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HAROLD H. HEIKKINEN,
 Appellant,

v.

Secretary, DEPARTMENT OF
 TRANSPORTATION,
 Respondent.

Case No. 90-0006-PC

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FINAL
 DECISION
 AND
 ORDER

On March 9, 1990, the Commission entered an interim decision and order rejecting respondent's requirement of certain training and experience criteria for the Civil Engineer 1 - Transportation exam. On March 20, 1990, appellant submitted an "application for fees and other expenses" pursuant to §227.485, stats. Respondents have not filed a response.

Appellant's statement of fees and expenses includes a claim for 14 pages of letters at \$25 per page. Since appellant appeared in this matter without counsel, this item presumably is intended to reimburse appellant for his own time in preparing these letters. Section 227.485(5), stats., which incorporates by reference §814.245(5) and through it §814.04(2), authorizes payment of attorney's fees but does not authorize payment of fees to a litigant unrepresented by counsel as compensation for the time he or she spends on the case. Therefore, the Commission has no authority to direct the payment of this item.

Appellant also claims \$10.00 for copying costs. This is not an allowable item under the foregoing statutory provisions, Department of Employment Relations v. Personnel Comm., Dane Co. Cir. Ct. No. 87 CV 7397 (11/7/88), and therefore cannot be allowed because it would be outside the Commission's statutory authority.

Finally, appellant claims \$4.00 for postage which is a reimbursable item under §814.04(2), stats., and therefore can be allowed.

Pursuant to §227.485(3), stats., allowable costs are to be awarded unless the Commission "finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust." Since respondents have not filed any opposition to appellant's motion for costs, it must be assumed that they are not contesting the award of costs under this subsection, and the Commission will not find that respondents were substantially justified in taking their position or that special circumstances exist which would make an award of costs unjust.

In his motion, appellant raises certain other contentions:

The current Civil Engineer 1 register should be declared invalid since those individuals with "equivalent training and experience" were wrongfully denied admission to the exam.

For ten years (1980-90), I have been wrongfully denied equal employment opportunities toward career advancement. What price do you put on this lengthy setback of an individual's career?

I hereby request that the State Personnel Commission determine the amount of compensation to me because I was wrongfully denied career advancement and include the order for payment of the compensation in the final decision.

These items are outside the scope of allowable fees and costs under §227.485, stats., and really run to the question of substantive remedy. Furthermore, the Commission notes with respect to the request to have the register declared invalid that pursuant to §230.44(4)(d), stats.:

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


The record in this case does not establish that the persons on any current Civil Engineer 1 register are unqualified. The only purpose of voiding any register would be to delay any possible appointments until appellant would have a chance to compete under revised training and experience standards. Since on this record there has been no showing of "obstruction or falsification as enumerated in §230.43(1)," *id.*, the Commission can not take this action.

The Commission also notes with respect to the appellant's request for compensation for denial of career advancement, that the only transactions that have been timely appealed and are before the Commission are the ones that occurred in 1988 and 1989, and that it could not be established on this record that appellant would have been hired had he been granted entry to the examinations in question. Therefore, there is no basis for a back pay award.

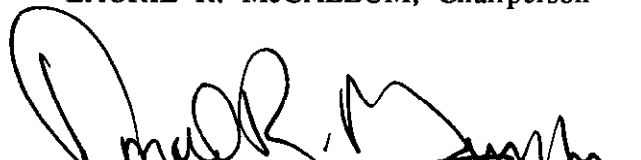
ORDER

The interim decision and order dated March 9, 1990, is hereby finalized, and respondent's action of using the training and experience criteria of a BSCE or an EIT certification to deny appellant admission to the examination for Civil Engineer 1 - Transportation is rejected and this matter is remanded for action in accordance with this decision. Furthermore, respondent is ordered to pay to appellant within 30 days of the entry of this order the amount of four dollars (\$4.00) as costs under §227.485, stats.

Dated: April 16, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:gdt


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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