

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 PHYLLIS GRAHAM,  
 \*  
 \*  
 Appellant,  
 \*  
 \*  
 v.  
 \*  
 \*  
 Secretary, DEPARTMENT OF  
 INDUSTRY, LABOR AND HUMAN  
 RELATIONS, and Secretary,  
 DEPARTMENT OF EMPLOYMENT  
 RELATIONS,  
 \*  
 Respondents.  
 \*  
 \*  
 Case No. 84-0052-PC  
 \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal from respondent, Department of Industry, Labor and Human Relations' (DILHR) decision to deny reclassification of appellant's position from Unemployment Compensation Specialist 2 to 3. At the prehearing conference held on April 12, 1984, before Anthony J. Theodore, General Counsel, the parties agreed to the following issue for hearing:

Whether the respondents' decision to deny reclassification of appellant's position from Unemployment Compensation Specialist 2 to 3 was correct.<sup>1</sup>

Hearing in the matter was held on October 17, 1984, before Dennis P. McGilligan, Commissioner. The parties completed their briefing schedule on November 21, 1984.

---

<sup>1</sup> Although the parties stipulated to this issue at the prehearing conference, they referred throughout the hearing to "Unemployment Benefits Specialist" (UBS), and the Commission will use this term hereafter.

FINDINGS OF FACT

1. At all times material herein, the appellant was employed by respondent DILHR as an adjudicator of disputed unemployment compensation claims.

2. Appellant requested reclassification of her position to Unemployment Benefits Specialist 3. The reclassification request was denied in February 1984 because the appellant did not attain the minimum performance evaluation score. By letter dated March 26, 1984, the appellant filed a timely appeal of the reclassification denial to the Commission.

3. The terms "reclassification" and "regrade" are defined in the Wisconsin Administrative Code as follows:

§ER-Pers 3.01 Definitions

\* \* \*

- (3) RECLASSIFICATION. Reclassification means the assignment of a filled position to a different class by the administrator as provided in §230.09 (2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.
- (4) REGRADE. A regrade means the determination of the administrator under §230.09 (2) (d), Stats., that the incumbent of a filled position which has been reallocated or reclassified should remain in the position without opening the position to other candidates.

Additional provisions in the Administrative Code further describe the regrade procedure:

§ER-Pers 3.015 Regrading Provisions

\* \* \*

- (2) Incumbents of filled positions which will be reallocated or reclassified may not be regraded if:
  - (a) The appointing authority has determined that the incumbent's job performance is not satisfactory;

- (b) The incumbent has not satisfactorily attained specified training, education or experience in a position identified in a classification series where the class levels are differentiated on this basis; or
- (c) The administrator determines that the position should be filled by competitive examination under §230.15 (1), Stats.

4. Respondent DILHR is delegated the authority by respondent DER to make reclassification and regrade decisions for employees in the department seeking reclassification from the UBS 2 to UBS 3 level. DILHR has further delegated responsibility to the Bureau of Benefits, Job Service Division, to determine whether an individual is satisfactorily performing at the UBS 3 level so as to qualify for reclass/regrade to that level.

5. The position standard for the JSS (now UBS) series provides, in part, as follows:

Entrance and Progression Through the Series

The majority of positions included in this position standard will be filled by competitive examination. There are two methods of entrance into this series. At the Job Service Specialist 1 level, positions will be filled by competitive promotional exam or open recruitment of applicants with clerical or para-professional-level experience in a job service program area or its equivalent.

Classification Factors

Because of the variety of existing or potential future positions identified in the Job Service series, individual position allocations will in most instances be based upon general classification factors such as those listed below:

- 1) Organizational status as it relates to level of responsibility.
- 2) Availability and applicability of established job service guidelines, procedures, precedents, and legal interpretations.
- 3) Potential impact of policy and/or program decisions on claimants, employers, job seekers, and overall Division operations.

- 4) Degree of internal and external coordination and cooperation required.
- 5) Availability of other staff (either within the Division or at the Regional Office) whose authority it is to make the most difficult and unprecedented program decisions or legal interpretations.
- 6) Complexity of employment services or unemployment compensation work performed.
- 7) Professional and paraprofessional staff size if applicable.

\* \* \*

## II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

\* \* \*

Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific classification level if the functions of these positions change significantly in level of complexity and responsibility. It is intended, rather, to be a framework within which classifications can be applied equitably to the present program and also adjusted to equitably meet future personnel relationships and patterns that develop as a result of changing programs and emphasis.

\* \* \*

JOB SERVICE SPECIALIST 2

PR 12-02

### Definition

This is responsible job service work in the Department of Industry, Labor and Human Relations.

Positions in the field offices allocated to this class function at the full performance level with responsibility for developing jobs, placing job seekers, and performing related job service program functions of a comparable level of complexity and responsibility.

\* \* \*

### Representative Positions

Objective level positions:

Field Offices

\* \* \*

Adjudicator - issues non-monetary determinations on disputed unemployment compensation issues after conducting an investigation and interviews to obtain the facts, explains determinations to involved parties. Positions at this level may assist the Adjudications Supervisor in public relations and public information programs.

\* \* \*

JOB SERVICE SPECIALIST 3

PR 12-03

Definition

This is specialized and advanced professional job service work in the Department of Industry, Labor and Human Relations.

Positions in the field offices allocated to this level are typically located in one of the largest field job service offices with full-time responsibility for one or a combination of the following job service programs: employer relations, labor market analysis, rural job service office operations, special applicant services, CETA contract monitoring and comparable specialties. Functions include responsibility for planning, developing and monitoring the application of program policies and procedures. Also identified at this level are adjudicators responsible for complex unemployment compensation claims adjudications and lead workers over small placement or job development units.

\* \* \*

Representative Positions

Field Offices

Adjudicator - issues non-monetary determinations on disputed unemployment compensation claims involving unusually complex issues after conducting an investigation and interviews to obtain the facts; explains determination to involved parties. Trains less experienced adjudicators. Positions at this level may assist the Adjudications Supervisor in public relations and public information programs.

\* \* \*

III. QUALIFICATIONS

JOB SERVICE SPECIALIST SERIES

Required Knowledges, Skills and Abilities

The level of these qualifications must be related to the specific classification level. As one progresses in this series the degree of ability and knowledges will increase. Also for

individual positions, a certain combination of knowledges, skills and abilities may need to be emphasized while for another position different emphasis will be needed. Generally individuals in this series need the following general knowledges, skills and abilities; however, additional qualifications will need to be considered for recruitment and examination purposes:

Knowledge of specific manpower and/or unemployment insurance programs and pertinent related state and federal laws, rules, regulations and procedures.

Knowledge of job service district operations and capabilities.

Knowledge of industrial and labor conditions of the community being served and of state and national industrial labor conditions.

Ability to effectively communicate with persons with differing viewpoints, priorities and objectives.

Ability to exercise judgment and discretion in the application and interpretation of departmental policies and regulations.

Ability to write well and concisely, to express thoughts clearly, and to develop ideas in logical sequence.

Ability to accept responsibility for the direction, control, or planning of an activity.

#### Required Training and Experience

\* \* \*

#### JOB SERVICE SPECIALIST 2

One year of professional level experience in job service work. Experience shall have been gained after graduation from an accredited college or university. An equivalent combination of training and experience may also be considered. Appropriate graduate school training may be substituted for experience on a year-for-year basis.

NOTE: For positions requiring specialized entry knowledges, skills or abilities, pertinent experience or training in a specialized area may be required.

#### JOB SERVICE SPECIALIST 3

Two years of professional level experience in job service work. Experience shall have been gained after graduation from an accredited college or university. An equivalent combination of training and experience may also be required. Appropriate

graduate school training may be substituted for experience on a year-for-year basis.

NOTE: For positions requiring specialized entry knowledges, skills or abilities, pertinent experience or training in a specialized area may be required.

6. As noted above, UBS 1 is the entry level for adjudicators. The objective level is UBS 2 and UBS 3 for adjudicators performing advanced or unusually complex determinations. Respondent DILHR grants reclassifications and regrades from UBS 2 to UBS 3 based upon performing appropriate duties, achieving a specified level of performance (as measured by an examination) and the passage of a specified period of time as an adjudicator.

7. The Bureau of Benefits conducts the performance exam for reclassification and regrade to the UBS 3 level. The exam is generally referred to as the Quality Performance Index (QPI) and is a quality review of twenty actual case files of completed non-monetary investigations. The requirement for reclassification from Unemployment Benefit Specialist 2 to 3 is no more than one case score below 75%.

8. Appellant received a score of less than 75% on six files. As a result, she failed to meet the minimum scores for passing the QPI that was administered after she requested reclassification to the UBS 3 level. The Bureau of Benefits recommended denial of the reclassification/regrade.

9. Respondent DILHR denied the appellant's reclassification request because the appellant failed the QPI. DILHR maintained appellant's position at the UBS 2 level.

10. Based upon the results of the QPI, appellant did not perform her duties at the required level necessary for a reclassification/regrade from the UBS 2 level to the UBS 3 level.

11. At no time material herein was the appellant regularly assigned claims involving unusually complex issues or work normally performed by a UBS 3.

12. The duties and responsibilities of appellant's position are more accurately described by the class specifications for an Unemployment Benefits Specialist 2 and appellant's position is more appropriately classified as an Unemployment Benefits Specialist 2.

#### CONCLUSIONS OF LAW

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

2. The appellant has the burden of proving that the respondents' decision to deny the reclassification of the appellant's position was incorrect.

3. The appellant has not met the burden of proof.

4. The respondents' decision to deny the reclassification of appellant's position was correct.

#### OPINION

Respondent DILHR, acting under authority delegated by DER, developed a specific scoring process to determine when an adjudicator has sufficient experience and training to be reclassified from Unemployment Benefits Specialist 2 to 3. This process was applied to appellant before the Commission's decision in McCabe v. DILHR & DER, 83-0204-PC, 7/6/84, (rehearing denied, 8/31/84), rejected the adjudicator reclassification process followed by DILHR because the position standard does not expressly identify the various levels for this position as a progression series. In reaching its holding, the Commission explained its decision as follows:

The appellant argues that the respondent should have reclassified his position to the JSS 3 level, since it is undisputed that the



assigned duties and responsibilities are at that level, denied him a regrade to the JSS 3 level pursuant to §ER-Pers 3.015(2)(a), Wis. Adm. Code,<sup>1</sup> and opened the position to be filled by competition.

There are two ways a position can be reclassified, see §ER-Pers 3.01(3), Wis. Adm. Code:

Reclassification means the assignment of a filled position to a different class by the administrator as provided in §230.09(2)(d), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent. (emphasis added)

The second alternative in the foregoing subsection is associated with what is commonly referred to as a "progression series" wherein employees progress from one level to another based on the "attainment of specified education or experience by the incumbent." In such a series, failure to attain the requisite training and experience obviously is a basis for denial of reclassification under §ER-Pers 3.01(3), Wis. Adm. Code.

In the opinion section of the proposed decision, it is stated that while movement from JSS 2 to JSS 3 does not appear to be part of a progression series based on the JSS position standard, "the series has been routinely applied by the respondents in such a manner." p. 9. The proposed decision goes on to state that:

Because the move from JSS 2 to 3 for adjudicator positions constitutes a progression series, and because the appellant had not attained the 'specified ... experience' [§ER-Pers 3.01(3), Wis. Adm. Code] for the higher classification, respondent correctly decided not to reclassify appellant's position. (p.9)

The difficulty with this conclusion is that there is no basis to conclude that because a series has in practice been applied to as a progression series, that it is a progression series.

---

<sup>1</sup> 2) Incumbents of filled positions which will be reallocated or reclassified may not be regraded if: (a) The appointing authority has determined that the incumbents' job performance is not satisfactory.

Section ER-Pers 2.04(2), Wis. Adm. Code, provides that "class specifications<sup>2</sup> shall be the basic authority for the assignment of position to a class." If the class specifications or position standard for a series do not identify it as a progression series, there is no basis for its administration on an ad hoc basis as a progression series. To do so is to disregard the entire framework of the state civil service classification system. Compare, Shepard v. DP, Wis. Pers. Commn. No. 80-285-PC (11/19/81) (Affirmed, Dane County Circuit Court, 81CV6492 (11/82)).

Since there is nothing in the JSS position standard, either express or implied, upon which to base a conclusion that reclassification from JSS 2 to JSS 3 is a progression-type of reclassification, the reclassification of appellant's position should not have been denied on the ground of failure to meet the QPI. Rather, since it is undisputed that the position had duties and responsibilities assigned to it that were at the JSS 3 level, the position apparently should have been reclassified and the appellant denied an immediate regrade to the higher level pursuant to §ER-Pers 3.015(2)(a), Wis. Adm. Code:

"(2) Incumbents of filled positions which will be reallocated or reclassified may not be regraded if: (a) The appointing authority has determined that the incumbent's job performance is not satisfactory...."

---

<sup>2</sup> The terms "class specifications" and "position standards" are functionally equivalent.

---

Therefore, respondent DILHR's use of the QPI to deny reclassification of appellant's position was improper according to the McCabe decision.

Notwithstanding that DILHR's use of the QPI to deny reclassification was improper, the position still cannot be reclassified to the UBS 3 level unless the permanently assigned duties and responsibilities are at that level. The appellant maintains that because her duties and responsibilities are at the "3" level, her position should be reclassified and pursuant to §230.09(2)(d) Stats., open to competition. Respondent DILHR does not agree with appellant's characterization of her work assignments.

The record supports DILHR's position. Appellant testified that her work was clearly of a three nature because she routinely replaced the lead worker in her absence and because she filled in for a vacant level three position from December 1983 through September 1984. However, the record does not support a finding that the lead worker's responsibilities were of a three nature. Nor does "3" level work performed on a temporary basis qualify a position to be classified at said higher level.

Appellant also stated that she was routinely assigned the most complex and difficult work at the "3" level. However, DILHR presented more persuasive testimony to the contrary. In this regard, Mr. John M. Roche who trains all adjudicators and helped grade appellant's QPI testified un rebutted that five of the six low scoring files could have been handled by adjudicators at the "1" level. Mr. Roche added that appellant did not perform particularly difficult or complex work at the "3" level.

Appellant maintains in addition that she should have been regraded to the "3" level because she was performing satisfactorily at that level. However, she was neither performing 3 level duties and responsibilities, nor was she<sup>2</sup> performing satisfactorily, as indicated by her failure to satisfy the QPI. It is undisputed that she failed to obtain a satisfactory score on the QPI, and that it was properly administered. Furthermore, even assuming that appellant was receiving "3" level work assignments, she could not be regraded for the reasons given to Mr. McCabe by the Commission:

Finally, the appellant argued that since his position should have been classified at the UBS 3 level because it was assigned the more complex adjudications, it follows that he was working at the UBS 3 level and should have been paid accordingly. The problem with this argument is that it ignores the entire regrade concept. While the appellant's position had assigned duties and responsibilities at the UBS 3 level, the

---

<sup>2</sup> This phrase is added to the proposed decision for purposes of clarity.

appellant's performance of those duties and responsibilities was not at the UBS 3 level because he had not met the QPI. Hence he was not eligible for regrade and could not earn at the higher level. McCabe v. DILHR & DER, supra, at p. 5.

Appellant also maintains that DILHR violated the Equal Pay for Equal Work section of the State Statutes, §230.09(2)(b) Stats. However, unlike McCabe, appellant's position is not assigned three level duties and responsibilities, nor was she performing satisfactorily to qualify for a regrade. Furthermore, §230.09(2)(b), Stats., provides that the principle of "equal pay for work of equivalent skills and responsibilities" applies only "when assigning a classification to a pay range." The issue in this case does not involve the assignment of a classification to a pay range. There has been no violation of §230.09(2)(b), Stats.

Although DILHR acted improperly in denying reclassification of appellant's position based on her score on the QPI, the record does not support a finding that her position should have been reclassified and open to competition or that she should have been regraded. Based on same, and in the absence of any persuasive evidence to the contrary, the Commission finds that the answer to the issue as stipulated to by the parties is YES, respondents' decision to deny reclassification of appellant's position from Unemployment Benefits Specialist 2 to 3 was correct.

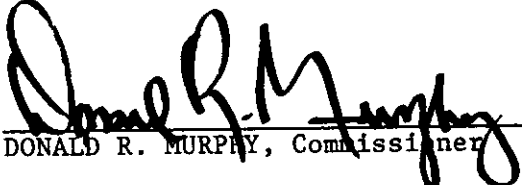
ORDER


The respondents' classification decision is affirmed and the appellant's appeal is dismissed.

Dated: April 12, 1985 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

DPM:jgf  
JGF002/2

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

Parties:

Phyllis Graham  
2857 N. Sherman Blvd.  
Milwaukee, WI 53210

Howard Bellman  
Secretary, DILHR  
P. O. Box 7946  
Madison, WI 53707

Howard Fuller  
Secretary, DER  
P. O. Box 7855  
Madison, WI 53707