

claims in the Janesville office of DILHR's Unemployment Compensation Division.

2. A request was made to reclassify appellant's position to Unemployment Benefit Specialist 3. The reclassification request was denied by letter dated October 29, 1984, (received November 8, 1984) because the appellant did not attain the minimum performance evaluation score. By letter dated November 27, 1984, the appellant filed a timely appeal of the reclassification denial to the Commission.

3. The term "reclassification" is 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. Respondent DILHR is delegated the authority by respondent DER to make reclassification decisions for employes 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 to that level.

5. The position standard for the 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 Unemployment Benefit Specialist 1 level, positions will be filled by competitive promotional exam or open recruitment of applicants with clerical or

paraprofessional-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 Unemployment Benefit Specialist 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 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 unemployment compensation benefit work performed.
- 7) Professional and paraprofessional staff size if applicable.

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II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities as well as the representative positions identified for specific classification levels provide examples and patterns for both present and future position allocations. Many different positions currently exist within the overall unemployment benefit program area and this position standard does not attempt to cover every eventuality or combination of duties and responsibilities either as they currently exist or may exist in the future. Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific classification level if the duties and responsibilities 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.

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UNEMPLOYMENT BENEFIT SPECIALIST 2

PR12-02

Definition

This is responsible professional unemployment benefit work in the Department of Industry, Labor and Human Relations.

This is the full performance level for positions in the field offices which adjudicate disputed unemployment compensation cases.

Positions in the administrative office allocated to this class function 1) at the full performance level or 2) in a developmental capacity with responsibility for advanced professional work.

Full performance level work is performed under general supervision. Work performed in a developmental capacity is performed under limited supervision.

Representative Position

Objective level position:

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.

UNEMPLOYMENT BENEFIT SPECIALIST 3

PR12-03

Definition

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

Positions in the field offices allocated to this level are responsible the majority of their time for independently adjudicating all types of complex issues such as: multi-claimant issues; monetary issues involving excluded employment; or employer/employee relationships; fraud involving collusion between employer and employee.

This is the full performance level for positions in the administrative office specializing in such work as complex benefit claims or fraud adjudications.

Training and guiding less experienced staff may be a function of positions in this class. Work at this level typically differs

from work at the Unemployment Benefit Specialist 2 level in impact and complexity of decision making required. Work is performed under general supervision.

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 activities.

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 from UBS 2 to UBS 3 based, in material part, on achieving a specified level of performance (as measured by an examination). With respect to movement from the UBS 2 to UBS 3 level, respondent's "Management Handbook" also provides as follows:

2. Wisconsin Fact-Finding Interview Index

The Fact-Finding Interview Index evaluation is required whenever the candidate has not had 8 interviews evaluated or had previously failed the Wisconsin Fact-Finding Interview. The same standards will apply whether the candidate is going from a Job Service Specialist 2 to 3 or from a Job Service Specialist 1 to 2.

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 two files. As a result, he failed to meet the minimum score for passing the QPI that was

administered after his requested reclassification to the UBS 3 level. The Bureau of Benefits recommended denial of the reclassification.

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. As noted above, appellant received a failing score on two files. The respondent's reasons for the low scores on the two files were, in summary, as follows:

- a. Anderson file - appellant focused on the fact that the claimant's last absence was for a valid reason and did not consider the prior absences that also formed part of the basis for the discharge under the employer's point system. Therefore, the determination as to the existence of misconduct was based on insufficient information and did not consider all of the material issues.
- b. Isler file - appellant did not obtain a clear statement of the issue from the employer before talking to the claimant and then decided that the claimant was ineligible for benefits without asking the employer to respond to her statement.

11. John M. Roche is the Bureau of Benefits specialist who regularly trains adjudicators and scores case files for QPI evaluations. He found that the significant problem with the Anderson file was the appellant's failure to consider all of the prior absences which led to the claimant's discharge under the employer's "debit/credit" policy. The determination issued by the appellant states that it was not "established that the claimant was discharged for misconduct connected with his employment." Appellant ruled in favor of the claimant because claimant's last absence was for a valid reason. The respondent contends that appellant should have made a proper inquiry into claimant's prior absences in order to determine whether the discharge was for misconduct. UC law requires a ruling on whether or not the claimant was discharged "for misconduct connected with

his or her employment..." §108.04(5), Stats. Respondent DILHR's policy is that adjudicators must look at all of the prior absences that form the basis for a discharge decision of this type. The rationale for this policy is: "if the last absence is for a valid reason but all of the prior absences were for invalid reasons, the proper conclusion for UC purposes could well be that the discharge was for misconduct." Appellant claims that he did consider the claimant's prior absences in his investigation. Indeed, the record indicates that the appellant gave cursory consideration to the claimant's absentee record under the employer's "debit/credit" policy wherein an employe is discharged at the point his/her debits exceed credits by two. However, the record also indicates that appellant failed to investigate thoroughly the reasons for claimant's prior absences independent of the employer's general policy on absences noted above in order to properly make a determination whether they were for valid or invalid reasons, and ultimately whether the discharge was for misconduct. Appellant has not met his burden of persuasion that he should have received more points on the Anderson file under the headings for "other information" and "all material issues covered" with respect to the "significant problem" with this file noted by respondent and discussed above. Based on same, and all of the above, respondent's QPI scoring in the Anderson file was correct and appellant should not have received a passing score on said file.

12. Again in the Isler file, respondent feels that appellant did not thoroughly investigate the claim and consider all the issues before arriving at a determination. In particular, respondent argues that appellant did not obtain a clear statement of the issue from the employer before discussing the matter with claimant and then decided that claimant was ineligible for benefits without first asking for an employer response to

her statement. By following this procedure, respondent contends appellant had a problem identifying the issue. The determination issued by the appellant states that the claimant was given the option of continuing her employment by simply reporting for work but that she chose not to show up for work thereby voluntarily terminating her employment with the employer. The appellant found that the claimant terminated her employment with the employer. He also found that she did not do so within any of the exceptions to section 108.04(7) which would allow the payment of benefits at the time in question. In reaching the above determination, appellant relied solely on the claimant's statements to find that she had quit and to conclude that there was no valid claim for UC benefits. However, the record is not as clear on this point as appellant alleges. To the contrary the record indicates there was a dispute over this issue which appellant should have investigated more fully. In this regard the record reveals that the claimant never used the word "quit" to describe what happened to her. Instead, the claimant stated, "I felt I had been fired." At a minimum there is some dispute here over whether the issue is a quit or discharge that the appellant should have more aggressively explored by asking the employer further questions on before reaching a conclusion. The record also indicates appellant did not obtain a clear statement of the case from the employer before discussing it with the claimant. Appellant has not met his burden of proving that his reliance on claimant's statements to conclude that she had "clearly" quit was the proper way to investigate, analyze and decide her claim. Based on same, respondent's QPI score in the Isler file was correct and appellant should not have received a passing score.

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

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

The parties stipulated to the aforesaid issues. Appellant argues that respondent DILHR erred in denying his request for reclassification of his position from Unemployment Benefit Specialist 2 to Unemployment Benefit Specialist 3. Respondents take the opposite position.

Within this context, the only question presented to the Commission is whether appellant's QPI score was correct. As in every reclassification appeal, the appellant has the burden of proving that the respondents' decision to deny the reclassification of the appellant's position was incorrect. In this case, that involves appellant proving that at least one of the two files in which he received scores below 75% were entitled to a

score of 75% or more. As noted in the Findings of Fact, and for the reasons listed below, the Commission finds it reasonable to conclude that appellant has not sustained his burden of proof by establishing that one of the two files which received scores below 75% was entitled to a passing score of 75% or more. The requirement for reclassification from Unemployment Benefit Specialist 2 to 3 is that no more than one case may score below 75%. Since the Commission has found that appellant had two case scores below 75%, he is not entitled to reclassification, and the respondent's decision to deny his reclassification must be affirmed.

The reasons for appellant's low scores on the two files in question were, in summary, as follows:

Anderson - The appellant focused on the fact that the claimant's last absence was for a valid reason and did not consider the prior absences that also formed part of the reason for the discharge under the employer's point system. The determination as to the existence of misconduct was therefore based on insufficient information and did not consider all of the material issues.

Isler - The appellant did not obtain a clear statement of the issue from the employer before talking to the claimant and then decided that the claimant was ineligible for benefits without asking the employer to respond to her statement.

In the Anderson case, appellant argues that he did consider the claimant's prior absences as required by the department's policy that adjudicators must look at all of the prior absences that form the basis for the discharge in order to make a determination regarding UC eligibility. However, the record indicates that appellant did not investigate these prior absences thoroughly in order to determine whether they were for valid reasons but instead focused primarily on the claimant's last absence in arriving at his decision. The record also indicates that appellant improperly focused on the fairness of the employer's "debit/credit" policy in reaching his conclusions in the case. Appellant should have pressed the employer for a better explanation of claimant's absences.

Appellant cites a number of UC Digest cases in support of his position. Most of them are not on point; they are essentially decisions that a particular absence used as the basis for a discharge was for good cause and therefore did not constitute misconduct under the statute. One of the cases (Case No. 45-A-100 on the third page of appellant's exhibit 2), although ruling in favor of the claimant on the facts, actually recites the same rationale as that given by Mr. Roche and Mr. Frank as being the correct approach in this case:

Prior appeal tribunals have held that discharges of employes for repeated absences from work for invalid reasons were for misconduct, whether or not an employer had a rule to that effect, because such conduct was within the province of the employer to control." (Emphasis supplied.)

In addition, another case on that exhibit -- Case No. 46-A-324 -- includes an evaluation of the claimant's absences without regard to the employer's rule which is exactly respondent's position in this case as to what appellant should have done.

Finally, the appeal tribunal decision cited by appellant in support of his position is not persuasive as to QPI process and this review of same.

Based on all of the above, and absent any persuasive evidence to the contrary, the Commission finds that respondent's scoring of the Anderson file was correct and appellant should not have received a passing score.

In the Isler case appellant argues that he could conclude from the claimant's statement alone that there was no valid claim for UC benefits. However, the claimant herself stated: "I felt I had been fired." At the very minimum this raises an issue which appellant should have investigated further. As noted previously the appellant should have returned to the employer for more details in order to make his determination.

Appellant argues that the employer alone cannot provide the basis for determining the issue. While this may be true it does not relieve the appellant of his responsibility to consider the entire record (and thoroughly investigate same) before issuing a ruling. Respondent also had another problem with the appellant's handling of this file. In this regard respondent feels that the "quit v. discharge" issue should have been clarified with the employer before the claimant's statement was taken. The record supports respondents' contention that the employer should have been contacted first to clarify the issue. Based on all of the above, the Commission finds that respondent's scoring of the Isler file was correct and the appellant should not have received a passing score.

In view of all of the foregoing, and in the absence of any persuasive evidence to the contrary, the Commission finds that the answer to the issue as stipulated by the parties is YES, respondent's decision to deny reclassification of appellant's position from Unemployment Benefit Specialist 2 to 3 was correct. The Commission reaches this conclusion because the answer to the subissue stipulated to by the parties is also YES, respondent DILHR's grading of the Anderson and Isler case files as part of the QPI was appropriate.

ORDER

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

Dated: July 17, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

DPM:jmf
JEN/2


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