

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 PHILLIP SMITH,
 Appellant,
 v.
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.
 Case No. 83-0001-PC
 * * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), Wis. Stats. At the hearing held on October 18, 1983, the parties agreed that the following issue would govern the course of these proceedings: Whether the Administrator of the Division of Personnel erred in not awarding back pay or seniority to appellant upon accretion. The following Findings of Fact appear to be undisputed.

FINDINGS OF FACT

1. The Disabled Veterans Outreach Program (DVOP) was originally staffed by limited term employes (LTE's) in the Department of Industry, Labor and Human Relations (DILHR), but from January, 1980, until September 30, 1981, the program functions were performed under contract with the Disabled American Veterans and the Vets House. Pursuant to a federal law enacted on October 17, 1980, then existing DVOP staff were to be appointed as DVOP specialists in "the State in which such individual is so serving, unless the Secretary for good cause shown determines that such individual is not qualified for such appointment." Appellant was a member of the DVOP staff at that time.

2. DILHR utilized an existing Job Service Specialist (JSS-1) exam for purposes of determining which of the existing DVOP staff were so qualified. DILHR set the passing score at 93. After results from the exam were tabulated, DILHR notified respondent Division of Personnel (DP) that thirteen individuals were designated as position incumbents for purposes of accreting them into the state classified service. Appellant was not one of the individuals so designated due to the fact that his exam score was lower than 93.

3. In December of 1982, DILHR lowered the passing score for such exam from 93 to 86 and, since appellant's exam score was higher than 86, offered the appellant employment in a DVOP position on an accretion basis. The appellant subsequently accepted the offer.

4. Upon receipt of appellant's acceptance of such offer, DILHR notified respondent that appellant was designated as a position incumbent for purposes of accreting appellant into the state classified service. Respondent determined that appellant was eligible for accretion and that the effective date of appellant's accretion into the state classified service was the accretion date provided by DILHR. Respondent utilized such effective date in determining appellant's pay, employe benefits, and status as identified in §§230.28 and 230.35, Wis. Stats.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(a), Wis. Stats.

2. Appellant has the burden of proving that respondent erred in not awarding back pay or seniority to appellant upon appellant's accretion into the state classified service.

3. Appellant has not sustained his burden of proof.

4. Respondent, pursuant to the authority granted by §230.15(1), Wis. Stats., correctly determined appellant's eligibility, pay, employe benefits and status identified in §§230.28 and 230.35, Wis. Stats., upon appellant's accretion into the state classified service.

OPINION

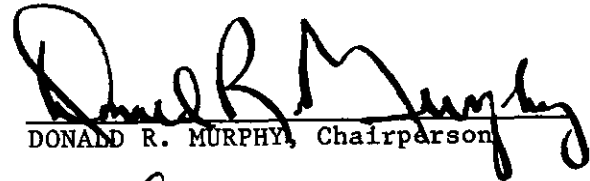
Appellant argues that the Administrator of the Division of Personnel should have awarded back pay and seniority (dating back to October 1, 1981) to appellant upon his accretion into the state classified service in December of 1982. Appellant offers as his rationale for such argument the fact that DILHR, in determining which individuals would be designated as position incumbents for purposes of accretion into the state classified service, exercised authority reserved for the respondent and that the respondent failed to properly exercise such authority due to its failure to promulgate appropriate administrative rules. However, it is clear from previous decisions of this Commission and from §230.15(1), Wis. Stats., that DILHR, not respondent, had the authority to establish minimum qualifications for the subject positions and that DILHR's establishment of such minimum qualifications occurred outside the state civil service procedures and, thus, outside the scope of respondent's rule-making authority.

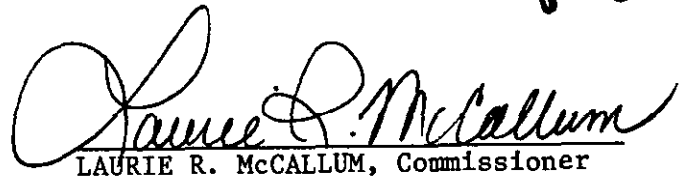
Appellant has offered no other rationale or authority in support of his argument and the Commission finds no basis for the award of back pay or seniority to appellant.

ORDER

The action of respondent in determining appellant's eligibility, pay, employe benefits and status identified in §§230.28 and 230.35, Wis. Stats., upon appellant's accretion into the state classified service is affirmed and this appeal is dismissed.

Dated: December 22, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

LRM:jmf


DENNIS P. MCGILLIGAN, Commissioner

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*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.