
 *
 JEANETTE SMART, *
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 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (Platteville)*
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 87-0125-PC *
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FINAL
 DECISION
 AND
 ORDER

This matter is before the Commission following the promulgation of a proposed decision and order by the hearing examiner, a copy of which is attached hereto. The commission has considered the arguments and objections filed by appellant and has consulted with the hearing examiner.

Appellant's objections to the proposed decision and order includes the following:

"There seems to be some confusion with the issues in the above referenced case . . . The proposed decision and order treats the two requests [for reclassification] as separate cases appealable to the Commission.

The witness at both hearings, Ms. Kelley, testified that she 'took both requests into consideration' when she made a decision on the appropriate level of program assistant. The proposed decision and order treats the two requests as separate cases appealed to the Commission. All parties to this dispute have at all times treated the testimony and evidence as one dispute. In fact, the respondent introduced the 1985 request as an exhibit at the first hearing . . . Ms. Kelley . . . stated that when her office receives a request for reclassification, the effective date of the reclassification is the date received. No mention [is made] of this in the proposed decision and order or whether this position of Ms. Kelley is meaningful or enforceable."

Regardless of whether the events that commenced in 1985, when appellant began seeking a reclassification of her position, and continued until

December 29, 1986, when the UW-System effectively denied the request could be characterized or have been viewed as one transaction from various standpoints or viewpoints, the significant question here and the only question the Commission addresses, is how these events should be characterized in the context of an interpretation of the DER effective date policy as set forth in Chapter 332, Wisconsin Personnel Manual:

332.060 EFFECTIVE DATE POLICY

A. Regrades Resulting From Reclassification Actions and Reallocation Actions under ER-Pers 3.01 (1)(e), (f) and (g), Wis. Adm. Code.

Both delegated and nondelegated reclassification regrade actions and reallocation regrade actions taken under ER-Pers 3.01 (1)(e), (f) or (g) will be made effective at the beginning of the first pay period following effective receipt of the request. However, a later effective date may be designated by the appointing authority when the conditions which warrant the reclassification/regrade or reallocation/regrade (e.g., attainment of required education or experience, performance of duties and responsibilities for six months, etc.) will not occur until such later date.

Effective receipt of a request may be made by any office within the operating agency that has been delegated, in writing, effective receipt authoring by the appointing authority. A request may be initiated in one of the following three ways through submission of appropriate documentation:

1. If the first line supervisor or above in the direct organization chain of command requests that the position be reviewed for proper classification level or recommending a specific classification level change, the required documentation is an updated Position Description and written reasons for the request.

In this case, the initial reclassification request was followed over a year later by a second reclassification request that was accompanied by a substantially revised updated position description and reclassification analysis forms. It is clear that there were very substantial changes in the position between the two reclassification requests. Under these circumstances, the agency's decision to use the date of the second request

as the basis for calculating effective date was a proper application of the aforesaid policy.

The aforesaid Personnel Manual effective date provision does not by its terms address cases where there are consecutive reclassification requests for the same position. Under the circumstances presented by this case, the primary operative facts upon which the PA 2 reclassification was based were those associated with the second request. Due to the very substantial changes in the position which occurred between the dates of the first and second requests, there is no basis for a finding that the first reclassification request, standing alone, would have supported a PA 2 classification. Therefore, it was appropriate for respondent to have used the date of the second reclassification request, which was accompanied by the updated position description, in establishing the effective date of the reclassification.

Furthermore, even if the Commission were to ignore the Personnel Manual provision on effective date and to evaluate respondent's action solely on the basis of when appellant actually began to perform at the PA 2 level, it is impossible on this record to conclude that this occurred at any given point in time that would warrant an earlier effective date than that actually established, particularly in light of the requirement imposed by §ER Pers. 3.01(3), Wis. Adm. Code, that the permanently assigned duties and responsibilities must be performed by the incumbent for a minimum of six months prior to a regrade.

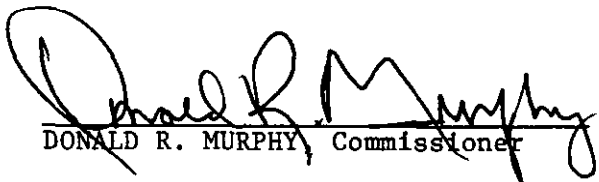
ORDER

The attached proposed decision and order is incorporated by reference as the Commission's final disposition of this matter, as augmented as set forth above, and the action of respondent is affirmed and this appeal is dismissed.

Dated: May 12, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

AJT:akw
VIC01/2


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JEANETTE SMART, *
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 Appellant, *
 *
 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (Platteville)*
 *
 Respondent. *
 *
 Case No. 87-0215-PC *
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PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of the effective date of a reclassification action. A hearing was held on March 8, 1988, before Laurie R. McCallum, Commissioner.

FINDINGS OF FACT

1. In a letter dated June 10, 1985, to Kate Kelley, Personnel Director, University of Wisconsin-Platteville, the supervisors of appellant's position requested in relation to such position:

...an audit of the Program Assistant 1 position assigned to our offices. We would like to have a determination made regarding the elevation of the position to the level of Program Assistant 2.

This letter was accompanied by reclassification analysis forms signed by the supervisors which indicated a Requested Classification level of Program Assistant 2.

2. As of July 8, 1986, no action had been taken in regard to the above-described request. In a July 8, 1986, memo to Ms. Kelley, appellant stated in pertinent part:

Due to the extended delay in any action being taken on my original request for elevation to Program Assistant 2 dated June 10, 1985, the current position description on file is outdated and does not reflect a true outline of my position's responsibilities. Therefore, I have attached a revised position description to be placed on file and to be used in determining the correct level in class title of this position.

The updated position description reflects all changes in the position responsibilities that have been incorporated since the merger of Counselor Education with Teaching and Learning, July 1, 1985, and the change in department chairperson with the transition period beginning mid-September, 1985.

A reclassification analysis form which indicated a Requested Classification level of "appropriate classification indicated by current position description" was prepared and signed by appellant's supervisor on July 18, 1986.

3. The duties and responsibilities of appellant's position changed substantially as a result of the 1985 merger and change in the department chairperson.

4. In a November 28, 1986, memo to James Cimino, Personnel Specialist, UW-System, Ms. Kelley recommended that appellant's position remain classified as a Program Assistant 1. The analysis which accompanied Ms. Kelley's recommendation dealt only with the duties and responsibilities of appellant's position subsequent to the 1985 merger and change in the department chairperson, i.e., the duties and responsibilities of appellant's position as embodied in the 1986 reclassification request.

5. In a December 29, 1986, letter from Mr. Cimino to appellant's supervisor, respondent upheld Ms. Kelley's recommendation.

6. Appellant filed a timely appeal of such decision with the Commission. (Smart v. UW & DER, Case No. 87-0002-PC (11/4/87)). A prehearing conference was held on May 4, 1987, at which time the parties agreed to the following issue:

Whether respondent's decision denying appellant's request for reclassification of her position from Program Assistant 1 to

Program Assistant 3 was correct? If not, what is the appropriate PA classification for that position?

7. Appellant contended in briefs filed with the Commission in the above-described case that her position was performing at the PA 2 level at the time of the 1985 reclassification request and at the PA 3 level at the time of the 1986 reclassification request and stated that the June 10, 1986 date "is the date the reclassification should be effective."

8. In a decision and order dated November 4, 1987, the Commission decided that appellant's position was most appropriately classified at the PA 2 level. The Commission based this decision on an analysis of appellant's position's duties and responsibilities after the 1985 merger and change in the department chairperson, i.e., the duties and responsibilities of appellant's position as embodied in the 1986 reclassification request.

9. As a result of this decision and order, respondent reclassified appellant's position to the PA 2 level effective July 20, 1986.

10. Appellant filed a timely appeal of respondent's decision relating to the effective date of such reclassification contending that the operative date should be the date of the 1985 reclassification request, not the 1986 reclassification request.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of proving that respondent's decision establishing July 20, 1986, as the effective date of appellant's reclassification to the PA 2 level was incorrect.

3. Appellant has not sustained her burden of proof.

4. Respondent's decision establishing July 20, 1986, as the effective date of appellant's reclassification to the PA 2 level as ordered by the Commission in Case No. 87-0002-PC was correct.

DECISION

It is clear from the record that appellant filed two discrete requests for the reclassification of her position, one on June 10, 1985, requesting reclassification to the PA 2 level, and one on July 8, 1986, requesting reclassification to the PA 3 level. It is also clear from the record in the instant appeal that the actions taken by respondent which were the subject of appellant's earlier appeal (Case No. 87-0002-PC; see Findings of Fact 6, 7 and 8, above) related solely to the 1986 request, i.e., Ms. Kelley's November 28, 1986, recommendation and respondent's December 29, 1986, denial letter analyzed only those duties and responsibilities assigned to appellant's position at the time of the 1986, not the 1985, request for reclassification. In addition, the stipulated issue and the decision and order in the earlier appeal filed by appellant indicate that the scope of such appeal was limited to a review of the 1986 request. There is nothing in the record of the instant appeal from which it is possible to conclude that respondent took any final action in regard to the 1985 request or that appellant ever withdrew such request. It could be argued that appellant's contention in the instant appeal that the effective date of the reclassification ordered by the Commission in the earlier appeal should relate back to the date of the 1985 request implies that appellant regarded the earlier appeal as encompassing both the 1985 and 1986 request and her failure to introduce evidence or argument relating to the merits of the 1985 request acts now as a constructive withdrawal of such request or as a waiver of her rights in regard to such request. The

Commission declines to reach such a conclusion in view of the overwhelming evidence to the contrary.

The Commission concludes that the respondent was correct in establishing July 20, 1986, as the effective date of appellant's reclassification to the PA 2 level, pursuant to the Commission's order in the earlier appeal (Case No. 87-0002-PC) and clarifies that this result relates solely to appellant's 1986 request for the reclassification of her position.

ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: _____, 1988 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
JMF08/3

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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