STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

SUSAN RAKOWSKI,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Case No. 17-CV-2127

RE: [WERC Dec. No. 36969-A]

DECISION AND ORDER AFFIRMING THE DECISION OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTRODUCTION

Susan Rakowski seeks judicial review of a decision of the Wisconsin Employment Relations Commission affirming the non-hire of Rakowski by the Wisconsin Department of Workforce Development. The Wisconsin Employment Relations Commission determined that the Wisconsin Department of Workforce Development neither acted illegally nor abused its discretion when it failed to hire Susan Rakowski Petitioner as an Adjudication Support Associate. At issue before this Court is whether the Wisconsin Employment Relations Commission could have reasonably reached that conclusion. For the reasons discussed below, this Court finds that the Wisconsin Employment Relations Commission's findings of facts are supported by substantial evidence and that the decision affirming the non-hire of Petitioner was reasonable. As a result, the decision of the Wisconsin Employment Relations Commission is affirmed in its entirety.

BACKGROUND

In October of 1995, the Wisconsin Department of Workforce Development ("DWD" or "the Department") hired Susan Rakowski ("Petitioner") as an Employment Security Associate (ESA) 3 Claims Specialist and later promoted her to ESA-4 Lead Worker. (Hr'g Tr. 22:25–23:7; Ex. R–6, at 12). In 2015, Petitioner transferred to a position as an Unemployment Benefit Specialist ("UBS") with a twelve month probationary period. Prior to the completion of her probationary period, Petitioner was terminated due to poor performance and discharged from employment with the State of Wisconsin. Adjudication Manager Robert Jessel and Adjudication Supervisor Patricia Woodward recommended the discharge. (*Id.* at 51:22–52:10, 131:15–21.).[1]

Subsequently, in December of 2016, Petitioner applied for a position as an Adjudication Support Associate ("ASA"). (*Id.* at R–1.) Two positions were available and approximately twenty-eight candidates were interviewed. (*Id.* at 12:15–19, 97:22–23.) Interviews were held in January of 2017 and took place before a three-member panel that consisted of Cameron Jarr, Robert Jessel, and Patricia Woodward. (*Id.* at 12:6–23, 97:14–98:1, 164:7–14.)

Interview questions and their associated benchmarks were drafted and reviewed by Human Resources prior to the job announcement. (*Id.* at 15:16–24, 16:3–13.) Before the

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[1] Petitioner appealed her termination as a UBS and discharge from State Employment. Ultimately, that appeal was successful. (*See* Decision No. 36912-A of the Wisconsin Employment Relations Commission, a copy of which has been filed into the court docket and of which this Court takes judicial notice.) The Order of the Wisconsin Employment Relations Commission dated April 11, 2017 states as follows:

> The discharge of Susan Rakowski is rejected and the State of Wisconsin Department of Workforce Development shall immediately reinstate her to an Employment Security Assistant 4 position in Menomonee Falls, Wisconsin, with permanent status in class and make her whole for all lost wages, benefits, and seniority.

Despite this favorable decision, it is important for this Court to note that the prior appeal of Petitioner's termination and discharge is not under review herein and in no way impacts the review by this Court of the issues in this appeal. The Decision and Order, however favorable to Petitioner, does not provide Petitioner with a basis upon which to claim entitlement to the ASA position. The review by this Court is limited to the decision of WERC to affirm the non-hire of Petitioner. To the extent reference has been made to Petitioner's prior discharge and appeal, such information has no precedential value and has only been referenced as historical information about the Petitioner and her prior employment.

interview, candidates were provided with a copy of the first five questions and given a period of fifteen minutes to review them. (*Id.* at 16: 3–25; 17: 5–11, 98:7–12, 164:21–25.) Each of these questions had benchmark responses. (*Id.* at 16: 3–25; 17: 5–11, 98:7–12, 164:21–25.) Candidates were not, however, provided with question number six, which was a "cold question" that did not have a benchmark response. (*Id.* at 19:13–16.)

Hiring recommendations were based solely upon the applicants' responses that were provided during the interview process. (*Id.* at 62:3–8, 81:7–83:9, 98:23–99:4, 132:23–133:2, 199:22–24.) Based upon the interviews, the panel unanimously recommended Ursula Burowack and Stephanie Laskowski for the available positions. (*Id.* at 14:15–19, 165:11–20.) The panel also unanimously decided to not recommend Petitioner for one of the available ASA positions. (*Id.* at 132:19–22.)

According to the panel members, Petitioner's response to question number five, a question about the candidate's ability to adapt to change, weighed heavily on the panel's decision to not recommend Petitioner for the position. (*Id.* at 61:3–17, 75: 7–13, 196:13–97:9, 198:13–21.) Specifically, each panelist selected "Not Recommended" as the benchmark for Petitioner's response to question number five. (Exs., R–9, R–10, R–11.) The panel also recognized that Petitioner did not score as highly as the selected candidates. (Hr'g Tr. 130:20–131:4.)

Once the panel made its decision, the interviewers proceeded to check the recommended candidates' respective references. (*Id.* at 40:10–15,133:3–13.) The reference checks did not alter the panel's decision regarding candidates Burowack and Laskowski and both candidates were offered the positions. (*Id.*)

In her application for the ASA position, Petitioner listed six references, including Woodward—one of the panelists and the same supervisor who had previously recommended Petitioner be discharged. (*Id.* at 153:9–13.) According to Woodward, had Petitioner's references been checked, Woodward would have given a negative reference based off of Petitioner's past work performance. (*Id.* at 155:4–13.)

On March 1, 2017, Petitioner appealed to the Wisconsin Employment Relations Commission ("Respondent"). (Appeal of Non-Selection.) The appeal was assigned to Examiner Peter G. Davis and a hearing was held on May 25, 2017. In her appeal, Petitioner asserted that she should have been hired by the DWD as an ASA. (*Id.*)

On July 26, 2017, Examiner Davis issued a Proposed Decision and Order in which he concluded that the DWD had "abused its discretion" by utilizing an interview panel that included two individuals who had previously recommended Petitioner be discharged from another DWD position during a probationary period. (Proposed Decision & Order 1–2.) Examiner Davis observed that "[n]o reasonable person could have confidence that a panel whose majority had previously fired an applicant was capable of fairly assessing the applicant's qualifications." (*Id.*, 3.) He continued, stating that "even if the panel was actually able to proceed without bias toward [Petitioner], the appearance of bias nonetheless provide[d] a sufficient basis for finding an abuse of discretion by DWD." (*Id.*) Examiner Davis concluded by ordering DWD to offer Petitioner the next available ASA position. (*Id.*, 2.)

On August 25, 2017, the Department filed objections to the Proposed Decision and Order. As a result, the matter was reviewed by WERC Chairman James J. Daley. On September 29, 2017, Respondent, by Chairman Daley, issued a decision affirming DWD's decision not to hire Petitioner. (Decision & Order) Respondent determined that the Department "did not act

illegally or abuse its discretion" and concluded that "while the composition of the panel . . . raise[d] questions about the appearance of bias in the hiring process, . . . the panel composition [wa]s not sufficient to meet [Petitioner]'s burden of proof . . . ." (*Id.*) Respondent also concluded that it would not have been improper for the panelist—who Petitioner had listed as a reference and had previously recommended that Petitioner be discharged—to provide a reference based on her prior interactions with Petitioner. (*Id.*) Lastly, Respondent noted that although the panel's scoring methodology was "inherently subjective and thus subject to attack," Petitioner failed to meet her burden of proof and therefore did not show that the scoring was "clearly against reason and evidence." (*Id.*)

Subsequently, Petitioner filed a petition for rehearing on October 18, 2017. In her petition, Petitioner alleged that during a break in the administrative hearing on her appeal, DWD's attorney (1) yelled at Petitioner about the amount of time the hearing was taking; (2) accused Petitioner of prolonging the interviews by asking too many questions; (3) yelled at Petitioner about her age discrimination case; (4) stated that Petitioner had cheated on the interview and did not deserve the position; and (5) accused Petitioner of bringing the benchmark questions and answers with her to the interview. (Pet. for Reh'g 1.) On November 7, 2017, Respondent denied Petitioner's request for a rehearing and concluded that the Decision and Order did not contain any errors of fact or law. (Order Den. Pet. for Reh'g.)

ANALYSIS

I. RESPONDENT REASONABLY CONCLUDED THAT DWD NEITHER ACTED ILLEGALLY NOR ABUSED ITS DISCRETION BY FAILING TO HIRE PETITIONER.

A. Standard of Review

Judicial review of agency action is governed by Wisconsin Statute Chapter 227 and is confined to the record established before the agency that made the challenged decision. WIS. STAT. § 225.57(1). The burden is not on the agency to justify its action. *City of La Crosse v. Wis. Dep't. of Nat. Res.*, 120 Wis.2d 168, 178, 353 N.W.2d 68 (Wis. Ct. App. 1984). Rather, the party seeking to overturn the agency action bears the burden of proof. *Id.*

In reviewing an administrative appeal, the court reviews the decision of the agency. *Wis. Bell, Inc. v. Labor & Indus. Review Comm'n*, 2017 WI App 24, ¶ 28, 375 Wis.2d 293, 309, 895 N.W.2d 57. The scope of review is set forth in Wisconsin Statute Section 227.57, which states that the court shall affirm the agency's action "[u]nless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision." WIS. STAT. § 227.57(2). With this, the court separately reviews "disputed issues of agency procedure, interpretations of law, [and] determinations of fact or policy within the agency's exercise of delegated discretion." WIS. STAT. § 227.57(3). "[U]pon such review, due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it." WIS. STAT. § 227.57(10).

An agency's findings of fact are conclusive on appeal if they are supported by substantial evidence. WIS. STAT. § 227.57(6); *Milwaukee Symphony Orchestra, Inc. v. DOR*, 2010 WI 33, ¶ 31, 324 Wis.2d 68, 781 N.W.2d 64. Under the substantial evidence standard, an agency's findings of fact are conclusive and therefore supported by substantial evidence "if a reasonable

person could arrive at the same conclusion as the agency, taking into account all [of] the evidence in the record." *Clean Wis., Inc. v. Pub. Serv. Comm'n of Wis.*, 2005 WI 93, ¶ 46, 282 Wis.2d 250, 310, 700 N.W.2d 768.

In this review, the court shall not substitute its judgment for that of the agency as to the weight or credibility of the evidence on any finding of fact. WIS. STAT. § 227.57(6). "An agency's findings of fact may be set aside only when a reasonable trier of fact could not have reached them from all the evidence before it, including the available inferences from that evidence." *Milwaukee Symphony Orchestra, Inc.*, 2010 WI 33, ¶ 31. In other words, an administrative agency's findings of fact will be set aside only if the determinations are found to be unreasonable. *Washington Cty. v. WERC*, 2011 WI App 49, ¶ 11, 332 Wis.2d 409, 797 N.W.2d 902. Yet, where substantial evidence supports two competing views, it is for the agency to determine which view it wishes to accept. *Yao v. Bd. of Regents of Univ. of Wis. Sys.*, 2002 WI App 175, n. 3, 256 Wis.2d 941, 649 N.W.2d 356.

Application of a legal standard to a particular set of facts presents a question of law. *City of Kenosha v. Labor & Indus. Review Comm'n*, 2000 WI App 131, ¶ 9, 237 Wis.2d 304, 614 N.W.2d 508. The reviewing court may give deference to an agency's legal determination so long as the court determines that the agency's conclusion was reasonable. *Milwaukee Symphony Orchestra, Inc.*, 2010 WI 33, ¶¶ 32–33. With this, Wisconsin courts have established three levels of deference—great weight, due weight, or no deference—to be granted to agency legal conclusions. *Id.*, ¶ 34. However, the reviewing court need not determine the level of deference to be afforded so long as the court is satisfied that the result would be the same under any level of deference or the legal question involves interpretation of an unambiguous statute. *Gen. Casualty Co. of Wis. v. Dep't of Revenue*, 2002 WI App 248, ¶ 4, 258 Wis.2d 196, 653 N.W.2d 513.

Great weight deference is appropriate where: (1) the agency is charged by the legislature with the duty of administering the statute; (2) the agency interpretation is one of long standing; (3) the agency employed its expertise or specialized knowledge in interpreting the statute; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. *Milwaukee Symphony Orchestra, Inc.*, 2010 WI 33, ¶ 35. When a reviewing court accords great weight deference, the court sustains the agency's reasonable statutory interpretation, even if the court concludes that another interpretation is equally or more reasonable than that of the agency. *Id.*

Lesser, due weight deference is warranted when the legislature has charged the agency with enforcement of the statute and the agency has some experience in an area, but the agency has not developed the expertise that necessarily places the agency in a better position than the court to interpret the statute. *Id.*, ¶ 36. When courts apply due weight deference, the court sustains the agency's statutory interpretation if it is not contrary to the clear meaning of the statute, unless the reviewing court determines that a more reasonable interpretation exists. *Id.*

No deference is given when any of the following are met: (1) the issue is one of first impression; (2) the agency has no experience or expertise in deciding the legal issue presented; or (3) the agency's position on the issue has been so inconsistent as to provide no real guidance. *Id.*, ¶ 37. When a court accords an agency's interpretation no deference, the court independently interprets the statute and, in effect, adopts an interpretation that the court determines is the most reasonable interpretation. *Id.*

B. Respondent's Findings of Facts are Supported by Substantial Evidence.

The findings before this Court for review are those of the Respondent, not those made by the examiner. *See Transamerica Ins. v. Dep't of ILHR*, 54 Wis.2d 272, 281, 195 N.W.2d 656

(Wis. 1972). As previously noted, findings of fact are reviewed under the substantial evidence standard. *Milwaukee Symphony Orchestra, Inc.*, 2010 WI 33, ¶ 31. The question then before this Court is whether a reasonable person, taking into account all of the evidence in the record, could arrive at the same findings. *See Clean Wis., Inc.*, 2005 WI 93, ¶ 46.

In reaching its decision, Respondent relied on the testimony and exhibits that were provided at the hearing. The exhibits included the job announcement, a detailed description of the ASA position, the panelists' interview notes from Petitioner's interview as well as the interviews of the two candidates who were ultimately chosen, and the hiring recommendations made by the panel. With this, Respondent made the following factual findings:

> 1. [Petitioner] applied for an [ASA] position with the DWD.
> 2. As part of the hiring process, [Petitioner] completed an examination [that] certified her as being qualified to hold the ASA position. Although she received one of the highest scores on the examination, the DWD hiring process does not provide that information to the DWD panel that interviews qualified applicants.
> 3. A three-person panel was utilized by DWD to interview all certified applicants (including [Petitioner]) and mak[e] a hiring recommendation[, which] was to be based exclusively upon how an applicant responded to the panel's questions. The panel included two individuals who had earlier successfully recommended that [Petitioner]'s employment in another DWD position be terminated during a probationary period. The panel did not recommend that [Petitioner] be offered employment as an ASA, and she was not hired for the ASA position.
> 4. If the panel had recommended that [Petitioner] be hired, the hiring process would have then moved to the stage of reviewing references. [Petitioner] listed six references including one of the two panel members who had earlier successfully recommended that she be terminated from another DWD position during a probationary period. If the hiring panel had recommended that [Petitioner] be hired, that panel member would have provided a negative recommendation and [Petitioner] would not have been hired.

Neither Petitioner nor Respondent advance an argument against the findings of fact made by Respondent. Moreover, neither party argues that the evidence in the record is not credible as a matter of law. Thus, the facts are not disputed. Yet, even if Respondent's factual findings were in dispute, this Court finds that the facts relied upon by the Respondent are supported by substantial evidence in the record. To state it a different way, on the basis of the record, reasonable minds could readily make the same factual findings as Respondent.

C. Respondent's Conclusion that DWD did not Act Illegally or Abuse its Discretion by Failing to Hire Petitioner was Reasonable.

Petitioner seeks judicial review of Respondent's decision and argues that the Department, in denying Petitioner's hire for the ASA position, acted illegally and abused its discretion. Wisconsin Statute Section 230.44(1)(d) authorizes appeals to the Wisconsin Employment Relations Commission and provides:

> 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.

1. Respondent's Conclusion that DWD did not Act Illegally was Reasonable.

Petitioner first contends that Respondent's conclusion was illegal. Specifically, Petitioner asserts that the Department failed to comply with Wisconsin Administrative Code ER-MRS Section 15.055 when it did not hire Petitioner as an ASA after discharging her from her former position.

Respondent acknowledges Petitioner's argument, but asserts that the issue has no legal bearing on the "abuse of discretion issue presently before th[is] [C]ourt." While Respondent is correct in that regard, the legality issue is under the scope of this Court's review as the Respondent concluded that the Department "did not act illegally or abuse its discretion." Therefore, Petitioner's argument that Wisconsin law was not followed goes to the question of

whether Respondent reasonably could have concluded that DWD did not act illegally when it failed to hire Petitioner.

Neither party has challenged the adequacy of the Respondent's decision. Nevertheless, this Court recognizes Respondent concluded that DWD did not act illegally without setting forth adequate reasoning for its conclusion. Since the issue here is one of law and was raised and addressed by the parties leading up to this appeal, this Court will address it here. It should be noted that this Court's decision on the legality issue would be the same under any level of deference. Therefore, the level of deference issue need not be decided. *See Gen. Casualty Co. of Wis.*, 2002 WI App 248, ¶ 4.

Wisconsin Administrative Code ER-MRS Section 15.055 provides:

> If a probationary period resulting from a transfer under s. ER-MRS 15.04 or 15.05 is required, the appointing authority, at any time during this period, may remove the employee from the position to which the employee transferred, without the right of appeal. An employee so removed shall be restored to the employee's previous position or transferred to a position for which the employee is qualified in the same pay range or pay rate or a counterpart pay range or pay rate without a break in employment. Any other removal, suspension without pay, or discharge during a probationary period resulting from transfer shall be subject to s. 230.34, Stats.

Under ER-MRS Section 15.055, an employee that is removed from a position during a probationary period "shall be restored to the employee's previous position or transferred to a position for which the employee is qualified in the same pay range or pay rate." Even so, Petitioner did not request to be restored under the Wisconsin Administrative Code. (Hr'g Tr. 235:9–23.)

More importantly, Wisconsin Administrative Code ER-MRS Section 15.055 is the administrative rule that applies the restoration rights set forth in Wisconsin Statute Section

230.31. This statute previously provided a right of restoration or reinstatement to any person that obtained permanent status and was separated from service without any delinquency or misconduct. However, the statute was amended in February of 2016 and currently provides that:

> (1) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service before July 1, 2016, without any delinquency or misconduct on his or her part but owing to reasons of economy or otherwise shall be granted the following considerations:
> (a) For a 5-year period from the date of separation, the person shall be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified.
> (b) For a 3-year period from the date of separation, if on layoff status, the person shall be placed, in inverse order of layoff, on an appropriate mandatory restoration register for the unit used for layoff and on a restoration register for the agency from which the person was laid off. Use of such registers shall be subject to the rules of the director.
> (3) Any person who has held a position and obtained permanent status in class under the civil service law and rules and who is laid off on or after July 1, 2016, is eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified for a 3-year period from the date of the layoff.

WIS. STAT. § 230.31.

The amendment eliminated restoration rights for those separated after July 1, 2016 and provided only limited reinstatement eligibility to workers who were laid off after this date. With the passage of Act 150, the rights and privileges attained by virtue of permanent status changed. Employees no longer have a right to restoration, except in a few circumstances not applicable here,[2] and only limited reinstatement eligibility if the employee is laid off or the employee has accepted an appointment in an unclassified position, neither of which is applicable in the present

[2] Restoration rights are available for those that take military leave or when a leave is taken to fill an unclassified appointment. WIS. STAT. §§ 230.32 and 230.33.

case. It is also important to note that Wisconsin Administrative Code ER-MRS § 15.055 was created well before the passage of Act 150.

"Administrative rules must be construed to be harmonious with statutory law dealing with the same subject matter." *DaimlerChrysler v. Labor & Indus. Review Comm'n*, 2007 WI 15, ¶ 36, 299 Wis.2d 1, 727 N.W.2d 311. To the extent this code provision conflicts with Act 150, the statute controls. WIS. STAT. § 227.40(4)(a) ("[T]he court shall declare [a] rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated without compliance with statutory rule-making procedures."); WIS. STAT. § 227.10(2) ("No agency may promulgate a rule which conflicts with state law."); *see also Wis. Ass'n of State Prosecutors v. WERC*, 2018 WI 17, ¶ 36, 380 Wis.2d 1, 907 N.W.2d 425.

Petitioner was discharged from her position in September of 2016. She was not laid off. As a result, Petitioner had no right to restoration or reinstatement under the current statute. Even assuming that Petitioner was laid off, she would be limited to reinstatement eligibility. However, reinstatement eligibility to a position of equal or lesser pay for which the laid off individual is qualified is not a legal right to a job. The statute provides no such right. Given that Petitioner had no rights to restoration or reinstatement, this Court finds that Respondent reasonably concluded the Department did not act illegally when it refrained from hiring Petitioner as an ASA, a position different than the one from which she had previously been discharged.

2. Respondent's Conclusion that DWD did not Abuse its Discretion was Reasonable.

Petitioner also argues that DWD's non-hire decision was an "abuse of discretion." An abuse of discretion is when an agency fails to exercise sound and reasonable decision-making and/or reaches a decision that is unsound or unsupported by the evidence. (*Abuse of Discretion*, BLACK'S LAW DICTIONARY (10th ed. 2014)).

Petitioner contends that the participation of two of the panelists constitutes an abuse of discretion because two of the three interview panelists previously recommended that Petitioner be discharged from her prior position as a UBS. It is undisputed that these panel members had recommended Petitioner be terminated from another DWD position. Yet, there is no evidence that the two panelists' previous interactions with Petitioner biased the panel's scoring decisions and ultimate hiring recommendations. Rather, the uncontroverted evidence in the record shows that Jessel and Woodward limited the evaluation of all candidates, including Petitioner, to the information elicited during the interviews. (Hr'g Tr. at 62:3–8, 81:7–83:9, 98:23–99:4, 132:23–133:2, 199:22–24.)

As previously noted, the decision of whether to recommend a candidate for hire was to be made solely upon the candidates' responses to the panel's interview questions. During the interview process, each candidate was asked the same questions and their responses were scored utilizing the same benchmarks. The panel unanimously selected "not recommended" in regards to Petitioner's response to question number five. In addition, the two recommended candidates scored higher than Petitioner.

Approximately twenty-eight candidates were interviewed for the two available positions. Thus, the panel needed to determine which of the candidates would be recommended for the positions – in other words, it was the duty of the of the interview panel to evaluate and recommend candidates for selection. In performing those duties and reviewing the candidates' responses to the interview questions, the panel unanimously determined that Burowack and Laskowski were the best candidates and therefore recommended them for the positions.

Petitioner also argues that the panel's non-hire recommendation was an "abuse of discretion" because one of the panelists would have given a negative reference and Petitioner

would not have been hired. However, the record demonstrates that references were not checked until after the panel had made its recommendation. The panel's decision to refrain from recommending Petitioner for an ASA position therefore took place before reference checks.

As Respondent noted, one perspective on the above scenario is that because Petitioner would have never been hired following the negative reference, the hiring process was a sham as to Petitioner and therefore constitutes an abuse of discretion. A second perspective is that because Petitioner chose to list a former supervisor as one of her six references, there would have been nothing improper for that individual to have provided a reference based on her prior interactions with Petitioner. Given the undisputed facts, Respondent's acceptance of the latter perspective is reasonable. The fact that one of the panelists would have given Petitioner a negative reference does not render the panel's non-hire recommendation an "abuse of discretion."

In addition, Petitioner attacks the interview panel's scoring methodology. As previously noted, Respondent refrained from "second guessing" the methodology employed by the panel because Petitioner had failed to meet her burden of proof. This Court agrees. Nothing in the record supports the conclusion that the panel's scoring decisions were "clearly against reason and evidence."

Under the facts of this case, there is no basis for the conclusion that Respondent acted illegally or abused its discretion by failing to hire Petitioner. Thus, Respondent's decision was reasonable and is affirmed. *See* WIS. STAT. § 227.57(2).

CONCLUSION

Petitioner has failed to present any evidence to support her claim that she was not hired for the ASA position because the interview panel was biased and did not treat all interviewees equally. Therefore, Petitioner has not met her burden of proof.

The evidence overwhelmingly indicates that all candidates faced the same interview process, the panel made hiring recommendations that were solely based on the interviewees' responses during the interview, and that Petitioner was not chosen for the ASA position because Petitioner's interview scores were lower than those of the candidates who were chosen.

After examining the record in this case, this Court determines that the undisputed findings of fact are supported by substantial and credible evidence in the record and that Respondent's decision was reasonable. *See* WIS. STAT. § 227.57(6). Accordingly, this Court affirms Respondent's decision in its entirety.

IT IS HEREBY ORDERED:

The decision of the Wisconsin Employment Relations Commission is affirmed in its entirety.

BY THE COURT:

Electronically signed by Jennifer R. Dorow

Jennifer R. Dorow

Circuit Court Judge

Title

06/25/2018

Date

This is a final order for purposes of appeal.

cc: Ms. Susan Rakowski
Wisconsin Employment Relations Commission
Department of Workforce Development