

OFFICIAL

STATE OF WISCONSIN

PERSONNEL BOARD

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D. EDWARD BOLTON,
Appellant,

v.

C. K. WETTENGEL, Director,
State Bureau of Personnel,
Respondent.

Case No. 73-142

OPINION

* * * * *

AND

MOHAMED HAMDY ABDEL-MONEIM,
Appellant,

ORDER

v.

C. K. WETTENGEL, Director,
State Bureau of Personnel,
Respondent.

Case No. 73-131

* * * * *

Before AHRENS, Chairman, JULIAN, STEININGER and WILSON.

OPINION

Background Facts

On May 14, 1973, Appellant, D. Edward Bolton, applied for a position as a Vocational Education Consultant I with the Board of Vocational, Technical and Adult Education in Madison, Wisconsin. His eligibility was certified to the appointing authority on June 12, 1973. The Appellant was ranked number one in a group of three qualified candidates for the position, and he was hired. Appellant's employment commenced on June 25, 1973. The same month, an

unsuccessful applicant, Mohamed Hamdy Abdel-Moneim, requested an investigation by this Board into the selection, alleging that Bolton had not received his bachelor's degree, which was one of the requirements of the position. The Appellant's application included a vita, which listed his education as follows: "University of Wisconsin-Milwaukee, 1968-71; B.A., 1970."

As a result of the investigation request by Mr. Moniem, the Respondent requested verification of Appellant's academic standing from the University of Wisconsin-Milwaukee. On August 1, 1973, the Assistant Director of Records at the University informed the Respondent that the Appellant's file indicated that he had completed 107 of the 120 credits necessary for a bachelor's degree. On August 16, the Respondent formally notified the Appellant that his employment with the State of Wisconsin was terminated for failure to meet the requirements of the job and for improperly asserting on his application that he did. On the same day, the Respondent informed the Secretary of the Board of Vocational, Technical and Adult Education of his action.

Mr. Moneim agreed that the part of his investigation request that related to Appellant's qualifications should be treated as an appeal against the Director for permitting Appellant to compete in the examination. Subsequently, after his dismissal, the Appellant appealed the Director's action in removing him from the position. The two appeals were consolidated for a prehearing conference since they involved one identical issue. At that time, all of the parties to the two proceedings, Mr. Moneim, the Appellant, and Respondent Wettengel, agreed that the Respondent Wettengel would represent Mr. Moneim upon the trial of the issue.

On November 16, 1973, a hearing was held on all matters at issue relating to the Appellant. Appellant was represented by counsel. Since that time, Appellant has retained an attorney other than the attorney who represented

him at the hearing, and has moved the Board to re-open the hearing to take further testimony. The matter was heard by a panel of Board members consisting of Chairman Ahrens, and Members Brecher and Julian. Since then Mr. Brecher has been replaced by Member Wilson. Since only two members of the Board heard live testimony and they do not constitute a quorum of the Board, this matter has been considered by a quorum of the Board through a reading of the transcripts and the entire record.

We find the foregoing statement of facts to be true and to be material to a determination of the issues in this case. Other findings of fact will be made in connection with our discussion of the issues.

Issues

The issues in this matter are:

1. Was the Appellant's termination from the position of Vocational Education Counselor 1 by the Director of the Bureau of Personnel, on the basis of failure to meet the minimal educational requirements and falsification of this information on his application proper?
2. Should the hearing be re-opened to take further testimony?

Appellant Did Not Possess a Bachelor's Degree, a Prerequisite for the Job.

Appellant has not questioned whether the requirement of a Bachelor's degree for the position of Vocational Educational Consultant I is valid or necessary to the performance of the job. Accordingly, we do not reach or decide this issue.

On June 12, 1973, the date Appellant was certified as eligible, he had not completed the necessary prerequisites for his degree either in terms of being entitled to 120 credits or in having fulfilled the foreign language

requirement for a degree. As stated earlier, the University of Wisconsin-Milwaukee informed the Respondent of the Appellant's credit deficiency on August 1, 1973. The 107 credits by then earned was a number that had remained officially fixed since the Appellant's last academic enrollment in the fall of 1970. The evidence demonstrates that Appellant had completed work in several courses, the credit for which remained "in limbo" as of June 12, 1973. Two incompletes which the Appellant had recorded in two different psychology courses, totaling 7 credits, were not removed until August of 1973. A 3-credit philosophy course, which Appellant had taken some years earlier at the Madison campus of the University of Wisconsin, was not officially transferred to his record at the Milwaukee campus until October, 1973. In other words, prior to 1970, the Appellant had completed work in psychology and philosophy to which he was entitled to 10 additional credits, but those credits were not as of June 12, 1973, formally shown on his academic records at University of Wisconsin-Milwaukee. The Appellant was successful in convincing the University of Wisconsin-Milwaukee of his entitlement to these credits in August, 1973, and the University of Wisconsin-Milwaukee formally acknowledged such credit standing in September, 1973.

Between September, 1971, and May, 1972, the Appellant did independent reading under the informal tutelage of Prof. John Porter. He was not then enrolled in any credit course at the University of Wisconsin-Milwaukee in connection with this reading. In the summer of 1973, Appellant learned that he might obtain 3 credits for this independent reading, provided he enroll for the fall semester in 1973, which he did. Therefore, at that time he received an additional 3 credits which gave him enough to graduate. We find that the Appellant's 3 credits acquired to attain a degree in the fall of 1973 cannot be counted toward his degree entitlement for purposes of qualification for the position here in question.

In addition, a 5-credit biology course which Appellant had taken early in his academic career at the University of Wisconsin-Whitewater was found by University of Wisconsin-Milwaukee to be duplicated by a botany course, which Appellant later took at the University of Wisconsin-Milwaukee. Thus, the credits Milwaukee accepted in transfer from Whitewater did not include those 5 credits. We find that the Appellant was not entitled to 5 credits for biology taken at the University of Wisconsin-Whitewater, and was not entitled to any additional course credits other than those heretofore mentioned. We find that on June 12, 1973 he was entitled to 117 course credits, which was 3 short of the 120 necessary for a bachelor's degree.

Most damaging to Appellant's case, however, is the foreign language requirement, which is a requirement for a B.A. in the College of Letters and Science at Milwaukee, however many credits a student earns in other subject areas. Appellant undertook to have this requirement waived due to what he testified to as his great difficulty in learning foreign languages. On December 21, 1970, he was informed by a letter from Thomas H. Burton that eight credits of Spanish had been waived, but that "all other requirements must be completed including Spanish 103 and 104." (Emphasis supplied). Appellant did nothing to complete this remaining foreign language requirement by June 12, 1973. This is made clear by the testimony of Erland F. Olfe, an Assistant to the Dean of Letters and Science:

"Q. Sir, as of June 12, 1973, what do your records indicate was Mr. Bolton's scholastic standing?

A. Mr. Bolton as of June 12, 1973 had not completed the foreign language requirement and had only completed 107 credits." (Emphasis supplied.)

It was not until October 26, 1973, that the Appellant's remaining foreign language requirement was waived. The Appellant only then had completed the minimal requirements for the bachelor's degree.

In summary, the Appellant had not completed the minimal requirements for the bachelor's degree as of June 12, 1973. The position applied for required a bachelor's degree at a minimum. We, therefore, find that Appellant did not qualify for the position for which he applied and for which he was hired. On this ground alone, regardless of what Appellant believed, his dismissal was proper.

Appellant Falsified His Application

Appellant's claim that he believed he had completed all the course requirements for a bachelor's degree at the time of his application is not plausible.

Appellant contends that early in the fall of 1970 he went over his transcript with Assistant to the Dean of the College of Letters and Science, Thomas H. Burton, and that Burton then advised him that if Appellant enrolled for a normal credit load during the fall semester, he would graduate at the end of that semester. Appellant testified that Burton had been his advisor since Appellant's first arrival at the Milwaukee campus and that he relied to a considerable extent on Burton's advice. Appellant insists that he came to believe that, by the beginning of 1971, he had earned the degree and that documentation of this was available to him upon request. Appellant thus asserts that he did not falsify his job application, but rather filled it out in good faith with the facts as he believed them to be.

Appellant's contention is not credible. The very man on whom he relied-- Thomas Burton--wrote Appellant a letter on December 21, 1970, informing the

Appellant of his foreign language deficiency. Appellant did not make any effort to clear up this deficiency until the late summer and early fall of 1973. This advice, coming as it did in unambiguous terms from an advisor Appellant claims to have trusted should not have failed to impress Appellant. Yet he did nothing about it until August 27, 1973, when he applied for a waiver. We conclude that the Appellant's new initiative to obtain his degree was prompted by his difficulty with Respondent.

Moreover, the Appellant admitted at the hearing that he knew from the late summer or early fall of 1972 that he had received an incomplete in Psychology 414--a course taken in the fall of 1970. Indeed, Appellant talked with Dr. Barron, the professor who taught the course, and was told by a letter of February 7, 1973, that the student must take the initiative in obtaining permission to be graded "pass-fail" in a course, an option Appellant chose in order to erase his incomplete. But the incomplete wasn't removed until August 1973. We do not understand how Appellant could feel he had acquired these credits at the time of his application in May when he wasn't officially given credit for them until August.

Similarly, Appellant's incomplete in Psychology 205 had been on his record at least since the summer of 1968; yet Appellant made no effort to remove it until August 1973.

In addition, Erland F. Olfe testified that Appellant was made aware of the duplication of a biology course taken at Whitewater with Botany 130 taken at Milwaukee in the summer of 1966 by an evaluation of his Whitewater credits sent him in the summer of 1967.

Appellant undoubtedly realized at some point prior to the time of his application that at least some of the courses on which he was relying for degree credits were not yielding them. In addition, there was the language

requirement. One would think that Appellant's admitted difficulty with learning languages would make him acutely aware, given the Burton letter, of the hurdle yet to be overcome. The language deficiency which confronted Appellant on December 12, 1970, confronted him still on June 12, 1973. It renders irrelevant Appellant's argument, based on the total number of credits earned, that he had completed the requirements for the bachelor's degree at the time he applied. We find that the Appellant willfully falsified his application, and that termination of his employment by the Respondent was proper.

Appellant's Motion to Re-Open the Hearing For Further
Testimony Must Be Denied

The Appellant filed a request that the hearing be re-opened for the purpose of taking additional testimony on the grounds: 1) that two important witnesses had not been called to testify; 2) that two other witnesses had subsequently, in depositions, testified in a manner claimed to be contrary to their original testimony; and 3) that Appellant desired to introduce newly discovered evidence. Appellant urges that the testimony of Dean William F. Halloran and Thomas H. Burton are essential to the case. Counsel for the Appellant had the opportunity to request the attendance of such persons at the hearing of the matter and, in the event they refused, to compel their attendance. Appellant did not do so and is now foreclosed from re-opening the hearing for that purpose. Similarly, Appellant argues that further testimony from Assistant Dean Olfe and V. M. Allison be had in view of what he claims to be their subsequent inconsistent testimony in depositions. Appellant should have proved these matters in his cross examination of these witnesses at the hearing and is barred from re-opening the hearing for that

purpose now. Lastly, Appellant makes reference to newly discovered evidence in his affidavit. However, his affidavit does not make clear when such evidence came to his attention, that he was not negligent in seeking to discover it, that it is material and not cumulative, and that it is reasonably probable that a different result would be reached after taking further testimony. See Combs v. Peters, 23 Wis. 2d 629 (1964). We find that an insufficient showing has been made by the Appellant to warrant the Board ordering further hearing in the matter.

ORDER

IT IS ORDERED that the Appellant's request to re-open the hearing for further proofs is denied.

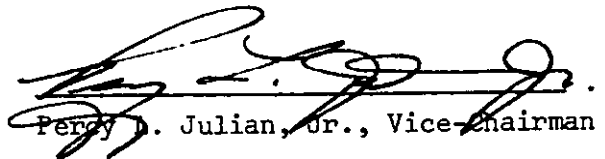
IT IS FURTHER ORDERED that the action of the Respondent dismissing the Appellant, D. Edward Bolton, is sustained.

Dated

July 3, 1974

STATE PERSONNEL BOARD

BY


Percy D. Julian, Jr., Vice-Chairman