

\*\*\*\*\*  
 JAMES L. GREENE,  
  
 Appellant,  
  
 v.  
 C. K. WETTENGEL, Director  
 State Bureau of Personnel,  
  
 Respondent.  
  
 Case No. 73-4  
 \*\*\*\*\*

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

*Handwritten signature*

OPINION AND ORDER

Before JULIAN, Chairperson, AHRENS, SERPE, STEININGER and WILSON

OPINION

I. Facts

Appellant, James L. Greene, a Management Information Specialist 6 with the Division of Financial Operations of the Department of Administration, applied for the newly created position of Management Information Supervisor 7--Chief, Research and Development. Appellant was one of twenty-five applicants.

A screening panel consisting of Richard W. McCoy, Director of Administrative Data Processing for the University of Wisconsin-Madison, and Lawrence Travis, Director of the Academic Computing Center for the University of Wisconsin-Madison, was appointed. They were appointed because of their expertise in this area and their ability to make relative comparisons of the applicants' qualifications. On November 27, 1972, the screening panel met initially to review the applications to determine those candidates best qualified by experience and achievements and who, accordingly, should be invited to participate in the oral examination scheduled for December 18, 1972. Prior to December 7, 1972, the panel

determined that eight of the twenty-five applicants met the criteria established. Both, Mr. McCoy and Mr. Travis, independently determined that Appellant was not qualified.

However, Mrs. Vivian Wessel, an analyst with the Bureau of Personnel, fearing a challenge from Appellant if he were not included, added his name to the list of applicants that had been invited to participate in the oral examination. Consequently, by letter dated December 7, 1972, Appellant was invited to participate in the oral examination scheduled for December 18, 1972. On or about December 13, 1972, Mr. McCoy discovered that the letter was sent and asked Mrs. Wessel why the letter was sent in view of the fact that the panel had found Appellant not to be qualified. On December 14, 1972, Verne Knoll, Deputy Director of the Bureau of Personnel conferred with Respondent, C. K. Wettengel on this matter. They both felt that Vivian Wessel's action in this regard was very inappropriate, threatened the whole integrity of the screening committee technique and instructed David Riehle, supervisor of the staffing unit of the Bureau of Personnel to write a letter to Appellant advising him that an error had been made and that he was not invited to attend the oral examination. The letter was written on December 14, 1972; however, Mr. Knoll read the contents of the letter to Appellant over the telephone on December 15, 1972. Since the other applicants who had been rejected were given an opportunity to supplement their applications for further review, Mr. Knoll attempted to notify Appellant by telephone and by driving to his home on said date without success. Appellant was notified of same in the morning of December 18, 1972, and had four hours to supplement his application.

Appellant did supplement his application and the screening panel did review same on December 18, 1972. The panel decided that the additional information did not support a change of their original determination. Accordingly, Appellant was advised that he could not participate in the oral examination. None of the other seven candidates, previously rejected and who also supplied additional information, were found to qualify either.

On December 20, 1972, Appellant filed a complaint with the Division of Equal Rights and Labor Standards of the Department of Industry, Labor and Human Relations alleging racial discrimination against the State of Wisconsin, Department of Administration and the Bureau of Personnel and the Bureau of Financial Operations. Appellant delivered a copy of said complaint, together with several other papers, to board member Julian on said date. On January 15, 1973, board member Julian sent a letter, together with said complaint and other papers, to William Grenier, Executive Secretary, Board of Personnel, stating that, in his opinion, the documents may be regarded as a complaint concerning racial discrimination in the civil service examination process.

After several prehearing conferences, the hearing was held on January 9, 1975, pursuant to the provisions of sec. 16.05, Stats. The issues, as stated in the record, are whether (1) the appeal was timely and (2) whether Respondent unlawfully refused to examine Appellant for the position of Management Information Supervisor 7--Chief, Research and Development Section.

Respondent took the position throughout the prehearing conferences and at the hearing that the delivery of a copy of a complaint filed with the Division of Equal Rights of the Department of Industry, Labor

and Human Relations to a member of the Board by Appellant could not be construed to constitute an appeal to this Board.

Appellant claimed that he was denied equal participation in the civil service examination for the position by various means because of his race. The two members of the screening panel were aware of the fact that Appellant was the only black applicant.

After a thorough review of the information submitted by Appellant, the screening panel concluded that he was not qualified for the position because of a lack of required experience in the areas of operations research and data base development. The qualifications for the position included two or more years of experience with prime responsibility in the areas of operations research, data base development, telecommunications utilization and related data processing research and development activities. Appellant did have experience in telecommunications utilization, but the necessary experience in the areas of operations research and data base development was lacking.

None of the applicants were appointed to the position. It was eventually filled by a lateral transfer.

We find the foregoing facts to be true and material to a determination of the instant appeal.<sup>1</sup>

## II. Conclusions

In cases of this nature,

"It is generally held that the proper allocation of the burden of proof is among the essential rules of evidence which must be observed in adjudications by administrative agencies. As in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issues before the administrative tribunal." 2 Am. Jur., Administrative Law, s 391, p. 197.

---

<sup>1</sup>It is intended that the facts recited above constitute the Board's findings of fact after hearing, pursuant to sec. 227.13, Stats.

Thus, the burden is on Appellant to prove his allegations to a reasonable certainty by the greater weight of the credible evidence.<sup>2</sup>

The Board has jurisdiction  
over this appeal

Section 16.05(1)(f) of the Wisconsin statutes requires the Personnel Board to hear appeals of interested parties from actions and decisions of the director. However, such appeals cannot be heard unless a written request therefor is received by this Board within 15 days after the effective date of the decision, or within 15 days after the appellant is notified of same. (Section 16.05(2).)

Appellant hand delivered on December 20, 1972, to Percy Julian's office, a copy of a complaint filed with the Equal Rights and Labor Standards Division of the Department of Industry, Labor and Human Relations. This complaint and attachments were sent by Board member Julian to William Grenier on January 15, 1975.

The statutes do not require a written request for an appeal to take any particular form. The complaint clearly indicated that Appellant was alleging a wrongdoing which would be within the Personnel Board's jurisdiction. This Board finds that this complaint constituted a written request for an appeal under Section 16.05(1)(f) despite its not being formally addressed to the Personnel Board.

Furthermore, for the instant appeal this Board concludes that the delivery of the complaint to Percy Julian in his official capacity as a member of the Personnel Board meets the statutory requirements for delivery to the Board. It should be noted, however, that this Board

---

<sup>2</sup>Reinke v. Personnel Board (1971), 53 Wis. 2d 123, 137, 191 N.W. 2d 833; Cudahy v. DeLuca (1970), 49 Wis. 2d 90, 181 N.W. 2d 374.

does not favor delivery of an appeal to an individual member as a substitute for delivery to the Board's office. The former method of delivery can cause delays and confusion in the processing of the appeal.

The appeal was timely delivered since Appellant was finally denied admission to the oral examination on December 18, 1975 and he delivered the complaint to Percy Julian's office on December 20, 1975.

Appellant was not discriminated against  
because of his race.

Appellant alleges he was discriminated against because of his race. He bases this allegation on the fact that (1) he was invited to participate in the oral examination and then not permitted to participate therein, (2) seven other candidates, who were initially rejected, were given approximately one week to prepare and submit additional information, whereas, he was afforded only four hours to do so, and (3) the members of the screening panel discriminated against him.

Although Appellant was found not to be qualified by the screening panel, he was initially invited to participate in the oral examination through an error in judgment on the part of a staff member of the Bureau of Personnel. Once this situation was discovered, the Bureau attempted to remedy it. There was no discrimination involved at this point. The entire integrity of the screening committee techniques would be open to attack if the Bureau allowed a single staff member to overrule the decision of the screening panel especially for reasons not based on the applicant's qualifications.

Further, this Board does not find any discrimination involved Appellant's second contention, based on the evidence submitted by him. It is true Appellant had only four hours to prepare additional materials for review by the screening panel while the other applicants had a week. However, this Board feels that the Bureau made a reasonable effort to notify Appellant on Friday, December 15, 1972 and thereby afford him an adequate opportunity to furnish the screening panel with additional information with respect to his training and experience. There was no showing that the Bureau was acting with an improper motive toward Appellant.

In addition, Appellant failed to establish how the information he did submit would have been different had he had more time. The mere fact that Appellant had less time does not in itself show either that he was discriminated against because of his race or that he was put at a disadvantage in comparison with the other applicants who were allowed more time to submit additional information.

Finally, Appellant alleged that the screening panel discriminated against him but offered no evidence to substantiate this allegation. On the other hand, it is clear that the screening panel objectively reviewed the training, experience and qualifications of all the applicants, and determined that Appellant, among many others, did not possess the necessary qualifications for the position. Section Pers 6.10(1) of the Wis. Adm. Code provides that the director may refuse to examine an applicant who is found to lack any of the preliminary requirements established for the examination. The panel, acting for Respondent, found that Appellant was not qualified for the position because of a lack of required experience in the areas of operations research and data base development.

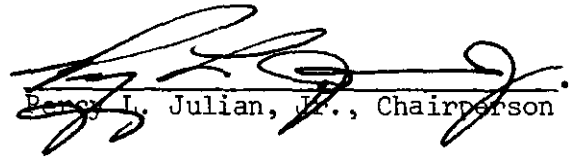
We conclude that Appellant failed to sustain his burden of proof and that the Respondent did not unlawfully refuse to examine the Appellant for the position of Management Information Supervisor 7--Chief, Research and Development Section.

ORDER

IT IS HEREBY ORDERED that the complaint be dismissed.

Dated this 2nd day of June, 1975.

STATE PERSONNEL BOARD

  
Percy L. Julian, Jr., Chairperson