

STATE OF WISCONSIN

BEFORE THE PERSONNEL BOARD

GARY E. MILLER,

Appellant,

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OFFICIAL

vs.

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C. K. WETTENGEL, DIRECTOR
STATE BUREAU OF PERSONNEL,

Respondent

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ORDER

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#452

The Board having entered its Findings of Fact and Conclusions of Law in this matter, hereby makes and files the following Order:

1. The oral examination Board, consisting of Dr. Gardner, William Kelsay, and Frank Newgent, was duly constituted and convened and conducted the oral examination of the Appellant.

2. The examination of the Appellant was conducted by all Board members in an objective and proper manner and as the result of such examination, ranked the Appellant No. 3, with a score of 85.

3. The application of ten veterans points to Rodney Van Deventer was required by statute and resulted in a realignment of the comparative rank of the top four candidates.

4. There is nothing in the voluminous record of the transcript of this matter which would indicate any impropriety in the examination, evaluation or ranking of the Appellant, and such grading and ranking is hereby affirmed.

5. The Appellant's appeal from his examination ranking and scoring is hereby dismissed on its merits.

Dated at Madison, Wisconsin this 11th day of June, 1973.

STATE PERSONNEL BOARD

By William Ahrens
William Ahrens, Chairman

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GARY E. MILLER,

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OFFICIAL

Appellant,

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FINDINGS OF FACT

vs.

**

AND

CONCLUSIONS OF LAW

C. K. WETTENGEL, DIRECTOR
STATE BUREAU OF PERSONNEL,

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Respondent.

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Hearings in this matter were conducted before the State Personnel Board on December 11, 1972, December 20, 1972, December 21, 1972, and concluded January 11, 1973. Board members Chairman William Ahrens, Percy L. Julian, Jr., and Susan Steininger participated in all hearings. Board member Charles Brecher participated in the hearing on December 11, 1972, and did not thereafter participate and, likewise, was excused from further consideration of the matter. The transcript of testimony has been reviewed and examined by the Board and briefs filed for and on behalf of both parties. The Board has considered all of the matters, including all of the exhibits admitted into evidence as well as the sworn testimony herein, and enters the following:

FINDINGS OF FACT

1. Gary Miller is a classified State employe, employed by the State Department of Health and Social Services, Division of Mental Hygiene, Bureau of Mental Retardation, with a classification of Social Services Administrator 3, salary range 1-16.
2. That a vacancy existed in the Social Services Administrator 5-Mental Retardation, salary range 1-18, as Assistant Director of the Bureau of Mental Retardation.
3. A certification request to recruit for this vacancy was prepared by the Department of Health and Social Services for the purpose of initiating recruiting efforts to secure applicants for examination and certification to this position vacancy. The deadline for filing such applications was set for September 13, 1971.

4. The appellant, Gary Miller, after observing the recruiting announcement, filed an application for this vacancy dated September 13, 1971, with the State Bureau of Personnel.

5. After the deadline for filing applications had passed, Arlaine Haugsby, Personnel Analyst, State Bureau of Personnel, reviewed all applications as filed. Upon her examination of the Gary Miller application, she determined that based on the materials submitted, the application did not show the minimal requirements for admission to the examination. She advised the appellant of this information by letter dated October 11, 1972, requested that he supply additional qualifying experience in the event such could be shown.

6. After the receipt of this letter of rejection for examination, the appellant personally appeared in the office of Arlaine Haugsby and reviewed his application and submitted in his writing additional qualifying experience showing minimal compliance with the requirement of two years of administrative or supervisory experience involving independent responsibility for a mental retardation program.

7. In preparation for the oral examination, the Department of Health and Social Services, by letter dated October 15, 1971, forwarded to the State Bureau of Personnel, in accordance with its suggested guidelines, a list of eight persons recommended for consideration as an Oral Board member to conduct the scheduled examination.

8. From the list of individuals submitted after a review of their qualifications, an initial Board of three members was selected by the State Bureau of Personnel, consisting of William Sloan, Director of the Division of Mental Retardation in the State of Illinois; William Kelsay, Mental Retardation Specialist, Department of Health, Education and Welfare, Chicago, Illinois; and Frank Newgent, Administrator of the Division of Family Services, State Department of Health and Social Services.

9. After the initial selection, Board member Sloan requested to withdraw and Professor Richard Heber of the University of Wisconsin was selected by the bureau to replace Mr. Sloan.

10. A short time before the scheduled examination, Professor Heber was unable to serve as a Board member due to a conflict in his schedule and he notified Theodore Cox, Personnel Manager of the Division of Mental Hygiene and Dr. Gardner was recommended, approved, and selected to serve in his place.

11. The examination was scheduled and held on Monday, November 15, 1971, with 14 candidates scheduled to appear for examination commencing at 8:30 a.m. The appellant, Gary Miller, was scheduled and did appear for examination at 3:00 p.m.

12. The Oral Board, consisting of Dr. William Gardner, William Kelsay, and Frank Newgent, appeared in Room 244 Wilson Street State Office Building, Madison, Wisconsin, at 8:00 a.m., November 15, 1971, for the purpose of conducting the scheduled examination. At the time of the convening of the Oral Board, they were briefed in the examination procedure, the nature and type of position being recruited for and were given a schedule of the applicants who were to appear for examination.

13. The examination of all applicants was under the supervision of Arlaine Haugsby, Personnel Analyst, State Bureau of Personnel. An Oral Board co-ordinator, Meredith Horton, assisted the Board in the introduction of the candidates and the operation of the tape recorder of each individual examination. Both the Oral Board briefing prior to the commencing of the examination, and the actual examination of all applicants who appeared is recorded on tape and preserved as required by statute.

14. At the time each candidate appeared for his oral examination, he was greeted by a receptionist who gave to him a written introduction and instructions to be used in conducting the oral examination as well as the names of the Oral Board members. Meredith Horton, prior to the examination of the

appellant, discussed the examination procedure with him, advised him who the Oral Board members were, and asked the appellant if he had received a copy of the written notice of instructions. The appellant advised Miss Horton that he had received such written instructions and that he was aware of the Oral Board members who were to conduct his examination. He discussed with her the possibility of requesting Dr. Gardner to withdraw from consideration and evaluation of him during the examination procedure.

15. After a short discussion, the appellant advised the co-ordinator that he felt that if he were to ask an Oral Board member to disqualify himself, it may adversely affect his examination by the other Board members and that he elected to proceed to the examination with all three selected Board members. The appellant was examined by all Board members present and a tape recording of such examination has been preserved in the bureau records.

16. After the completion of the examination of all of the applicants, the Board individually and collectively evaluated and ranked the first four applicants as follows:

Rank 1 - Gerald Dymond - Score 95
Rank 2 - Peter Townsend - Score 89
Rank 3 - Gary Miller - Score 85
Rank 4 - Rodney Van Deventer - Score 84

After the completion of the ranking and scoring of all of the applicants, this information was forwarded to the State Bureau of Personnel who computed the final grades by the addition of veterans points to those individuals who had indicated they were qualified to receive this preference.

17. As the result of such application of veterans preference points, applicant Rodney Van Deventer, who initially ranked fourth with a Board score of 84, was entitled to ten veterans points by Wisconsin law and his final grade was adjusted to 94, this adjustment changed his ranking from No. 4 to No. 2. All other applicants were entitled to no veterans preference grade points so that in the final grading, the No. 1 candidate, Dymond, remained No. 1, Rodney

Van Deventer ranked No. 2, Peter Townsend ranked No. 3, and the appellant, Gary Miller, ranked No. 4.

18. Each of the applicants who appeared for examination were notified in writing of their rank and final score on the examination. The appellant, upon receipt of his ranking of No. 4, contacted C. K. Wettengel, the respondent, and eventually timely appealed his ranking and the result of examination.

19. In compliance with the Wis. Adm. Code Pers. 6.08, Rules of Personnel Board and Rules of Director, after the appeal of examination, the appellant appeared for a conference with Arlaine Haugsby at which time she reviewed the examination results with him, confirmed his final ranking and gave him a review of the general Board comments made by the Board members at the time of his examination.

20. As the result of the filing of the appeal, the hearing in the matter was initially set for hearing July 10, 1972, but was later adjourned at the request of the appellant's attorney and was subsequently reset for hearing December 11, 1972, at 10:00 a.m.

BOARD OPINION

A review of the entire transcript of the hearings held indicates that at the commencement of the hearing a request for definement of the issues was made, and prior to the swearing of any testimony, the Board considered and defined the issues to be as follows: Was any statute or any other rule of law violated in the constituting of the oral Examining Board in appellant's examination; and if a violation occurred, did it adversely affect the appellant. What actions or other circumstances or conditions, if any, involving the Examining Board occurred during the examination and scoring of the appellant which adversely, illegally or improperly affected his examination results.

After an intense examination of the complete record in this matter and bearing in mind that this is an appeal from an examination of applicants for a vacant classified position which places the burden of proof upon the appellant to show by a preponderance of the evidence to a reasonable certainty that improprieties did, in fact, exist in the examination process which adversely affected the appellant, that he has failed to meet this burden.

Parenthetically, it now appears after the testimony has been closed that the position being examined for, to-wit, Social Services Administrator 5-Mental Retardation, with the working title of Assistant Director of the Bureau of Mental Retardation, is presently vacant and that it can be reasonably anticipated that a certification request will be forthcoming from the department requesting the Bureau of Personnel to schedule an examination for the purpose of filling this position. At that time, the appellant may, if he wishes, submit his application for consideration and participate in the examination for this vacancy. This was his initial request at the commencement of the hearing, that is, to declare the position vacant and conduct a new examination for a list of three eligibles to be considered for hiring.

The Board having entered the above Findings of Fact and Board Opinion enters the following:

CONCLUSIONS OF LAW

1. The oral examination Board, consisting of Dr. Gardner, William Kelsay, and Frank Newgent, was duly constituted and convened and conducted the oral examination of the appellant.

2. The examination of the appellant was conducted by all Board members in an objective and proper manner and as the result of such examination, ranked the appellant No. 3, with a score of 85.


3. The application of ten veterans points to Rodney Van Deventer was required by statute and resulted in a realignment of the comparative rank of the top four candidates.

4. There is nothing in the voluminous record of the transcript of this matter which would indicate any impropriety in the examination, evaluation or ranking of the appellant.

5. The appellant's appeal from his examination ranking and scoring is hereby dismissed on its merits.

Dated at Madison, Wisconsin this 11th day of June, 1973.

STATE PERSONNEL BOARD, By



William Ahrens, Chairman