

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

MICHAEL F. CONLEY, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*

HEALTH AND SOCIAL SERVICES, \*

Respondent. \*

Case No. 83-0075-PC \*

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission as an appeal from the effective date of a reclassification. The parties agreed to the following issue for hearing:

Whether or not the effective date of May 1, 1983, established by the respondent for the reclassification of the appellant's position from Officer 1 to Officer 2 was correct.

If not, what should the effective date have been.

FINDINGS OF FACT

1. The appellant commenced employment with respondent Department of Health and Social Services (DHSS) on January 8, 1979, as a correctional officer at the Waupun Correctional Institution.

2. During the period from February 24, 1979 until October 21, 1979, the appellant was on a leave of absence from his Officer 1 position because of an injury he suffered while riding in a vehicle driven by an inmate in the prison yard at Waupun.

3. On February 28, 1980, respondent terminated the appellant's employment. The appellant appealed the termination to the Personnel Commission (Case No. 80-67-PC). The parties reached a settlement agreement

midway through the hearing held by the Commission. The agreement was recited into the record and reads, in relevant part, as follows:

MR. WHITCOMB. [Attorney for the respondent.] Mr. Examiner, while we were off the record, the parties discussed settling this case and we believe we reached a stipulation contingent, of course, on all of the provisions of that stipulation being complied with in order to settle this case. This stipulation would be full and final settlement of any and all claims relating to this case.

First, Mr. Conley would be offered a position at the Kettle Moraine Correction Institution as an officer, Officer 1. While at KMCI, he will be required to serve a three-month probationary period. That probationary period will be deemed to be in the nature of an original probationary period. It will not be a permissive probationary period. His starting salary at KMCI will be an amount -- and I haven't got the exact figures -- but it's what he would be earning had he successfully completed his probation at Wisconsin State Prison and received his probationary step, an amount which I don't know, but it can be computed by payroll. That Mr. Conley will have an opportunity to expunge his personnel file and remove from that file any evaluations or other information relating to the termination of his employment at the Wisconsin State Prison. That Mr. Conley will be paid an amount of \$1,800 and an amount yet to be determined and that is an amount that would reflect his share of the insurance payments that he paid as a result of the fact that he was terminated. Mr. Conley continued his insurance program during his termination. It is my understanding that the rules of the Group Insurance Board provide that the State share must be picked up by the employe and I don't know how much that amount is, but it can be computed. That amount of money, \$1,800 and the insurance money, is all the money that is involved in this case.

Mr. Conley is going to agree that he will not make any derogatory remarks to his fellow employes at KMCI about the personnel staff at the prison.

MR. WEINKE. [Attorney for the appellant.] Excuse me. I would like to interject that applies equally well as to the institution here.

MR. WHITCOMB. Yes. As a matter of fact, something we hadn't specifically discussed, but I am going to talk to the Institution about this to make sure there isn't any -- how shall I put it -- exchange of information of the supervisory staffs of the two institutions.

MR. WEINKE. That his date of service would be considered his original date of January 8th, 1979, so he doesn't lose seniority or any other benefits.

David, one other thing, were you going to include as well his vacation pay?

MR. WHITCOMB. Do you want that pay or time?

MR. CONLEY. I would rather have it time.

MR. WHITCOMB. Mr. Conley earned an amount of vacation while at the prison which was forfeited as a result of his termination during his probationary period. That vacation that he earned while at the prison would be reinstated as vacation.

(Discussion off the record.)

MR. WHITCOMB. There are certain aspects of the settlement which haven't been firmed up with respect to time which Mr. Conley may have forfeited -- vacation time or holiday time which he may have forfeited as a result of the termination of his employment at the prison. Now we can compute that amount and then agree on a figure, but it's not readily at hand. But the point is that the respondent is willing to reinstate anything that he forfeited as a result of his loss because of termination.

The terms of the agreement indicate that except for his salary, the appellant was to be made whole.

4. Pursuant to the settlement agreement, the appellant commenced employment at the Kettle Moraine Correctional Institution (KMCI) on June 29, 1980, where he worked until August 22, 1981, at which time he commenced a medical leave of absence which lasted until October 15, 1982.

5. The appellant's entire personnel file from Waupun was sent to KMCI.

6. On October 29, 1982, DHSS issued a written reprimand to the appellant for his conduct while on duty on October 15, 1982.

7. The Officer 1 level is the entry level for correctional officers, while Officer 2 is the objective level. Reclassification to the objective level can only occur when the employe has "two years of experience" as a

correctional officer. This requirement is established in the classification specifications which do not define the term "experience".

8. In addition, the standards applied by the Division of Corrections for reclassification from Officer 1 to 2 are:

- a. Eighty hours of required training.
- b. Two years of experience as an Officer.
- c. A record free of formal discipline for six months prior to the reclassification target date.
- d. Satisfactory job performance as indicated in performance evaluations.

9. The respondent refused to reclassify the appellant to the Officer 2 level until May 1, 1983, after concluding that reclassification could occur only after he had actually worked as an Officer 1 for the required two years and when the requirement of six months without discipline had been met. Respondent calculated the appellant's actual work time by excluding time spent on any medical leave of absence as well as the period between the appellant's termination from Waupun and subsequent reinstatement at KMCI.

10. Terry Regan, Personnel Manager at KMCI, performed the analysis for determining the appellant's reclassification date. Mr. Regan became aware of the appellant's 1979 leave of absence and the 1980 termination period through information found in KMCI's payroll records. The information was also available in the appellant's personnel file. The personnel file established that the appellant was terminated on February 28, 1980, and then did not work as an Officer 1 until he was reinstated at KMCI on June 29, 1980.

11. The settlement agreement reached by the parties did not require the expungement of information in appellant's file relating to his medical leave of absence while at Waupun. Mr. Regan was entitled to consider any leave of absence authorization or certification request forms found within

the file for purposes of determining whether the appellant had taken any medical leaves of absence that would not count towards the two year experience requirement.

12. Except for the two year requirement, the appellant met all of the requirements for reclassification to the Officer 2 level by January 8, 1981.

13. In light of his eight month medical leave of absence during 1979 and the medical leave that commenced on August 22, 1981, the appellant lacked two years of experience as an Officer 1 until sometime after October 15, 1982.

14. The appellant did not meet the Officer 2 requirements until six months after the October 15, 1982, incident for which he received a written reprimand. His reclassification was processed promptly once the six-month period had been completed.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats (1981-82).

2. The appellant has the burden of establishing that respondent's decision to reclassify the appellant from Officer 1 to Officer 2 effective May 1, 1983 was incorrect.

3. The appellant has failed to show that the respondent's consideration of medical leaves of absence in determining compliance with the requirement for two years of experience as an Officer 1 was incorrect.

4. Respondent's decision to reclassify the appellant to the Officer 2 level effective May 1, 1983 was correct.

OPINION

The parties to this appeal had settled a prior probationary termination appeal by agreeing that the appellant would receive \$1,800 as a monetary settlement and would be offered a position at KMCI without loss of seniority or any other benefits. The appellant expected to be reclassified from the Officer 1 to Officer 2 level on January 8, 1981, exactly two years after he had been first hired at Waupun.

As of February 28, 1981, the personnel manager at KMCI determined that the appellant did not meet the two years experience requirement set out in the Officer 2 class specifications. The respondent ultimately reclassified the appellant, but the reclassification was effective on May 1, 1983.

The following summary of the appellant's work history is based upon the record in this matter:

- a. Work period from January 8, 1979 to February 24, 1979 (47 days)
- b. Medical leave commencing February 25, 1979 (no credit)
- c. Work period from October 21, 1979 to February 28, 1980 (130 days)
- d. Termination period commencing February 29, 1980 (121 days)
- e. Work period from June 29, 1980 to August 22, 1981 (419 days)
- f. Medical leave commencing August 22, 1981 (no credit)
- g. Work period from October 15, 1982 through May 1, 1983
- h. Letter of reprimand issued for conduct on October 15, 1982.

The respondent added 47 days (a) plus 130 days (c), plus 419 days (e) for a total of 596 days and determined that the appellant did not meet the two year (730 days) experience requirement until after the October 15, 1982 reprimand was issued. The respondent therefore refused to grant the reclassification until the six month discipline-free period had been completed in April of 1983.

The appellant argues that the settlement agreement reached in Mr. Conley's appeal from his February 28, 1980 termination required that his entire personnel file at Waupun be expunged. Appellant then suggests that had the records been properly removed, Mr. Regan would not have known about the prior leave of absence and would have reclassified the appellant on

January 8, 1981, exactly two years after the appellant was first hired as an Officer 1.

The problem with appellant's argument is that there is no language in the settlement agreement that grants the appellant continuous employment from January 8, 1979, for purposes of reclassification. Nothing in the agreement says anything about the appellant's 1979 leave of absence, either in terms of expunging his personnel record or ignoring it for purposes of reclassification.

Testimony established that despite the terms of the settlement agreement, the appellant's entire personnel record at Waupun made its way to KMCI.<sup>FN</sup> The file served as the basis for Mr. Regan's calculations as to the appellant's eligibility for reclassification. Mr. Regan testified that he probably obtained the information as to the appellant's 1979 medical leave from the certification request forms in the personnel file. Whether or not the information was obtained from certification request forms or leave of absence request forms, the forms are payroll documents that were not covered by the terms of the settlement agreement. As a consequence, Mr. Regan was free to rely on the information found in these forms for determining whether the appellant met the two year experience requirement.

Implicit in the case presented by the appellant is the argument that the respondent should have credited the appellant with the 121 day long "termination period" in order to comply with the terms of the settlement

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<sup>FN</sup> The settlement agreement gave the appellant "an opportunity to expunge his personnel file and remove from that file any evaluations or other information relating to the termination of his employment at the Wisconsin State Prison." The record shows that the appellant did not make use of this "opportunity" until February of 1981 when he became aware that his Waupun personnel file had made its way intact to KMCI.

agreement. Even if the Commission would conclude that the respondent is equitably estopped from establishing that the appellant was not working as an Officer 1 for the period from February 29, 1980 until June 29, 1980, this additional 121 day period would be insufficient to permit reclassification of the appellant before October 15, 1982. Therefore, it is not necessary for the Commission to consider whether the elements of equitable estoppel exist in this case.

The appellant also argued that the respondent improperly required two years of "actual work" as an Officer 1 rather than merely two years of being classified at the Officer 1 level. The Officer 2 specifications require two years of "experience" as an Officer 1 and the Commission concludes that the most reasonable interpretation of the term "experience" is actual work experience.<sup>FN</sup> Time spent on an approved medical leave of absence does not qualify as experience. Mr. Regan suggested that an injury constituting a "hazardous employment injury" as defined in §230.36, Stats., would not cause a delay in reclassifying an Officer 1. The appellant claimed that his 1979 medical leave of absence was caused by a work-related injury. He did not claim that the 1981-82 leave was work related, however, and there is no indication that the appellant filed a §230.36, Stats., claim for either period. There is no basis on which to conclude that the periods in which the appellant was on approved medical leaves of absence should be considered Officer 1 "experience" qualifying him for reclassification.

For the reasons set out above, the respondent's reclassification decision must be affirmed.

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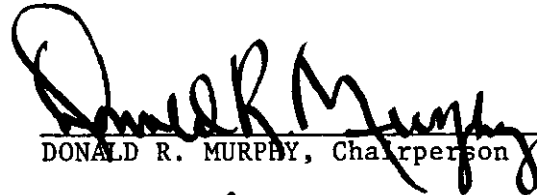
<sup>FN</sup> Webster's New Collegiate Dictionary defines experience as "knowledge, skill or practice derived from direct observation of or participation in events."



ORDER

Respondent's decision reclassifying the appellant's position to the Officer 2 level effective May 1, 1983, is affirmed and this appeal is dismissed.

Dated: May 23, 1984 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

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DENNIS P. MCGILLIGAN, Commissioner

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