

STATE OF WISCONSIN

PERSONNEL COMMISSION

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FEDERICO ESCALADA-CORONEL,  
 Appellant,  
 v.  
 Administrator, DIVISION OF  
 MERIT RECRUITMENT AND  
 SELECTION,  
 Respondent.  
 Case No. 86-0189-PC

\* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF CASE

This is an appeal of a refusal by respondent to permit appellant to take an exam.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has resided in Portage, Wisconsin. Appellant is a native of Mexico and, although he can read and comprehend English, it is his second language and there are certain technical and colloquial usages with which he is not familiar.

2. Some time during September of 1986, appellant's job counselor in Portage advised him that there was a vacant LTE probation and parole agent position with the Department of Health and Social Services (DHSS) for which he might be qualified. Appellant learned that Kay Kendall, a unit supervisor for DHSS's Bureau of Community Corrections, was the person who would effectively make the hiring decision for this LTE position, and appellant dropped by Ms. Kendall's office unannounced some time in late September or early October, 1986, to discuss this LTE position with her. Appellant brought with him to this meeting a state application form given to him by

his job counselor which appellant had completed at least in part. Since it was not necessary that such an application be completed in order for appellant to be considered for the LTE position, and since the requirements for the application process for the permanent position in Ms. Kendall's unit having duties and responsibilities equivalent to the subject LTE position had not yet been determined, Ms. Kendall discarded appellant's state application form. Appellant and Ms. Kendall scheduled an interview for the LTE position for October 2, 1986.

3. At the October 2, 1986, interview, Ms. Kendall advised appellant that there was a vacant permanent position in the unit she supervised, the duties and responsibilities of which were equivalent to those of the LTE position for which he was interviewing, but that he would have to take an exam to be considered for the permanent position.

4. In a letter to appellant dated October 6, 1986, and received by appellant on October 7, 1986, Ms. Kendall wrote:

Would it be possible for you to come down for a second interview this Thursday, October 9, 1986, at 11:00 A.M.? I would like an opportunity for you to meet with myself and Ilda Thomas, Director of Centro Hispano. Please call me if you cannot come; otherwise I will see you then.

I am enclosing a copy of the exam announcement for the permanent job in case you haven't seen it and an application form. It has to be sent in to Ms. Taylor by 4:30 P.M. on this Friday.

Both Mr. Trameri and I enjoyed meeting you; I am looking forward to seeing you again.

The exam announcement Ms. Kendall included in this correspondence stated:

SOCIAL WORKER 1 -  
BILINGUAL: SPANISH/ENGLISH - STATEWIDE

JOB CLASSIFICATION CODE: 51801013

Dept. of Health and Social Services (DHSS); Division of Corrections. First two vacancies are in Madison and Kenosha. Other vacancies may become available in other areas of the state at a later date, however, you must

apply now to be considered. Start at \$1588 per month. Identify the nature and causes of Probation and Parole clients' problems; formulate and implement a plan to develop the capacities and resources to cope with/resolve the problems, provide counseling and guidance; refer to appropriate community resources; provide translation and interpretation in Spanish and English.

KNOWLEDGE REQUIRED: Fluency in Spanish, including familiarity with street language and dialectal varieties; skill in communicating efficiently in Spanish with clients of various Spanish linguistic backgrounds; interviewing techniques and dynamics of human relations; identification and resolution of problems; reading and comprehension of written directives, rules and regulations; Hispanic cultural values, attitudes and family dynamics and the differences amongst the various Hispanic cultures, knowledge of the acculturation process and skill in assessing the stage each client is at. NOTE: The written examination for this position, which is scheduled for November 1, includes a "pass/fail" portion in Spanish. Candidates eligible for interviews as a result of this exam will have their verbal bilingual skills evaluated at that time. Because of the nature of some Social Worker positions, applicants with conviction records will be asked to furnish a signed, written record of any convictions. Be prepared to discuss this record prior to or during a job interview. Apply with a State Applicant Registration Form by 4:30 p.m. on October 10 to Georgina Taylor; (608) 266-7296; Merit Recruitment and Selection; P. O. Box 7855; Madison, WI 53707. Applications received after the deadline will not be accepted. Direct questions regarding vacancies to Tomas Garcia at (608) 266-8787.

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6. Immediately following the October 9 interview with Ms. Kendall, appellant completed all but one section of the state application form Ms. Kendall had included in her October 6 correspondence to him and mailed it to Georgina Taylor at the address listed in the exam announcement.

7. The following appears on the top of page 2 of the state applicant form:

Write the complete civil service title for which you are applying as listed in the job announcement \_\_\_\_\_

Appellant did not complete this section on the application form he mailed to Georgina Taylor; i.e., he did not indicate which job he was applying for.

8. The first page of the state application form states, in pertinent part:

This is a machine-readable form. It will be used to register an applicant's interest in competing for jobs in State Service. Information such as education, work experience, etc. will be obtained later from those applicants who are considered for appointment. INFORMATION CONCERNING VETERANS PREFERENCE POINTS WILL BE OBTAINED AT THE EXAM CENTER. It is the applicant's responsibility to complete all the information requested completely and accurately. All correspondence to you will be sent to the address you provide on this form. If, at any time, this information changes, please notify the State Division of Personnel at the address indicated above, c/o Applicant Registration Unit.

THE DIVISION OF PERSONNEL WILL USE ONLY THE INFORMATION CONTAINED ON THIS FORM. THE DIVISION WILL NOT ASSUME RESPONSIBILITY FOR INTERPRETING OR CORRECTING THE INFORMATION PROVIDED.

HOW TO FILL OUT THIS FORM

General:

- . Use only a #2 or softer black pencil.
- . Erase any stray marks completely.
- . Make all responses dark, glossy, and complete.
- . COMPLETE ALL ITEMS UNLESS INSTRUCTED OTHERWISE.
- . Photo copies will not be accepted.
- . Return this form in an envelope no smaller than 4 x 9 inches (business size).
- . DO NOT STAPLE DOCUMENTS TO OR TEAR THIS FORM.

SPECIFIC INSTRUCTIONS FOR COMPLETING PAGES 2 AND 3 OF THIS FORM

A) Write the complete civil service title for which you are applying as it was listed in the job announcement in the space provided at the top of the next page.

9. The State Service Current Opportunities Bulletin from which the exam announcement Ms. Kendall included in her October 6 correspondence to appellant was obtained states on its first page the following, in pertinent part:

NOTE: Applications received at the announced location after 4:30 p.m. on the deadline date will not be processed.

Include the job classification code number on your application for state positions. Your application for state positions cannot be processed without this number.

10. Appellant's application form was received at the offices of respondent Division of Merit Recruitment and Section (DMRS) at 1:31 p.m. on October 10, 1986. Such application form was not forwarded to Ms. Taylor but was removed from its envelope, the envelope was discarded, and the form fed into a computer. The computer rejected appellant's application form because it was incomplete as described in Finding of Fact 7, above, and appellant's form was mailed back to him with a yellow slip attached indicating that his form failed to indicate the job classification code or civil service title of the position for which he was applying.

11. Appellant was hired for the LTE probation and parole agent position in Ms. Kendall's unit and he began employment in this position on October 14, 1986. On this date, he was advised that, in order to continue in this LTE position, he was required to demonstrate that he was qualified for this position by passing the examination for the permanent position. Appellant immediately called Georgina Taylor to verify that he was scheduled to take the exam for the permanent position. Ms. Taylor advised appellant that, at that time, there was no way for her to know if his application form had been received.

12. On October 17, 1986, appellant received his application form for the permanent position with the yellow slip attached in the mail. He wrote the job classification code and the civil service title of the permanent position on the application form and mailed it back to DMRS on October 18, 1986. This was received at the offices of DMRS at 2:03 p.m. on October 20, 1986. Appellant called Ms. Taylor on October 20 and she advised him that

he could not take the exam because a complete application form had not been filed by appellant on or before October 10, 1986.

13. The individuals, including Ms. Kendall and Ms. Taylor, who were responsible for writing the exam for the subject permanent position, met for the last time on October 10 to finalize the content of the exam. Ms. Taylor delivered the group's work product to the typing pool on October 15. The final version of the exam was not sent to the printer until after October 20. DMRS routinely orders from the printer extra copies of an exam in the event there are misprints or misassembled exams and in order to keep copies for DMRS's records. There were 61 applicants on the exam register for the subject exam.

14. It is DMRS policy and practice that, if either the job classification code or the civil service title of the position but not both are not indicated on the application form, the missing item will be filled in manually. If neither is indicated the form is returned to the applicant with a yellow slip unless it is obvious that the applicant's form could not be returned prior to the deadline.

15. It is DMRS policy and practice that if an applicant fails to complete the residency section on the application form, the applicant is contacted by DMRS staff to obtain the applicable residency information. It is DMRS policy and practice to permit such residency information to be provided by the applicant on or before the day preceding the scheduled exam day.

16. It is DMRS policy and practice to permit application forms received on or before the applicable deadline to be completed or corrected after the deadline if such forms contain all of the following:

- a. job classification code or civil service title of the position;

- b. applicant's name;
- c. applicant's address;
- d. applicant's social security number;
- e. application is completed in pencil.

The rationale offered by DMRS for this policy and practice and for not allowing exceptions to this policy and practice is that this is how their computer system is set up.

17. It would not be more burdensome for respondent to contact applicants who neglect to put the job classification codes and/or civil service title on their applications to obtain this information, than it is to contact applicants who fail to put residency information on their applications, and there is no reasonable basis for treating these two categories of applicants differently in this manner.

18. The subject exam was given on November 1, 1986, and DMRS did not allow appellant to take the exam. Appellant filed a timely appeal of this action with the Commission.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), Stats.
2. The appellant has the burden of proof.
3. The subject matter of this appeal is controlled by the legal standard set forth in §230.16(1)(a), Stats.:

The administrator shall require persons applying for admission to any examination under this subchapter or under the rules of the administrator to file an application with the division in a reasonable time prior to the proposed examination.

4. The appellant has the burden of establishing that respondent DMRS violated §230.16(1)(a), Stats., by denying the appellant permission to compete in the exam for the Social Worker 1 - Bilingual position which was given on or about November 1, 1986.

5. The appellant has satisfied his burden of proof.

6. Respondent DMRS did violate §230.16(1)(a), Stats., by denying the appellant permission to compete in the aforesaid exam.

DECISION

The parties agreed that the issue in this appeal is:

Whether the respondent violated §230.16(1) (a), Stats., by denying the appellant permission to compete in the examination for the Social Worker 1 - Bilingual classification on or about November 1, 1986.

Section 230.16(1)(a), Stats., states:

230.16 Applications and examinations. (1)  
(a) The administrator shall require persons applying for admission to any examination under this subchapter or under the rules of the administrator to file an application with the division a reasonable time prior to the proposed examination. (emphasis supplied)

It is uncontroverted that respondent DMRS established a reasonable deadline for the filing of applications for the subject exam. The Commission must then determine whether respondent enforced this deadline in a reasonable manner. The appellant has the burden of proof on this issue.

The record clearly indicates that, in relation to incomplete applications filed on or before an application deadline, respondent does not enforce the deadline in a consistent manner. Specifically, applicants who fail to include the job classification code and the civil service title of the applicable position on their application forms are not contacted by phone by DMRS staff for the purpose of obtaining the missing information, are only contacted by mail for the purpose of obtaining the missing information if it appears that they would be able to supply the missing information on or before the deadline, and are only allowed to take the exam if the missing information is supplied on or before the deadline. On the other hand, applicants who fail to include residency information on their application form are contacted by phone and/or by mail by DMRS staff for



the purpose of obtaining the missing information and are allowed to take the exam if the missing information is supplied on or before the day immediately preceding the exam.

The remaining question then is whether there is a reasonable basis for this inconsistent treatment of persons who, like appellant, fail to include certain information on their applications.

Respondent argues that its policy in this regard is reasonable as a means of enhancing administrative efficiency. However, respondent does not explain why it is less burdensome to call an applicant who has failed to supply residency information than it is to call one who has failed to include the job classification code and the civil service title. There is nothing on the record to explain this, nor is the commission aware of any self-evident explanation. The commission can only conclude the burdens are no different.

Respondent argues that an applicant's name can be placed on the proper exam register if the only information missing from the application form is that related to residency. If, however, the job classification code and civil service title are missing from the application form, respondent argues that an applicant's name cannot be placed on the proper exam register since it cannot be ascertained which exam the applicant is applying to take and this distinction justifies the inconsistent treatment of the two classes of applicants. However, the hearing record clearly indicates that respondent makes corrections, including additions and deletions, to exam registers up to and including the day immediately preceding the exam. Respondent fails to explain why it is easier to delete the name of an applicant when it becomes apparent he/she does not meet residency

requirements than it is to add the name of an applicant once the proper job classification code or civil service title is supplied.

Respondent argues that allowing appellant to take the exam would have resulted in extra work on the part of DMRS to assure that an extra exam was delivered to the proper exam center. However, the record indicates that extra exams are routinely delivered to exam centers so that there will be enough exams in the event some are printed or assembled incorrectly. Allowing appellant to take the exam, therefore, would not have resulted in extra work for DMRS in this regard.

Respondent offers as further justification for its policy and practice in this regard the fact that its computer system is set up to implement this policy and practice. This is not a convincing argument since respondent has control over the content of such program and could set it up any way it chooses.

Respondent finally argues that, if appellant would have been allowed to take the exam, respondent would have had to allow all late applicants to take the exam. However, this conclusion fails to take into account the fact that appellant filed his application before the deadline but it was incomplete. The Commission does not regard appellant's application as a late application, i.e., as one filed after the deadline. The Commission has upheld respondent's policy of denying late applicants' permission to take an exam (Marxer v. DMRS, Case No. 86-0070-PC (8/20/86)).

It is clear that respondent provides prospective applicants with notice that failure to include the job classification code and/or civil service title of the applicable position on their application forms could prevent the processing of their applications. However, the issue in the instant appeal is not one of notice. The respondent has a policy which

makes certain exceptions to their stated policy that they will use only the information contained on the form and will not assume responsibility for interpreting or correcting the information provided. The issue before the Commission is whether there is a rational basis for the inconsistent treatment of applicants resulting from the application of these exceptions to the stated policy. The Commission concludes that on this record there is no such a rational basis.

The Commission having determined that the respondent's handling of this matter violated §230.16(1), stats., the appellant is entitled to be examined for this position.

ORDER


Respondent's action denying appellant permission to participate in the examination for the Social Worker 1 - Bilingual: Spanish/English - State-wide position is rejected, and this matter is remanded to respondent for action in accordance with this decision.

Dated: November 26, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf  
ID6/2

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

Parties:

Federico Escalada-Coronel  
40 Sweetbriar  
Wisconsin Dells, WI 53965

Sue Christopher  
Administrator, DMRS  
P. O. Box 7855  
Madison, WI 53707