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 TIM RASMAN, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 NATURAL RESOURCES, and *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
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 Case No. 85-0002-PC *
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(b), Stats., of a decision to deny appellant's request for reclassification of his position. A hearing was held on May 15, 1985, before Commissioner Laurie R. McCallum, and the briefing schedule was completed on June 26, 1985.

FINDINGS OF FACT

1. At all times relevant to this appeal, appellant has been employed in the classified civil service in the Lake Michigan District office of respondent DNR. Appellant filed a timely appeal of respondent's decision denying his request for reclassification of his position from Environmental Specialist 4 (ES4) to Environmental Specialist 5 (ES5).

2. The duties and responsibilities of appellant's position are accurately described in the position description signed by the appellant on March 16, 1984, which summarizes such duties and responsibilities as follows:

- 30% A. Coordination, planning and implementation of the nonpoint source pollution programs for the district.

- 15% B. Coordination of priority watershed projects in the district under the Wisconsin Fund Program.
- 20% C. Coordination, planning, and conducting a lake management program.
- 10% D. Conduct stream investigation and monitoring programs.
- 15% E. Conduct special projects in the district including scuba diving and acid deposition projects.

3. The position standard for the ES4 classification position provides in pertinent part:

Definition

This is responsible environmental specialist work. Positions allocated to this class typically function as: 1) a specialist responsible for implementation of a major environmental program in a portion of a district where program decisions are delegated from the district office; 2) a specialist in a district responsible for implementation of a major environmental program in a significant portion of a district where, while the program has not been decentralized to an area, the program decisions have been delegated to the position; 3) a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program; 4) a specialist in the central administrative office with specific subprogram responsibility in an environmental program; or 5) an environmental scientist position performing work of limited scope, impact and complexity and/or with limited discretion.

Representative Positions:

Positions Functioning Out of an Area Office

- Water Resources Management Specialist: this position is responsible for implementing the surface water monitoring program at the area level; conducting point source evaluation studies; reviewing and issuing aquatic nuisance control and bird control permits; investigating environmental emergencies to determine the extent of water quality damage; and reviewing areawide water quality plans.

Positions Functioning Out of a District Office

Water Resources Management Specialist: this position is responsible for developing and coordinating the district's basis assessment, ambient monitoring and quality assurance programs; designing studies; collecting and interpreting data; and providing technical reports and recommendations based on needs identified by the district water resources management program.

4. The position standard for the ES5 classification provides in pertinent part:

ENVIRONMENTAL SPECIALIST 5 (PR 15-05)

Definition:

This is responsible environmental program coordinative work. Positions allocated to this class typically function as: 1) an area program specialist responsible for implementing all phases of a major environmental protection program in a portion of a district where program decisions are delegated from the district office, or an equivalent combination of responsibilities; 2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program, or an equivalent combination of responsibilities; 3) a central office specialist responsible for providing central office coordination and/or guidance for segments of an environmental program being implemented on a state-wide basis; or 4) an environmental scientist performing a wide range of functions involving assessing unusual conditions; evaluating incomplete or conflicting data; choosing and adopting a variety of specific scientific principles and techniques in order to develop research conclusions; developing methods and standards; evaluating programs or proposals; planning projects; coordinating work with others; and handling conflicts or unusual situations independently. Work at this level is performed under general direction.

Representative Positions

Positions Functioning Out of an Area Office

Water Management Specialist: this position is responsible for administering the water regulation and zoning program in order to protect public rights in surface waters and ensuring reasonable use of floodplain, shoreland and wetland areas; reviewing and approving/denying permits; providing surveillance; assisting with investigations and prosecution of violators; and providing technical assistance to counties and municipalities in administration of zoning ordinances.

Positions Functioning Out of a District Office

Assistant Environmental Impact Coordinator: this position has been delegated major segments of the district environmental impact program with full authority for coordinating and certifying environmental assessments for district actions for compliance with Wisconsin Statutes, and independently conducting investigations and developing agency recommendations on assigned outside agency proposals and department environmental impact statement projects. There is a clear separation of duties with the

district environmental impact coordinator and formal delegation of these responsibilities.

Nonpoint Source Project Coordinator: this position is responsible for directing special nonpoint source projects; evaluating monitoring data from special nonpoint source projects; applying modeling to nonpoint source projects; and interpreting results of nonpoint source projects for application in State nonpoint source programs.

5. Dennis Weisensel, appellant's first-line supervisor, is responsible for planning, coordinating, directing, and supervising all aspects of the district water resources management program.

6. Appellant has not been delegated independent authority over a significant portion of the district water resources management program.

7. The duties and responsibilities of appellant's position are better described by the classifications specifications for the ES4 classification than those for the ES5 classification.

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 respondent's decision denying the reclassification of appellant's position from ES4 to ES5 was incorrect.

3. The appellant has failed to meet that burden of proof.

4. Respondents' decision denying appellant's reclassification request was correct.

OPINION

The proper classification of a position involves a weighing of the class specifications and the actual work performed to determine which classification best fits the position. In appeals of reclassification denials, it is frequently the case that the duties and responsibilities of

the subject position overlap in some respects both of the class specifications in question. The position is not entitled to reclassification because some aspects of the work involved fall within the higher class, Kailin v. Weaver and Wettengel, 73-124-PC (11/28/75), particularly if those aspects constitute less than a majority of the total duties and responsibilities of the position, Bender v. DOA & DP, Case No. 80-210-PC (7/1/81).

The language in the ES4 position standard which best describes appellant's position is: (3) a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program.

The language in the ES5 position standard which best describes appellant's position is: (2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program.

It is not obvious from the above language what the essence of the difference between the ES4 and ES5 classifications is. Either cited section, standing alone, could describe the duties and responsibilities of appellant's position.

However, a review and comparison of the remainder of the relevant position standards, including the descriptions of representative positions, indicate that positions in the area or district offices classified at the ES5 level have independent authority over a significant portion of an area or district environmental program. For example, a district assistant environmental impact coordinator classified at the ES5 level "has been delegated major segments of a district environmental impact program with full authority for coordinating and certifying environmental assessments

for district actions for compliance with Wisconsin Statutes." Representative ES4 positions do not have such independent authority. For example, an ES4 water resources management specialist is responsible for "developing and coordinating the district's basin assessment, ambient monitoring and quality assurance programs; designing studies; collecting and interpreting data; and providing technical reports and recommendations based on needs identified by the district water resources management program."

Appellant's position does not have the independent authority envisioned by the ES 5 position standard. The first-line supervisor of appellant's position is responsible for planning, coordinating, directing and supervising all aspects of the district water resources management program.

It is clear that the majority of the duties and responsibilities of appellant's position parallel the duties and responsibilities of the representative ES4 district water resources management specialist position. If, however, appellant's position devoted a majority or a very significant proportion of time to performing duties and responsibilities of greater scope and complexity than those commonly assigned to an ES4 water resources management specialist, an argument could be made the classification at the ES5 level was appropriate. This record does not support such a conclusion. The duties cited by appellant in support of this argument primarily relate to appellant's scuba diving duties and duties related to acid deposition and other miscellaneous projects. The record shows that appellant's position devotes less than 15% of his time to such duties and that positions which perform scuba diving duties a majority of the time are assigned classifications at even lower counterpart pay ranges than an ES4 or ES5.

During the course of the hearing and in his brief, appellant expressed the belief that the procedure followed by respondent in reviewing the reclassification request should be a factor considered by the Commission in this appeal. Due to the fact that the Commission's hearing on the appeal is a de novo proceeding and the facts considered are not limited to the findings made by respondent in its review of the request, consideration of the procedure followed by respondent in making its findings would serve no useful purpose and would have no probative value in relation to the merits of this appeal. (See Haberman v. DP, Case No. 81-334-PC (1982)).

Appellant also cites the fact that his position was reallocated to ES5 as a result of the approval of new position standards for the ES series in April of 1985 as evidence that his position was not appropriately classified at the time he made the reclassification request which is the subject of this appeal, i.e., April of 1984. However, the Commission is required to apply the classification specifications in existence at the time the subject reclassification request was made. Any subsequent revisions to such classification specifications or changes in classifications based on such revisions are not relevant to the matter before us.

ORDER

The decision of respondents is affirmed and this appeal is dismissed.

Dated: August 1, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
ID6/1


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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