

**SUSAN M. WILLIAMS,**  
*Appellant,*

v.

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

DECISION AND ORDER

Case No. 99-0092-PC

This is an appeal of a decision establishing the effective date of the reclassification of appellant's position. A hearing was held on February 15, 2000, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the schedule for doing so was completed on April 24, 2000. A Proposed Decision and Order (PD&O) was issued by the hearing examiner on April 28, 2000, and the parties filed objections/responses to this PD&O. After consulting with the hearing examiner and reviewing the PD&O and the objections/responses thereto, the Commission has adopted the PD&O's Order but has modified the PD&O's Decision to eliminate language which it felt was unnecessary for the decision of the specific issues noticed for hearing. In modifying the hearing examiner's decision, the Commission has not disturbed any of her credibility determinations.

1. At all times relevant to this matter, appellant has occupied a Program Assistant position reporting to the Regional Chief of Region 7 of respondent DOC's Division of Community Corrections. Appellant's appointment to this position, effective September 27, 1998, resulted from a promotion from Program Assistant 2 (PA 2) to PA 3. Appellant was required to serve a six-month probationary period.

2. Kathy Czerwonka was the previous incumbent of the subject position until she left the position July 3, 1998. Ms. Czerwonka filed a written request for the reclassification of this position from PA 3 to PA 4 on June 17, 1998. This request was approved on or around July 20, 1999, retroactive to June 21, 1998. Ms. Czerwonka's request was processed with several other comparable requests from other regions.

3. Upon her appointment to the subject position, appellant was aware of Ms. Czerwonka's pending reclassification request. She inquired of Alan Kasprzak, the Regional Chief of Region 7 and her first-line supervisor, as to the impact of this request on the classification of her position, and he advised her to contact respondent DOC's Bureau of Personnel and Human Resources (BPHR).

4. Some time in October of 1998, appellant contacted Scott Thompson of respondent DOC's BPHR, who was coordinating the review of Ms. Czerwonka's reclassification request and the comparable ones from the other regions. Appellant indicated to Mr. Thompson that she wanted to "make sure she was being considered for the reclassification" that had been submitted for her position. Mr. Thompson told appellant that he was not sure and that he would look into it. Appellant indicated to Mr. Thompson that she wanted to make sure she wasn't "lost in the shuffle." Mr. Thompson did not get back in touch with appellant in response to her inquiry.

5. Based on her knowledge of the existence of the Czerwonka reclassification request and the contacts with Ms. Kasprzak and Mr. Thompson described in ¶¶4. and 5., above, appellant apparently formed the belief that the reclassification of the Czerwonka position would result in the reclassification of appellant's position retroactive to the date of her appointment.

6. Kari Houzner, who was assisting Mr. Thompson with the audit of Ms. Czerwonka's position and the other regional positions, contacted Mr. Kasprzak for the purpose of questioning him about Ms. Czerwonka's position's duties and responsibilities. Ms. Houzner reminded Mr. Kasprzak, in response to his repeated references to appellant's duties and responsibilities during this conversation, that Ms. Czerwonka's, not appellant's, position was the subject of the audit/reclassification

request. Ms. Houzner was not surprised that Mr. Kasprzak mentioned appellant's duties and responsibilities since appellant was the current incumbent of the position being audited.

7 After his conversation with Ms. Houzner, Mr Kasprzak contacted appellant and told her of the conversation. Appellant then initiated contact with Ms. Houzner on March 26, 1999, to discuss the duties and responsibilities of her position, and Ms. Houzner told appellant that she had already discussed the duties and responsibilities of the position with Ms. Czerwonka and that if, in the future, BPHR looked at appellant's position, she would be contacted.

8. On July 20, 1999, Mr Kasprzak was advised that Ms. Czerwonka's request for reclassification had been approved. In response to his questions regarding the impact of this action on appellant's position, Mr Kasprzak was informed by Mr. Thompson that the typical procedure was to reallocate the current incumbent's position to the new level effective as of the first day of the pay period following the date of the approval, i.e., August 1, 1999. Mr. Thompson also advised Mr. Kasprzak that appellant would receive a significantly greater pay increase if her position was reclassified, rather than reallocated, to the PA 4 level. As a result, Mr. Kasprzak prepared and submitted, on July 23, 1999, a written request for the reclassification of appellant's position from PA 3 to PA 4. This request was ultimately granted with an effective date of August 1, 1999. This was the only written request submitted to BPHR for the reclassification of appellant's position from PA 3 to PA 4.

The issue to which the parties agreed is:

Whether the decision of the respondents setting August 1, 1999, as the effective date for the reclassification of appellant's position was correct. If not, what is the correct effective date?

The Wisconsin Personnel Manual, in §332.060, states as follows, in relevant part:

A. Regrades Resulting from Reclassification Actions and Reallocation Actions under ER-Pers 3.01, Wis. Adm. Code.

Both delegated and nondelegated reclassification regrade actions taken under ER-Pers 3.01(1)(e), (f) or (g) will be made effective at the beginning of the first pay period following effective receipt of the request. However, a later effective date may be designated by the appointing authority when the conditions which warrant the reclassification/regrade or reallocation/regrade (e.g., attainment of required education or experience, performance of duties and responsibilities for six months, etc.) will not occur until such later date.

Respondent's Supervisors' Manual, states as follows, in relevant part, in Ch. 303, IV Reclassification Process, D. Reclassification Effective Date:

For divisional employment units, the effective date of a reclassification action for these units is the beginning of the *first pay period following effective receipt by the Bureau of Personnel and Human Resources Administrative Support Unit.* (Italics in original)

Appellant does not dispute that she did not submit a written request for the reclassification of her position to respondent DOC's BPHR until July 23, 1999, and that the August 1, 1999, effective date represented the first day of the first pay period following this date of submission. What appellant is contending is that she was led by respondent DOC to believe that a request for the reclassification of her position was being processed and, in reliance on this, she did not take action to initiate a reclassification request until she became aware, in July of 1999, that a reclassification of her position had not previously been under consideration. In other words, appellant is arguing that, based on these alleged actions by respondent DOC, respondents should be equitably estopped from relying on the July 23, 1999, filing date for establishing the effective date for the reclassification of appellant's position.

The elements of a showing of equitable estoppel against a state agency are: reasonable reliance by an employee to his or her detriment on conduct by the agency or its agents which amounts to fraud or a manifest abuse of discretion. *Mergen v. UW & DER*, 91-0247-PC, 11/13/92; *Warda v. UW-Milw & DER*, 87-0071-PC, 6/2/88.

In regard to the question of whether appellant has shown that respondent DOC engaged in fraud or a manifest abuse of discretion, appellant primarily relies on the phone conversation she had with Mr. Thompson in October of 1998 to support her argument. This conversation does not support application of the theory of equitable estoppel. Unlike those cases in which the Commission concluded that equitable estoppel should lie against the respondents (see, e.g., *Mergen v. UW & DER*, 91-0247-PC, 11/13/92; *Locke et al. v. DHSS & DER*, 90-0384-PC, 7/11/91, *Guzniczak & Brown v. DER & DHSS*, 90-0370-PC, 7/8/92), there was no representation by Mr. Thompson, either express or implied, that a request for the reclassification of appellant's position had been received or was being processed. Instead, Mr. Thompson expressed uncertainty and told appellant he would look into it. Although appellant appears to have interpreted Mr. Thompson's continuing silence after this October 1998 contact as an acknowledgement by BPHR that a request to reclassify appellant's position was under review, appellant's reliance on this silence as the basis for her inaction was not reasonable given Mr. Thompson's stated uncertainty during the contact. In addition to the conversation with Mr. Thompson, complainant also cites the following in support of her theory of equitable estoppel: (a) conversations she had with Mr. Kasprzak—however, he made it clear in these conversations that appellant should check with BPHR; (b) certain emails and meeting notes—however, these refer in general to the "regional secretaries" reclassification requests, not to appellant's specifically and it is undisputed that these other requests, including Ms. Czerwonka's, were under consideration at the time; (c) Mr. Kasprzak's and her conversations with Ms. Houzner—however, it is apparent that the intent of the conversation with Mr. Kasprzak was to discuss the duties and responsibilities of the Czerwonka position, as embodied in the PA 4 position description filed with the Czerwonka reclassification request, and that Ms. Houzner made this clear during the conversation, and that Ms. Houzner explained to appellant in their conversation that she was auditing the Czerwonka position and, if appellant's position came under consideration for reclassification some time in the future, she would contact her. Appellant has failed to

show fraud or manifest abuse of discretion by respondent DOC and has, as a result, failed to show that equitable estoppel should apply here.

ORDER

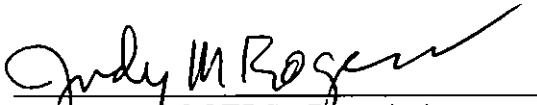
The action of respondents is affirmed and this appeal is dismissed.

Dated: August 28, 2000

STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

LRM:990092Adec1

  
JUDY M. ROGERS, Commissioner

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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