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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62 (1).

No. 86-1320

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

NOTICE

This opinion is subject to further editing. If published the official version will appear in the book of the Court of Appeals.

WALTER A. RASCHICK,

Appellant,

v.

DEPARTMENT OF JUSTICE  
and STATE PERSONNEL  
COMMISSION,

Respondents.

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APR 27 1987

Personnel  
Commission

APPEAL from an order of the circuit court for  
Burnett county: HARRY F. GUNDERSEN, Judge. Affirmed.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Walter Raschick appeals an order affirming a State Personnel Commission determination that Raschick was not denied employment because of his age. Raschick raises several issues on appeal. Because substantial evidence supports the commission's finding that Raschick was denied employment for legitimate nondiscriminatory reasons, we must affirm.

Section 227.20(2), Stats., governs the scope of our review of the commission's determination. The standards

we use are identical to those governing the circuit court. Boynton Cab Co. v. DILHR, 96 Wis.2d 396, 405, 291 N.W.2d 850, 855 (1980). In order to reverse, modify or set aside the commission's action, we must find a specific ground to do so. A specific ground would include a material procedural error, an erroneous legal interpretation, or findings not based upon substantial evidence. Section 227.20(4), (5), and (6), Stats. Raschick's challenge is basically that the commission's findings are not supported by substantial evidence.

Raschick applied for the job of Public Information Officer II at the University of Wisconsin-Eau Claire. He was one of forty-five applicants for the position. Each applicant was tested, and six, including Raschick, were granted interviews.

Raschick's interview was brief. Raschick was age fifty-two at the time of the interview and had more than thirty years in radio, TV, and printed media experience. Ms. Hoffman, a twenty-four-year-old female, was hired for the position. Alleging age discrimination, Raschick appealed to the commission. The investigator initially determined that Raschick was rejected for legitimate, nondiscriminatory reasons. After a contested hearing, the

commission affirmed. The circuit court concluded that the commission's decision was supported by substantial evidence and affirmed.

The commission has adopted a three-part analysis to determine age discrimination. The initial burden is on the job applicant to establish a prima facie case, then the employer must articulate some legitimate nondiscriminatory reason for its action, and, finally, the applicant must show that the employer's articulated reason is merely pretextual. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Here, Raschick established a prima facie case by showing that his age places him in a protected class, sec. 111.33(1), Stats., that he was qualified and not selected for the job, and that a twenty-four-year-old was selected instead.

The issue is whether substantial evidence supports the commission's finding that the university established legitimate, nondiscriminatory reasons for denying Raschick employment. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion." Gateway City Trans. Co. v. PSC, 253 Wis. 397, 405-06, 34 N.W.2d 238, 242 (1948). The fact that the evidence may be subject to more than one reasonable, equally plausible interpretation is immaterial. Hamilton v. DILHR, 94 Wis.2d 611, 617, 288 N.W.2d 857, 860 (1980).

There may be two conflicting views of a case, each supported by substantial evidence, and in such a case it is for the agency alone to determine which view of the evidence it wishes to accept. Robertson Trans. Co. v. PSC, 39 Wis.2d 653, 658, 159 N.W.2d 636, 638 (1968). Our task is to search the record for substantial evidence supporting the agency's decision, not for evidence that might lead to an opposite result. See Vande Zande v. DILHR, 70 Wis.2d 1086, 1097, 236 N.W.2d 255, 260 (1975).

We conclude that the requisite degree of evidence supports the commission's finding that Raschick was denied employment for legitimate, nondiscriminatory reasons and that the reasons were not pretextual. The interviewer testified that he selected Ms. Hoffman, who had scored the highest on the examination, had experience in public information at the university, and had superior writing skills. He testified that Raschick made a poor impression at the interview because of his attire, his old writing samples, and talkative manner.

Raschick challenges this testimony and asserts that he was properly dressed, that his writing samples were not offensive, and that his conversational manner was appropriate. These challenges, however, address the weight and credibility of the testimony, which is the function of the agency, not the court. Holtz & Krause, Inc. v. State, 85 Wis.2d 198, 204, 270 N.W.2d 409, 413 (1978); sec. 227.20(6), Stats.

Raschick further contends that Hoffman was "pre-selected" and that the test and interview were unfairly conducted. Raschick's view of the case conflicts with the university's. There was evidence that others as well as Hoffman were encouraged to apply and that the examination was approved by the Division of Personnel in the Wisconsin Department of Employment Relations. Two employees of the University News & Publications office rated the exams and sent them to the Division of Personnel to be graded on a percentage basis. There was also testimony that the interviewer cut short the interview based on Raschick's attire, old writing samples, and demeanor. It is the function of the commission, not the court, to determine which view of the evidence to accept. Robertson, 39 Wis.2d at 658, 159 N.W.2d at 638. Because substantial evidence supports the commission's view, we may not overturn it.

Raschick also contends that the circuit court failed to properly apply "U.S.C. 621 and 623, The Age Discrimination in Employment Act." He argues that federal rights under this Act parallel rights guaranteed under state law. Section 111.31(3), Stats. Because Raschick does not claim any different rights under federal law than under state law, he fails to show grounds for reversal.

By the Court.--Order affirmed.

Not recommended for publication in the official reports.