

STATE OF WISCONSIN

CIRCUIT COURT  
Branch 11

DANE COUNTY

TERRY FRANK,

Plaintiff,

-v-

PERSONNEL COMMISSION FOR  
STATE OF WISCONSIN,

Defendant.

RECEIVED

MAR 11 1986

Personnel  
Commission

MEMORANDUM DECISION  
and ORDER

Case No. 85 CV 5490

INTRODUCTION

This matter is before the court on the petitioner's appeal from the Wisconsin State Personnel Commission's decision of October 1, 1985, affirming the Central Wisconsin Center's decision to deny petitioner's reinstatement. This court has jurisdiction to review this appeal under ch. 227, Stats..

Petitioner's appeal presents the following issues: 1). Was petitioner's April 14, 1983 application for reinstatement timely filed within the meaning of sec. 230.31 (1)(a), Stats.?

2) Was respondent's refusal to consider petitioner's April 14, 1983 application an abuse of discretion in contravention of sec. 230.44(1)(d)?

3). Was respondent's attempt to compel petitioner to take a competitive exam before she would be eligible for re-hire a violation of Section ER-Pers. 16.01(1) of the Wisconsin Administrative Code?

Because I find for petitioner on the first issue, that her application for reinstatement was timely filed, it is not necessary to reach the other two issues.

FACTS

Plaintiff Terry Frank was employed by the Central Wisconsin

Center for the Developmentally Disabled (hereinafter "CWC") beginning on October 24, 1977. Petitioner worked for CWC continuously until April, 1979, when she left CWC due to a work-related injury. Petitioner never returned to work at CWC after that time.

On April 18, 1980 Brian Fancher, the personnel manager at CWC, sent petitioner a letter notifying her that her employment with CWC was terminated as of the date of the letter, and notifying her that CWC would consider an application for reinstatement within three years of April 18, 1980. Petitioner did not actually receive this letter until October or November, 1982.

On April 14, 1983 petitioner submitted an application for reinstatement to the personnel department at CWC. Mr. Fancher decided not to forward petitioner's application to the residential living center for further processing and no processing of the application was in fact done.

The only indication petitioner received from CWC that the center had received her application was a letter dated July 7, 1983 advising her of the competitive exam scheduled for all applicants for her former job position. Petitioner filed an appeal of the requirement that she take a competitive examination to the Wisconsin Personnel Commission (hereinafter "WPC"). After an evidentiary hearing on April 17, 1984, the hearing examiner denied the appeal on June 20, 1985. The WPC affirmed the hearing examiner's decision on October 1, 1985, finding that petitioner's application for reinstatement was not timely. WPC also found that CWC had determined that petitioner's application would not be considered because of her poor employment references.

## DISCUSSION

The court in reviewing the denial of petitioner's appeal is guided by sec. 227.20, Stats.. The statute sets forth the scope of review is as follows:

- (5) The court shall set aside or modify the agency's action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.
- (6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact....

Because I find that petitioner's appeal entails the interpretation of sec. 230.31(1)(a), Stats., sec. 227.20(5) provides the appropriate standard of review; i.e., whether WPC's interpretation was "erroneous."

Construction of a statute by an agency is not controlling. Department of Revenue v. Bailey-Bohrmann Steel Corp., 93 Wis. 2d 602, 606, 287 N.W. 2d 715 (1980). Where the agency's application and construction of a statute is long-standing it will be upheld if reasonable. Nottelson v. Department of Industry, Labor and Human Resources, 94 Wis. 2d 106, 117, 287 N.W. 2d 763 (1980). That is not the case here because the question of whether petitioner did not timely file her application within sec. 230.31(1)(a), Stats. presents a case of first impression in Wisconsin.

Petitioner contends that the plain meaning of sec. 230.31, Stats., impels a finding that on April 14, 1983 petitioner was eligible for reinstatement to CWC. Section 230.31, Stats. provides that:

- (1) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service without any delinquency or misconduct on his or her

part but owing to reasons of economy or otherwise shall be granted the following considerations for a 3-year period from the date of such separation:

- (1) Such person shall be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified.

Respondent argues that, strictly construed, sec. 230.31(1)(a), Stats. requires that "any permissive reinstatement be effected within the "3-year period from the date of such separation."

I find that the plain meaning of sec. 230.31(1)(a), Stats., compels the interpretation that petitioner was eligible for reinstatement on April 14, 1983 and that nothing in the statute requires that petitioner's application be completed or processed before the running of the three year period. To hold otherwise would allow an employer governed by the statute to impose conditions which could significantly shorten the three-year period. A requirement that the application must be processed within the three-year period, if such processing required six months, would cut the eligibility period to two and one-half years. In the alternative, the employer could simply hold the application until the three-year period ran out, after which time an applicant would no longer be eligible. In any event, the petitioner in this case had no notice of any requirement beyond sec. 230.31(1)(a), Stats., which she would have needed to fulfill in order to retain her eligibility. Respondent contends that sec. 230.31(1)(a), Stats., does not grant petitioner the unqualified right to automatic reinstatement. Such contention, however, has no bearing on the fact that the statute does grant petitioner the right to be eligible for reinstatement. CWC is not constrained from adhering to its usual pre-reinstatement procedure by sec. 230.31(1)(a), Stats..

Because I find that petitioner's application for reinstatement

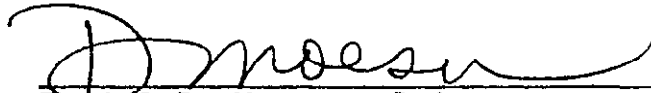
was timely filed, there is no need to consider the issues concerning discretion or the competitive exam. The prior decision of the Wisconsin Personnel Commission is hereby reversed.

ORDER

I find that petitioner's application was timely filed and that Petitioner should be considered for reinstatement. I am not ordering that she be reinstated but rather that her application for reinstatement be considered.

Dated this 4<sup>th</sup> day of March, 1986.

BY THE COURT:



\_\_\_\_\_  
Daniel R. Moeser, Judge  
Circuit Court Branch 11

cc: Robert J. Vergeront, AAG  
Atty. Steven Schooler