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RICHARD L. SNIDER,

Appellant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION, &

Administrator, DIVISION OF
PERSONNEL,

Respondents.

Case No. 81-254-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the Commission as an appeal from respondent's refusal to consider appellant's request for reclassification prior to appellant having served one year at his current classification.

FINDINGS OF FACT

1. Appellant was first employed by the Wisconsin State Patrol in 1956. He completed his training at the State Patrol Academy in that year, finishing near the top of his class, and became a traffic officer with the Patrol.

2. In 1962, after over five years as a traffic officer, appellant was promoted to the position of Motor Vehicle Inspector 2. He held that position until 1980.

3. Upon the appellant's request, he was laterally transferred to the position of State Patrol Trooper 2, effective April 6, 1980.

4. Appellant completed over 230 hours of training after his transfer.

5. On November 1, 1980, appellant was injured while on duty. As a consequence of those injuries, appellant has been on a leave of

absence from his position. At the time of hearing, appellant still had not returned to active duty as a State Patrol Officer.

6. On May 15, 1981, appellant requested that he be reclassified from Trooper 2 to Trooper 3.

7. Respondents, by Captain L. M. Walsingham, Commander of State Patrol District 8, refused to consider appellant's request:

Your qualifications presently do not meet the requirements of the Trooper 3 classification. Following your return to active duty, you can work toward fulfilling the requirements. When they are met, your request can be processed.

8. Pursuant to the State Patrol Trooper 3 class specifications, Respondent's Exhibit 1, this classification is defined as "full performance law enforcement work . . ." Trooper 1 is the entry level and Trooper 2 the objective level. All these classifications involve basically the same type of duties and responsibilities.

9. The Trooper classification series is commonly referred to as a "progression" series, where reclassification is premised upon a normal progression from one level to the next higher level. Reclassification occurs upon:

[s]atisfactory attainment of a (sic) specified training, education or experience....
§ Pers 3.01(3)(b), Wisconsin Administrative Code.

10. The following requirements must be met for a trooper to be reclassified from the 2 to the 3 level:

- 1) The individual must already be a Trooper 2,
- 2) must complete 60 hours of additional inservice training and must pass the examinations given at the end of each

of the two 30 hour sessions,

3) must perform at the objective level for a period of at least 12 months prior to reclassification and,

4) must receive favorable recommendations from his or her supervisor and the district commander.

11. Appellant meets only two of the four reclassification requirements: he is a Trooper 2 and by virtue of his over 230 hours of training since his transfer, he has completed his inservice requirements.

12. During the eighteen years in which the appellant was a Motor Vehicle Inspector 2, he performed a predominantly investigative function for DOT. He conducted background investigations, vehicle registrations, driver license pick ups and bad check investigations. He had the authority to enforce state laws relating to motor carrier operations, vehicle registrations and vehicle titles, although the actual time spent by appellant in enforcement activities was minimal.

13. Appellant's duties as a Motor Vehicle Inspector 2 were different from the duties assigned the Trooper 2 classification. Appellant's duties as a Trooper 2 are described in his position description dated April, 1980, a copy of which is attached hereto and incorporated by reference as if fully set forth as a part of this finding. Those activities that the appellant also performed while an MVI 2 have been checked.

14. Appellant has not performed at the Trooper objective level for a period of twelve months subsequent to his April, 1980 transfer. As a result, he has not received a recommendation, either favorable or unfavorable, from his supervisor and the district commander.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Wis. Stats.
2. The burden of proof is on the appellant to establish that the respondents have erred in refusing to consider the appellant's request for reclassification.
3. The appellant has failed to sustain his burden of proof.
4. The respondents did not err in refusing to consider the appellant's request for reclassification.

OPINION

This case is substantially identical to Mittelstadt v. DOT & DP, 81-31-PC, (10/2/81). In that case the Commission upheld respondent's refusal to consider Mittelstadt's reclassification request until he had served one year in the Trooper 2 classification. Mittelstadt had been a trooper for eleven years and then in 1975 transferred to an investigator position with responsibilities for trucking regulation. He returned to a Trooper 2 classification in 1980 and sought reclassification to the Trooper 3 classification less than twelve months later. The Commission affirmed DOT's decision precluding reclassification prior to the running of the twelve month period.

The same analysis used by the Commission in Mittelstadt can be applied to the present case. The relevant provision of the Wisconsin Administrative Code establishes a minimum of six months at a new position before a reclassification and regrade can occur:

Incumbents of filled positions which have been reclassified will not be regraded until the incumbent has performed the permanently assigned duties and responsibilities for a minimum of 6 months. § Pers 3.015(3), Wisconsin Administrative Code.

In the present case, testimony established that respondent DOT has adopted a twelve month period of performance as a Trooper as a prerequisite to Trooper 3 reclassification. As was noted in the Mittelstadt decision, "[o]ne of the reasons for this policy is the highly independent conditions under which the work is performed and the lack of available supervision." The expanded period allows each trooper to be exposed to a far wider variety of experiences than would be possible in just a six month time span. The period adopted by DHSS for reclassification of institution guards from Officer 1 to Officer 2 is two years.

Implicit in appellant's case is the argument that, even though DOT has decided on a twelve month period of performance as a trooper before reclassification, the appellant's work history entitles him to special consideration. To support this argument, appellant established those facts set out as Findings of Fact 1 through 4, above. Appellant also showed that during the months he was on active duty as a Trooper 2, his performance ratings were excellent to outstanding. Respondent argues that a full twelve month performance period was necessary because appellant's prior experience as a traffic officer concluded in 1962 and his responsibilities as a Motor Vehicle Inspector 2 were significantly different from a troopers' duties.


The Commission is persuaded by respondent's arguments as well as the prior ruling of Mittelstadt. In that case, the appellant had spent a 6½ year hiatus from trooper duties as an investigator primarily involved in trucking regulation compliance. As an investigator, Mittelstadt did not hold a "law enforcement position." The same conclusions apply to the current appeal. Mr. Snider's hiatus was even longer (nearly twenty years) and the MVI 2 position is not a "law enforcement position." The difference in duties between the MVI 2 and Trooper 2 positions are indicated on the appellant's position description, a copy of which has been attached to this decision.

ORDER

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

Dated: March 8, 1982 STATE PERSONNEL COMMISSION

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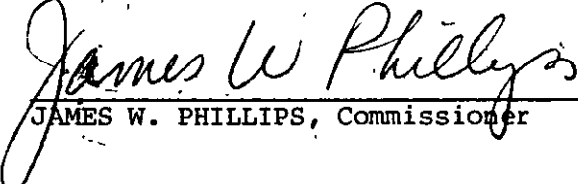

DONALD R. MURPHY, Chairperson

Parties

Richard L. Snider
Route 8, Box 188
Hayward, WI 54843


LAURIE R. MCCALLUM, Commissioner

Charles Grapentine
Administrator
P. O. Box 7855 - DP
Madison, WI 53707


JAMES W. PHILLIPS, Commissioner

Owen Ayres, Secretary
DOT
P. O. Box 7910
Madison, WI 53707

POSITION DESCRIPTION

DER-PERS-10 (Rev 1-78)
 State of Wisconsin
 Department of Employment Relations
 DIVISION OF PERSONNEL

1. Position No 4405	2. Cert/Reclass Request No 927	3. Agency No 395
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4 NAME OF EMPLOYEE Richard L. Snider	5 DEPARTMENT, UNIT, WORK ADDRESS Department of Transportation Division of State Patrol
6 CLASSIFICATION TITLE OF POSITION State Patrol Trooper 2	
7 CLASS TITLE OPTION (To be Filled Out By Personnel Office)	8. NAME AND CLASS OF FORMER INCUMBENT
State Patrol Trooper 2	
9 AGENCY WORKING TITLE OF POSITION State Patrol Trooper II	10 NAME AND CLASS OF EMPLOYEES PERFORMING SIMILAR DUTIES Trooper Warren E. Holden Trooper Donald R. Aderman
11 NAME AND CLASS OF FIRST-LINE SUPERVISOR Sergeant George Eder	12 FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYEE PERFORMED THE WORK DESCRIBED BELOW?

13. DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYEES IN PERMANENT POSITIONS? Yes No IF YES, COMPLETE AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (DER-PERS-84)

14 POSITION SUMMARY - PLEASE DESCRIBE BELOW THE MAJOR GOALS OF THIS POSITION This is an intermediate level trooper position. Work is performed under the limited supervision of a State Patrol Sergeant. Employees in this position develop the knowledges and skills required to function independently as a law enforcement officer. Employees in this position exercise full statutory arrest authority and are responsible for enforcement of state laws, rules and regulations pertaining to the protection of life and property, and provision of related services to the general public in an assigned area.

15 DESCRIBE THE GOALS AND WORKER ACTIVITIES OF THIS POSITION (Please see sample format and instructions on back of last page)

APPELLANT'S

(Continue on attached sheets) **EXHIBIT # 20**

TIME %	GOALS AND WORKER ACTIVITIES
70%	A. Performance of Highway Patrol and Enforcement Functions A-1. Observe the operation and condition of vehicles to ascertain compliance with laws, rules and regulations. A-2. Observe traffic, persons, buildings and surrounding areas to detect unusual conditions, suspicious persons and activities, and to identify situations requiring further investigation and action. A-3. Develop and implement plans for effective patrol and maximum deterrent effect.

(CONT.)

16 SUPERVISORY SECTION - TO BE COMPLETED BY THE FIRST LINE SUPERVISOR OF THIS POSITION (See Instructions on Back of last page)

a The supervision, direction, and review given to the work of this position is [] close [X] limited [] general

b The statements and time estimates above and on attachments accurately describe the work assigned to the position (Please initial and date attachments)

Signature of first line supervisor: George Eder Date 4-3-80

17 EMPLOYEE SECTION - TO BE COMPLETED BY THE INCUMBENT OF THIS POSITION

I have read and understand that the statements and time estimates above and on attachments are a description of the functions assigned my position (Please initial and date attachments)

Signature of employee: Richard L. Snider Date 4-3-80

18 Signature of Personnel Manager: Mark Ferguson Date 4-19-80

TROOPER ATTACHMENT

Goals and Worker Activities (Cont.)

- B A-4. Take proper enforcement action for violations observed, including the issuance of warnings or citations, or the effecting of an arrest.
- A-5. Make decisions regarding risks to self and violator from available alternative courses of action (i.e., to continue or not to continue a high speed chase).
- A-6. Effect lawful arrests of suspected violators by taking them into physical custody, subduing or restraining them if necessary, searching their person, explaining the reason for arrest and advising them of their constitutional rights.
- A-7. Transport prisoners to headquarters or jail for further processing.
- A-8. Operate patrol cruiser under routine/emergency conditions in a manner consistent with safe driving practices.
- A-9. Operate various items of equipment used in enforcement patrol such as VASCAR/TDS and Radar Speed Measuring devices, weapons, radios, cameras, fire extinguishers, etc.
- A-10. Assist state patrol pilot by making apprehensions as part of aerial enforcement team.
- ✓ A-11. Provide assistance, information and advice to other law enforcement agency officers upon request.
- ✓ A-12. Collect, preserve and document evidence in accordance with statutory/legal standards.
- ✓ A-13. Interview complainants, witnesses, suspects and others who may have knowledge of a crime or violation in order to obtain facts and information.
- ✓ A-14. Evaluate and make recommendations regarding condition of highways and adequacy of highway markings and signs.
- ✓ A-15. Compose reports of activity, incident or arrest reports, and other periodic and special reports and correspondence.

38 B. Investigation of Traffic Accidents

- B-1. Protect accident scene to prevent further damage or injury.
- B-2. Administer emergency first aid to accident victims, extricate injured persons, move them to a place of safety and assist in loading them into ambulance(s).
- B-3. Conduct in-depth accident investigations.

TROOPER - ATTACHMENT

- B-4. Conduct follow-up accident investigations as required.
- ✓ B-5. Interview involved drivers and witnesses.
- ✓ B-6. Arrange for removal of involved vehicles and clean-up of scene.
- B-7. Prepare required reports and diagrams.
- B-8. Collect, preserve and document evidence in accordance with statutory/legal standards.
- B-9. Take proper enforcement action for violations detected.
- ✓ B-10. Prepare reports regarding unsafe highway design or maintenance and submit recommendations.
- *B-11. Conduct in-depth investigations of accidents involving Divisional vehicles when assigned as District Fleet Safety Officer.

10% C. Assistance to Motorists and Public Relations

- ✓ C-1. Assist stranded, disabled or injured motorists by: helping them, change tires, make minor vehicle repairs, obtaining tow trucks; providing directions or advice; administering first aid or otherwise responding to their needs.
- ✓ C-2. Present safety talks to schools, public service organizations or other interested groups.
- ✓ C-3. Provide registration assistance to the public on routine and complex registration matters.
- ✓ C-4. Provide registration assistance by inspecting vehicles for compliance with registration laws and regulations.
- ✓ C-5. Compute and collect registration fees, prepare required forms and submit to Department of Transportation.
- ✓ C-6. Advise citizens of their rights and responsibilities under the law.

9% D. Performance of Court Related Responsibilities

- ✓ D-1. Arrange for release of persons under arrest by posting deposit/bail.
- ✓ D-2. Incarcerate persons under arrest when they are unable to post deposit/bail.
- ✓ D-3. Prepare evidence and testify as prosecution witness at trials and hearings.

TROOPER - ATTACHMENT

- ✓ D-4. Confer with prosecutor and explain circumstance of arrests, evidence, and facts or conclusions in order to develop trial strategy or obtain arrest warrants.
- ✓ D-5. Serve arrest warrants, accept deposit/bail or make incarcerations in accordance with statutory requirements.
- ✓ *D-6. Represent the Division, prepare cases, obtain and sign complaints, obtain arrest warrants, and perform related duties when assigned as a Court Officer.
- ✓ *D-7. Provide advice/assistance to the District Attorney or Court when requested.

3% E. Administration of Chemical Tests for Intoxication

- E-1. Administer preliminary breath tests to drivers suspected of operating under the influence of alcohol.
- E-2. Administer breathalyzer tests to drivers arrested for operating under the influence of alcohol.
- E-3. Collect urine specimen or arrange for collection of a blood specimen for drivers arrested for operating under the influence of alcohol or drugs.
- E-4. Conduct preliminary tests with drug screening kits.
- E-5. Collect, preserve and document evidence in accordance with statutory/legal standards.
- E-6. Prepare required reports.
- *E-7. Inspect, maintain and certify preliminary breath testing devices/breathalyzers when assigned as District Technician.

1% F. Performance of Emergency Duty Assignments

- F-1. Respond to civil disorders and riots and use physical force in personal confrontations as required to effect an arrest, disarm or render an antagonist ineffective, or otherwise quell the disturbance.
- F-2. Respond to scenes of natural or manmade disasters to protect life and property and restore order.
- F-3. Respond to accident scenes where radioactive materials are involved and monitor radiation levels, protect life and property and restore order.
- F-4. Patrol highways during periods of severe weather emergencies and provide assistance to motorists.

28 G. Participation in Training Functions

- ✓ G-1. Attend district/work unit meetings.
- ✓ G-2. Attend annual in-service and special training sessions when assigned.
- G-3. Conduct training at the State Patrol Academy or other law enforcement agencies when assigned.
- G-4. Conduct on-the-job training for Enforcement Cadets and/or Trooper personnel.

18 H. Maintenance of Uniforms and Equipment

- ✓ H-1. Maintain used/assigned equipment in a state of complete repair and absolute readiness at all times.
- ✓ H-2. Arrange for routine maintenance work on police cruiser (change oil, lube, wash).
- ✓ H-3. Check cruiser regularly for signs indicating needs for repair work.
- ✓ H-4. Arrange for major repair work according to policy & procedure.
- ✓ H-5. Periodically inspect all other issued uniform and equipment items and arrange for repair or replacement as required.

18 I. Performance of Related Work as Required

- I-1. Direct traffic at special events.
- I-2. Escort oversize units.
- ✓ I-3. Relay emergency blood supplies, donor organs or provide other assistance during medical emergencies.
- ✓ I-4. Perform other job related work as required.
- ✓ I-5. Prepare reports and maintain correspondence, manuals and records as required.
- ✓ *I-6. Represent Division in assigned county as Resident Liaison Officer (i.e., liaison with county criminal justice system, traffic safety commission, etc.).
- *I-7. Perform limited leadwork of Troopers 1 and 2 when assigned.
- *I-8. Serve on staff level committees and participate in planning functions.
- ! *I-9. Conduct special investigations and/or personnel background investigations.

TROOPER - ATTACHMENT

- *I-10. Actively recruit new employes.
- *I-11. Certify speedometers for accuracy and testify in court when assigned as trackmeter technician.
- *I-12. Operate State Patrol aircraft when assigned.

*Reflects duties that are assigned to Trooper 3 personnel wherever possible because such tasks require the expertise of a Trooper 3 in scope, variety, and complexity.