted in §PC 3.02, Wis. Adm. Code. A \$50 filing fee applies (§PC 3.02(3), Wis. Adm. Code) except for hardship cases (§PC 3.02(4), Wis. Adm. Code). The text of the hardship provisions found in §PC 3.02(4)(b)-(c), is shown below:

(b) *The hardship exception.* An appellant may qualify for a hardship exception if either of the following conditions are met:

1. The appellant's income is at or lower than the federal poverty level as defined by the federal department of labor under 42 USC 9902(2), and where the appellant has cash resources totaling exactly or less than one month's rent and food for appellant's family.

2. Similar circumstances exist which demonstrate that appellant is unable to pay the filing fee without suffering severe financial hardship.

(c) *Entitlement to the hardship exception.* An appellant may demonstrate entitlement to the hardship exception by completing and timely filing a notarized affidavit stating that the appellant meets one of the conditions set forth in par. (b).

The above rules as promulgated included the following note after §PC 3.02(4)(b)1. & 2., Wis. Adm. Code:

The 1995 poverty guidelines were published in the Federal Register, Vol. 60, #27, Thursday, February 9, 1995. The poverty level for a family unit of one was set at \$7,470, with an additional \$2,560 added for each additional family member.

By Commission letter dated May 9, 2001, the appellant was advised that the federal poverty published in 2001 (the year this appeal was filed) was \$17,650 for a family of four

The appellant earns about \$32,000 per year. Accordingly, his income is not at or below the federal poverty level, within the meaning of §PC 3.02(4)(b)1., Wis. Adm. Code. For clarity it is noted that the appellant does not claim entitlement to waiver of the filing fee under this section of the code.

The Commission now turns to consider whether the appellant has shown "similar circumstances," within the meaning of §PC 3.02(4)(b)2., Wis. Adm. Code. Even if it is presumed that the high-end estimate of \$11,000 for medical expenses (see ¶9, Findings of Fact) occurred in 2000 or 2001, his net income of \$21,000 is above the federal poverty level for a family of four. The appellant has not alleged other expenses that might be used to reduce the net income of \$21,000. He also has not asserted that he is unable to pay rent or buy food. Under these circumstances, he has not shown entitlement to waiver of the filing fee under §PC 3.02(4)(b)2., Wis. Adm. Code.

The above conclusion is not intended to diminish the appellant's situation or his wife's medical condition. He takes pride in the fact that his family has paid their own way in the face of adversity, as evidenced from the following excerpt from his letter dated April 19, 2001.

My wife had been unable to work due to her having cancer in 1987 and again in 1989. After her treatment (radiation) her lung was destroyed and needed major hospitalization on and off till this day because of infections that will happen in her lung. Also she has had to have angioplasty every year due to blockage in her arteries due to complications from her radiation and lung operations.

We don't live over our means, and because of her medical problems were pre existing conditions, prior to my state hire, many items are not covered by my medical coverage. I had to support a family of four, my wife, two sons, and myself on my wages. This was hard but it had to be done. I never applied for any type of aid of any kind but could have.

Respondent requested (by letter dated March 5, 2001) that this case be dismissed if it is determined that the appellant filed a false affidavit, within the meaning of PC 3.02(4)(d), Wis. Adm. Code, the text of which is shown below:

(d) *Penalty for affidavit made in bad faith.* The Commission may dismiss an appeal on the merits if it determines that the appellant falsified a hardship affidavit to avoid payment of the filing fee.

The Commission cannot conclude that the appellant falsified his hardship affidavit. He was uncertain what types of "similar circumstances" would qualify for waiver of the filing fee under §PC 3.02(4)(b)2., Wis. Adm. Code and he correctly thought that his wife's unpaid medical expenses could be a legitimate factor for consideration. He requested specific guidance on this at a telephone conference held on March 20, 2001 (see Conference Report of the same date), but the presiding hearing examiner was unable to provide a detailed response due to the lack of Commission decisions on the topic. Under these circumstances, it would be inappropriate to dismiss the appeal on the merits. Instead, the appellant will be given an opportunity to pay the filing fee.

ORDER

The appellant must pay the filing fee of \$50.00 within 30 calendar days from the date of mailing shown on the Affidavit of Mailing enclosed with this ruling. This means the Commission must receive his payment by the stated deadline. Filing fees must be made only by money order, certified check, cashier's check or bank check made payable to the "State Treasurer of Wisconsin." See §PC 3.02 (3)(b), Wis. Adm. Code. If such payment is not received timely, this case will be dismissed for failing to pay the filing fee.

Dated: July 3, 2001.

STATE PERSONNEL COMMISSION

JMR:010010Arul1.doc



JUDY M. ROGERS, Commissioner
Designated as hearing examiner, with authority to
render a final decision.