

STATE OF WISCONSIN

PERSONNEL COMMISSION

**SUZANNE M WEBER,**  
*Appellant,*

v.

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

RULING ON MOTION  
TO DISMISS

Case No. 98-0157-PC

This matter is before the Commission on respondent DCom's motion filed on February 4, 2000, to dismiss this case as to part of the issue that had been noticed for hearing. After the parties agreed to postpone the hearing, both parties filed briefs on the motion.

A prehearing conference report dated December 14, 2000, includes the following statement of issue for hearing: "Whether respondents' decision denying appellant's request for the reclassification of her position from Community Services Specialist 2 (CSS 2) to CSS 3 or Economic Development Consultant was correct." Respondent seeks dismissal of the first part of the issue—i. e., as to the CSS 3 classification. Respondent's motion is based on the contention that an earlier decision in a case involving the same parties—*Weber v. DCom & DER, 95-0168-PC, 4/24/97*, should be given preclusive effect on the current case. That case also involved an issue as to whether respondents' decision to reclassify the appellant's position to CSS 2 rather than CSS 3 was correct. The Commission concluded that appellant had not sustained her burden of proof and dismissed the appeal.

Respondent asserts that the "legal bases for the Motion is based on the legal doctrines of res judicata, collateral estoppel and issue preclusion." Motion to dismiss, p. 2. The Dane County Circuit Court addressed the doctrines of claim preclusion (also known as the principle of res judicata) and issue preclusion (also known as collateral estoppel) in *Balele v. WPC, 98CV0257, 8/10/98*, as follows:

The doctrine of claim preclusion holds that “a final judgment is conclusive on all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings.” In order for earlier proceedings to act as a claim preclusive bar in relation to the present suit, three criteria must be satisfied: 1) an identity between the parties in the prior and present suits; 2) an identity between the causes of action in the two suits; 3) a final judgment on the merits in a court of competent jurisdiction. Wisconsin courts apply the “transactional rule” in determining whether the claims or causes in the two cases are sufficiently identical: “a basic factual situation generally gives rise to only one cause of action, no matter how many different theories of relief may apply. . . . The cause of action is the fact situation on which [the first] claim was based.” If the present claim arose out of the same “transaction as that involved in the former action, the present claim is barred even though the plaintiff is prepared in the second action to present evidence or grounds or theories of the case not presented in the former action, or to seek remedies or forms or relief not demanded in the first action.” In sum, the purpose of the claim preclusion doctrine is to prevent multiple litigation of the same claim, and it is based on the assumption that fairness to the defendant requires that at some point litigation involving the particular controversy must come to an end. *Id.*, pp.6-7 (citations omitted) (brackets in original)

The doctrine of issue preclusion is a related but different concept:

The doctrine of issue preclusion refers to the effect of a judgment in precluding relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in a prior action. . . . Issue preclusion, unlike claim preclusion, does not require an identity of the parties. Issue preclusion is a narrower doctrine than claim preclusion

In order for earlier proceedings to act as an issue preclusive bar in relation to the present suit there must be an identity between the causes of action in the two suits. “[A] basic factual situation generally gives rise to only one cause of action, no matter how many different theories of relief may apply. . . . The cause of action . . . is the fact situation on which [the first] claim was based. It is clear that Balele’s state claim arises out of the same basic events and the same conduct of the defendants as does his federal action. *Id.*, pp. 9-11 (citations omitted) (brackets in original)

Thus, neither one of these doctrines can apply to bar appellant’s effort to litigate the issue of the correctness of respondent’s denial of appellant’s position to CSS 3 unless her current appeal involves the same fact situation on which her first appeal was

based.<sup>1</sup> Appellant's first case involved a 1994 reclassification request which was denied in 1995. The current appeal involves a 1996 reclassification request which was denied in 1998. Therefore, the operative time period for the first reclassification transaction was prior to the submission of the reclassification request in 1994. The operative time period for the second reclassification transaction was the time period prior to the submission of the reclassification request in 1996. It appears to be undisputed that the relevant class specifications have not changed, and the appellant is still in the same position. Accordingly, the resolution of the issue respondent raises turns on the question of whether the duties and responsibilities of appellant's position were materially different during the two time periods.

In support of this motion, respondent asserts as follows:

The attached affidavit shows [that] Appellant's level and types of duties and responsibilities, the work to be performed by the Appellant and the work actually performed by the Appellant . . . to be virtually identical as described and included both in [appellant's] prior appeal as evidenced by the Decision and Order and the Appellant's present appeal.

In the present case [appellant] is seeking to have a "rehearing" of the same Community Services Specialist classification issue related to virtually the same level and types of duties and responsibilities and work to be performed and actually performed. Motion, p 2.

The affidavit of H. Hampton Rothwell states that he has directly supervised appellant since 1996, and includes the following:

I have determined from my review of the above cited documents [this appeal and the Commission's 1997 decision in Case No. 95-0168-PC] and my personal understanding of the level and types of duties and responsibilities of Ms. Weber, the work to be performed by Ms. Weber, and the work actually performed by Ms. Weber that the level and types of such duties and responsibilities and work are virtually identical as described and included both in Ms. Weber's prior Appeal as evidenced in the Decision and Order and Ms. Weber's present appeal (for the Community Services Specialist aspect of her present Appeal only).

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<sup>1</sup> There is no dispute that the parties are the same in both appeals and that the Commission rendered a decision on the merits in the first appeal.

In opposition to the motion to dismiss, appellant states that in the first appeal she was limited to the presentation of evidence concerning the position during the period before the date of submission of the first reclassification request—i. e., prior to June 1994. She asserts that the current appeal is based on expanded duties and responsibilities during the period of June 1994 to October 1996, and she contests a number of Mr. Rothwell's contentions. She contends that her position is in a different division than he asserts in his affidavit, that she has not been continuously supervised by Mr. Rothwell, that he has not been in her supervisory chain or even in the same division during much of this period, and that her duties and responsibilities during the operative periods have been materially different. In its response, respondent refers to appellant's contentions as representing an attempt by her to usurp management rights by assigning herself duties not covered in her PD and than characterizing them at a higher level.

In the current posture of this case, respondent's motion amounts in effect to a motion for summary judgment. Respondent relies on an asserted set of facts that appellant directly contests. The factual dispute can not be resolved without an evidentiary hearing. *See, e. g., Balele v. Wisconsin Personnel Commission*, 223 Wis. 2d 739, 589 N. W. 2d 418 (Ct. App. 1998) (administrative analogue of summary judgment process can only be used when there is no dispute of material fact). Therefore, respondent's motion must be denied.

ORDER

Respondent's motion to dismiss part of this case, filed on February 2, 2000, is denied, and a hearing on the merits will be scheduled

Dated: October 4, 2000.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, Commissioner