

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 LLOYD R. ROSE *
 *
 Appellant, *
 *
 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH & SOCIAL SERVICES, and *
 Administrator, DIVISION OF *
 MERIT RECRUITMENT & SELECTION, *
 *
 Respondents. *
 *
 Case No. 89-0035-PC *
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 * * * * *

INTERIM
 DECISION
 AND
 ORDER

NATURE OF CASE

This is an appeal of respondent's failure to certify appellant for a vacant Officer 5 position at the Wisconsin Resource Center. The parties agreed that the following issue should govern the appeal:

Was respondent's failure to certify the appellant on February 8, 1989, for the position of Officer 5 at the Wisconsin Resource Center in violation of §230.25, Stats.?

The parties also agreed to submit the issue to the Commission through a stipulated fact statement and not to file written or oral arguments and to waive their right to an evidentiary hearing. The stipulated fact statement was filed with the Commission on September 15, 1989, and provides as follows:

FINDINGS OF FACT

The following are stipulated to to be factual by the undersigned parties:

1. Applicants for the Officer 5 examination were required to fill out a Locator Sheet specifying those DHSS institutions in which they would consider employment. Applicants were told that the employment areas that they had previously indicated on their Application for State Employment forms would not be used to refer applicants to Officer 5 vacancies.

2. Lloyd Rose (Appellant) did fill out the Locator Sheet referred to in number 1. (See Attachment 1.) Mr. Rose's Locator Sheet indicated a desire to be considered for vacancies at Columbia, Waupun, Taycheedah, Fox Lake, Dodge, Corrections Drug Abuse Treatment Center, Oshkosh Correctional Institution and the Wisconsin Resource Center.

3. The Officer 5 register was established by the Division of Merit Recruitment and Selection (DMRS) on July 21, 1988. Since certification for this classification was delegated to DHSS, the Officer 5 register was then sent to the Bureau of Personnel & Employment Relations (BPER) at DHSS. The Locator Sheets were included with the register materials received from DMRS.

4. Due to a processing error in BPER the information from the Locator Sheets was not incorporated into the Officer 5 register referral file and consequently was not used by BPER to refer applicants to Officer 5 vacancies. Instead, the top applicants were referred in the standard way based on the employment areas they had identified on their state application forms. If the register indicated that an applicant did not check any employment areas on the state application, BPER assumed the applicant was interested in being considered for vacancies in all areas and referred the applicant to any Officer 5 vacancy which occurred.

5. Prior to January 1989, Appellant was certified for all Officer 5 vacancies, including those for which he had indicated no interest on the locator sheet.

6. In January 1989, BPER started to access the new DMRS computerized Employment Relations Certification System (ERCS) and started to make certifications from this automated system. Since the existing Officer 5 register had been loaded into ERCS by DMRS, BPER determined to make all future Officer 5 certifications from the ERCS system rather than continuing to certify manually.

7. Prior to 3-6-89, BPER utilized ERCS to make the following four Officer 5 certifications:

(CR# 2059022) Wisconsin Resource Center. Certified 2-8-89. This position was filled on 3-2-89.

(CR# 3269033) Kettle Moraine. Certified 2-13-89. This position was filled on 3-2-89.

(CR# 3239019) Taycheedah. Certified 2-23-89.

(CR# 3279035) Oakhill. Certified 3-3-89.

8. Appellant's name was not on any of these lists.

9. On March 6, 1989, Sandy Powers, Division of Corrections Personnel Manager, advised the BPER Operations Unit that Lloyd Rose

had contacted him in respect to why he had not been certified for the Officer 5 vacancy at Kettle Moraine Correctional Institution.

10. In reviewing Mr. Rose's employment area interest file in ERCS, it was learned that Mr. Rose had not identified any employment interest areas on his Officer 5 state application form and consequently was not certified for the Kettle Moraine vacancy.

11. At this time BPER became aware that ERCS requires applicants to complete the employment areas on the state application in order to be certified for any vacancy. With the ERCS system, if an applicant fails to check any employment interest areas on his state application, the applicant is not referred to any vacancies. Since Mr. Rose did not check any employment interest areas on his state application for the Officer 5 examination, he was not referred by ERCS to any Officer 5 vacancies.

12. In the process of searching for information in response to Mr. Rose's inquiry, the Locator Sheets specifying the institutions where each Officer 5 applicant indicated they would consider employment were brought to the attention of the certification unit's supervisor, David Kaeding.

13. A decision was made to stop those Officer 5 transactions in which a hiring decision had not been made, to enter the Locator Sheet information for each applicant into ERCS and to send out corrected certification lists.

14. Taycheedah (CR #3239019) and Oakhill (CR #3279035) were notified that the Officer 5 certification lists they had received may be incorrect and that corrected lists were being prepared. The vacancies at Kettle Moraine (CR #3269033) and the Wisconsin Resource Center (CR #2059022) were already filled on 3-2-89.

15. On March 9, BPER staff finished inputting the information into ERCS to reflect the Locator Sheet choices the Officer 5 applicants had originally expressed. Corrected Officer 5 certification lists were sent out to Oakhill (CR #3279035) and Taycheedah (CR# 3239019).

16. Mr. Rose was advised that the Kettle Moraine position (CR #3269033) was filled and that he was not certified because he did not indicate an interest in being considered for employment at Kettle Moraine on his Officer 5 Locator Sheet. Since Mr. Rose also did not specify on his Locator Sheet that he was interested in being considered for vacancies at Oakhill, he was not certified for the Oakhill vacancy (CR #3279035).

17. Mr. Rose's name was certified on the Basic Certification list (Score 85.52) for the Taycheedah vacancy (CR #3239019).

18. On March 30, 1989, Appellant asked Judy Wagaman of BPER staff why he had not been certified for the Wisconsin Resource Center Officer 5 position.

19. On March 30 Dave Kaeding called Lloyd Rose in respect to his telephone conversation with Judy Wagaman on the Officer 5 certification list for the position at the Wisconsin Resource Center. Mr. Kaeding explained that a problem had occurred in the processing of the applicant information for the Officer 5 register and that this problem had been corrected as a result of Mr. Rose's original phone call on March 6. Mr. Kaeding further explained to Mr. Rose that he was not certified to the vacancy at the Wisconsin Resource Center (CR #2059022) because this position was filled on 3-2-89 prior to BPER becoming aware of the problem with the certification referral process.

The Commission makes the following additional Findings of Fact:

20. On April 7, 1989, appellant filed a timely appeal with the Commission of respondent's failure to certify him for the above-referenced Officer 5 vacancy at the Wisconsin Resource Center.

21. Respondents' failure to certify appellant for the subject vacancy was the result of an unintentional administrative oversight.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(a), Stats.

2. The appellant has the burden to prove that respondents' failure to certify the appellant on February 8, 1989, for the position of Officer 5 at the Wisconsin Resource Center violated §230.25, Stats.

3. Appellant has sustained his burden.

DECISION

Respondents acknowledge that an error was made and that appellant should have been included on the certification list for the subject Officer 5 vacancy at the Wisconsin Resource Center. As a result, the Commission concludes that the appellant has satisfied his burden of proof in regard to the underlying issue, i.e., the appellant has proved that respondents failed to follow the procedure specified in §230.25, Stats., for developing lists of certified candidates. This is a necessary

conclusion since, if the proper procedure had been followed, the appellant would have been certified for the Wisconsin Resource Center vacancy.

The question now becomes one of remedy. Section 230.44(4)(d), Stats., states that:


(d) The commission may not remove an incumbent or delay the appointment process as a remedy to a successful appeal under this section unless there is a showing of obstruction or falsification as enumerated in s. 230.43(1).

Section 230.43(1), Stats., specifies what actions constitute obstruction or falsification within the meaning of §230.44(4)(d), Stats. These actions all require that there be a showing of willfulness on the part of the perpetrator in order for there to be a showing of obstruction or falsification. In the instant case, no showing of willfulness on the part of respondents has been made. It is clear from the record that the failure to certify appellant for the subject vacancy was the result of an unintentional administrative oversight. As a result, the Commission does not have the authority to remove the person appointed to the subject Officer 5 vacancy at the Wisconsin Resource Center as a remedy in the instant appeal. The remedy available here is one of ordering the respondents to cease and desist from engaging in the activities which resulted in the subject error.

ORDER

The actions of respondents in this regard are rejected. Respondents shall cease and desist from engaging in the activities which resulted in the subject error.

Dated: October 25, 1989 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:gdt
JMFO4/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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