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GREGORY C. JONES,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH and SOCIAL SERVICES, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 90-0370-PC

* * * * *

DECISION
AND
ORDER

This is an appeal of respondent's decision setting December 31, 1989, as the effective date for the reclassification of appellant's position. The following findings of fact, conclusions of law, opinion and order are based on the evidentiary record made at the hearing on this appeal held before Commissioner Gerald F. Hoddinott.

FINDINGS OF FACT

1. At all times relevant to the matters at issue in this case the appellant, Gregory C. Jones, was employed by the respondent, Department of Health and Social Services, Office of Policy and Budget¹ as a Programming and Planning Analyst 3 (PPA3). His immediate supervisor was Ken Streit.
2. Respondent, Department of Health and Social Services (DHSS) is a state agency and is charged with administering the state's health and social programs.
3. On July 29, 1987, appellant met with his immediate supervisor Ken Streit to discuss appellant's Performance Planning and Development Report. During that meeting appellant asked Mr. Streit about reclassification, i.e. what it took to be reclassified. Also, appellant asked Mr. Streit to review his work because he wanted to be reclassified.

¹Formerly known as The Division of Policy and Budget (DPB).

4. On February 22, 1988, appellant met with Barbara Blatterman, the unit Personnel Manager to ascertain how to have his position reclassified. Blatterman explained the procedure for initiating an independent reclassification request but told appellant that a reclassification request initiated by the unit supervisor had a better chance of approval. She did not inform him of the effective date policy.

5. Afterwards, appellant had a series of meetings with Blatterman, Mr. Streit, and Tom Kaplan, appellant's section chief. On April 1, 1988, at 9:30 a.m., appellant met with Blatterman and told her he would attempt to convince Mr. Streit to initiate a reclassification. At 10:00 a.m. on the same date appellant met with Mr. Streit and asked him to review his work product from the perspective of reclassification. On July 29, 1988, at 11:00 a.m., appellant met with Ken Streit to discuss his PPD and work progress. On November 9, 1988, at 2:00 p.m., appellant met with Tom Kaplan. At this meeting appellant asked Mr. Kaplan what was needed for reclassification, and said that he wanted to be reclassified.

6. In subsequent discussions with Mr. Streit about his work progress, appellant was informed that his work was not at the Program and Planning Analyst 4 (PPA4) level.

7. Over the next year and a half, appellant attempted to convince his supervisors that he was performing at the PPA4 level.

8. Ken Streit never requested reclassification of appellant's position to the PPA4 level.

9. In December 1989, appellant met with Ken Streit daily and occasionally, Tom Kaplan, over a period of two weeks, about the reclassification of his position.

10. On December 18, 1989, respondent received a memorandum from appellant dated December 12, 1989, addressed to Tom Kaplan, requesting reclassification of his position to PPA4, effective June 1988.

11. Appellant made a written request for reclassification, knowing it would be denied, but with the knowledge that, shortly, he would be working at the newly created Department of Corrections, and not under his current supervisors.

12. Some 6 to 12 months prior to appellant's written request for reclassification, appellant discussed the matter with Eric Hands. Mr. Hands, a Personnel Specialist in the Bureau of Personnel and Employment Relations (BPER) informed appellant that BPER could not act on a reclassification request unless it "had something in writing "

13. Appellant, the only black in the unit, was sensitive to being considered a "trouble maker" and to possible retaliation, if he put his request in writing.

14. By memorandum, dated December 21, 1989, from Ken Streit and Barbara Blatterman, appellant was provided a written denial of his reclassification request identifying the reasons for denial and providing instructions for obtaining a re-review of their decision.

15. On the same date (December 21, 1989) appellant made a written request to BPER for re-review of his unit's reclassification decision.

16. BPER's re-review included a review of two of appellant's Performance Planning and Development Reports, covering the period of July 1987 through June 1989.

17. After the re-review, BPER reclassified appellant's position to PPA4, effective December 31, 1989.

18 This effective date was in accordance with state policy set out in Chapter 332, Wisconsin Personnel Manual which provides: reclassification regrade actions . . . will be made effective at the beginning of the first pay period following effective receipt of the request.

19. Within 30 days after receiving notice of the re-review decision, appellant appealed the BPER decision to the Commission, claiming the effective date of December 31, 1989 for reclassification of his position established by BPER was incorrect.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230 44(1)(b) Stats.

2. Appellant has the burden of proving respondents' decision to designate December 31, 1989 as the effective date for reclassifying his position from PPA3 to PPA4 was incorrect.

3. Appellant has not sustained his burden and it is concluded that respondents' decision was not incorrect.

DISCUSSION

Appellant asserts that the first pay period in June 1988 is the correct date for his position's reclassification. He testified that in February, 1988, he had several conversations with Barbara Blatterman, unit Personnel Manager and Ken Streit, his immediate supervisor about reclassification. Appellant argues that Blatterman's verbal advice was misleading and convinced him not to make a written request for reclassification, but rather to attempt to persuade his immediate supervisor to initiate the request. He testified that he pursued this action because he did not want to be perceived as a trouble maker or not a team player, nor did he want to risk retaliation. Over the next several months, appellant had discussions with his immediate supervisor about reclassification and the performance level required for PPA4 positions.

Respondent argues that appellant's unit had delegated authority to receive reclassification requests and the established effective date of December 31, 1989, was in accordance with Ch. 332 of the Wisconsin Personnel Manual, i.e. appropriate documentation was not provided until December 18, 1989 and the first day of the next pay period was December 31, 1989. Further citing Porter v. DOJ, Wis. Pers. Comm. No. 78-154-PC (5/14/79) and Guzniczak & Brown v. DER, Wis Pers. Comm. Nos. 83-0210, 0211-PC (5/13/87), respondent argues it is devoid of any elements of fraud, bad faith, intentional concealment, or gross negligence.

In the Office of Policy and Budget (OPB), reclassifications were normally initiated by the immediate supervisor. In recent history only one employe had initiated a request for reclassification. On the advice of the OPB Personnel Manager (Blatterman), appellant attempted to persuade his supervisor to initiate such a request. Finally, appellant made a written request for reclassification based on his discussions with BPER personnel concerning the need for a written request to be submitted and the realization that his supervisor would not initiate a request for reclassification.

The question posed by appellant is whether his verbal request to his supervisor concerning reclassification of his position constituted the starting point for establishing the effective date of reclassification of his position.

The evidence shows that in 1988 and 1989, appellant was repeatedly told during discussions with his supervisor concerning reclassification and his work performance that he was not at the PPA4 level. Appellant's supervisor responded verbally and never advised appellant he needed to file a written request to preserve his desired effective date.² Ms. Blatterman, the unit personnel manager, explained the process for filing a reclassification request on his own but said a reclassification request initiated by his supervisor had a better chance of approval. She said nothing about the need to file a written reclassification request to preserve an effective date.

While this is a close case, the Commission must conclude that this matter does not fall into either of the categories of cases where an employee is entitled to an effective date earlier than the date indicated by the DER policy set forth in Ch. 332 of the Wisconsin Personnel Manual.

In Guzniczak & Brown v. DER & DHSS, 83-0210, 0211-PC (5/13/87), the Commission found that respondents were equitably estopped from relying on this policy because the employees had been misled by management to believe that management was considering their verbal requests for reclassification and the employees did not need to do anything further. Under these conditions, the Commission concluded there was equitable estoppel because the appellants had justifiably relied to their detriment on conduct by respondents' agents which amounted to fraud or a manifest abuse of discretion. However, in this case, appellant had been advised by Ms. Blatterman at the beginning of the process how to file his own reclassification request. While she also told him that a reclassification request initiated by his supervisor would have a better chance of approval, this merely reflected the reality of the situation. Furthermore, appellant's supervisor never encouraged him to think a favorable decision would be forthcoming. To the contrary, he consistently took the position that appellant's work was not at the PPA4 level. The only potentially

²Appellant's supervisor testified he did not recall appellant making any "specific" verbal request for reclassification of his position. However, he testified to conversations with appellant where he pointed out examples on his PPD of changes in work performances needed to obtain the PPA 4 level.

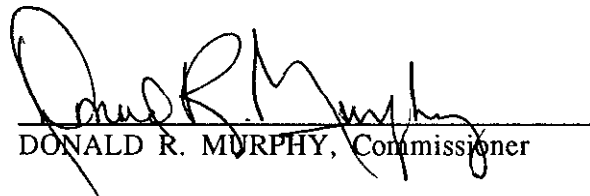
inequitable conduct by respondents' agents was their failure to have advised him that by not pursuing a written reclassification request he could not preserve an earlier effective date. However, management does not have a general obligation to inform an employe of his or her rights, see Jabs v. State Board of Personnel, 34 Wis. 2d 245 (1967), although it does have a duty not to mislead the employe.

The second category of cases where the employe can avoid the import of the DER effective date policy is where management makes a ministerial error which prevents the reclassification request from being processed in the normal manner. For example, in Kimball v. DHSS & DP, 79-236-PC (4/23/81), the supervisor submitted the wrong form resulting in misfiling and a delay in the effective date of the reclassification action of approximately one month. Here, there was no error. Management failed to inform appellant of the implications with respect to effective date if he failed to submit a written reclassification request, but, as noted above, they were not under a mandatory obligation to have done so.

ORDER

Respondent's reclassification decision setting an effective date of December 31, 1989, for reclassification of appellant's position is affirmed and this appeal is dismissed.

Dated: July 8, 1992 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

DRM:rlr


GERALD F. HODDINOTT, Commissioner

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**NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.