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DONNA ANGLIN,

Appellant,

v.

Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,

Respondent.

Case No 91-0193-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on an appeal by appellant pursuant to §230.44(1)(a), Wis. Stats., whereby she alleges that respondent violated the law when it invalidated her examination and removed her name from the register for the Job Service Specialist I position. The following findings, conclusions, discussion and decision are based on a hearing held January 24, 1992. To the extent any of the discussion constitutes a finding of fact, it is adopted as such.

FINDINGS OF FACT

1. On April 29, 1989, Donna Anglin signed an application form for Proctor for the Department of Employment Relations, Division of Merit Recruitment and Selection.
- 2 This Proctor Application Form, signed by appellant, included a section called Statements of Responsibilities. Under this section were listed six provisions Provision 4 was:

I agree that I will not be a candidate for any examination for which I proctor nor will I participate in a test coaching program for a period of not less than two (2) years after the examination date.

3. Prior to signing this form, the Chief Proctor reviewed the Statements of Responsibility section with appellant He advised her about the need for examination security and explained that special arrangements were necessary if she wanted to take an exam

4. Subsequently, appellant was hired as a proctor for DMRS, the position she currently holds.

5. On Wednesday evening, July 31, 1991, appellant and her current Chief Proctor, Diane Gertz, each acting as the others proctor, took a Job Service Specialist test at the kitchen table in the Gertz home. The examinations had arrived at the Gertz home that same day and Gertz and appellant were scheduled to proctor them the following Saturday morning.

6. Later that week, appellant was excused from proctoring the examination to participate in the arrival of family relatives that same day.

7. As was her custom, Gertz wrote a note, dated August 3, 1991, to the DMRS Examination Administration specialist, Phill Bloedow, reporting on the August 3, examination. She also advised him that she and appellant had taken the examination earlier that week.

8. At Mr. Bloedow's request, Gertz wrote a letter dated August 7, 1991 detailing the circumstances of the examination taken by her and appellant.

9. By letters dated August 19, 1991 from Jesus G. Q. Garza, a Staffing Analyst for respondent, Gertz and appellant were advised of the invalidation of their examinations.

10. Within 30 days after receipt of notice of her examination invalidation, appellant appealed the decision to the Commission.

11. Currently, DMRS has approximately seventeen examination centers per year. Two to five thousand examination booklets are mailed to each examination center. Approximately 100,000 examinations are given each year.

12. Mr. Bloedow acts as the supervisor for the proctors at the examination centers and he provides each examination center Chief Proctor with specific examination instructions and updates of DMRS rules and policies.

13. If a proctor wishes to take an examination, it is the usual practice of DMRS to provide the examination at a state personnel office or other neutral site, where administering examinations is a part of the operation. Such examinations are given early, before the proctor would have access to them.

14. As a practice, no examinations are allowed to be administered to proctors without prior authorization from DMRS.

15. Neither Diane Gertz nor appellant obtained authorization from DMRS to administer or take the Job Service Specialist 1 examination on July 31, 1991.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), Wis. Stats.
2. Appellant has the burden of proving that respondent's removal of her name from the Job Service Specialist 1 register was in violation of Wis. Stats., Ch. 230, Subch. II Civil Service.
3. Appellant has failed to sustain this burden of proof.
4. Respondent's removal of appellant's name from the subject register did not violate ch. 230, Ch. 230, Subch. II, Wis Stats.

DISCUSSION

The facts in this matter are straightforward and uncontroverted. The question before the Commission is whether respondent's action of removing appellant's name from the register of eligible candidates for Job Service Specialist 1 positions was correct, i.e., in violation of the state Civil Service Law.

Under §230.17, Stats. respondent was given the authority to make rules under which a person could be refused examination, reexamination or certification. Further, this section provides:

Conditions (of refusal) shall be based on sufficient reason and shall reflect sound technical personnel management practices and those standards of conduct, deportment and character necessary and demanded to the orderly, efficient and just operation of state service.

Respondent's rule, §ER-Pers. 6 10(10), Wis Adm. Code, provides:

In addition to provisions stated elsewhere in the law or rules, the administrator may refuse to examine or certify an applicant, or may remove an applicant from a certification: who has in any manner gained access to special or secret information regarding the content of an examination.

In a letter dated August 19, 1992, DMRS notified appellant that she took the examination for Job Service Specialist 1 in violation of Statement of Responsibility 4, in her Proctor Application form; and that, in accordance

with §ER-Pers 6.10(10), Wis. Adm Code, they were removing her name from the register.

Appellant does not dispute that she took the examination on the evening of July 31, 1991 in Ms. Gertz's kitchen. She argues that, although the examination was taken at the Gertz home, the examination process integrity remained intact — "there was no cheating" Further she argues that she relied exclusively on the judgment of Diane Gertz, the Chief Proctor, and believed there was nothing wrong in the manner the examination was taken. She noted that nothing in the Statements of Responsibility, signed by her, spells out where examinations could be held


In response, respondent argues that appellant is an experienced proctor who was aware of the importance respondent places on examination security. Also, respondent argues that any reasonable person would have questioned the propriety of taking an examination in someone's kitchen. Appellant needed only to telephone her acting supervisor, Mr. Bloedow about this questionable procedure. In fact, Gertz, the Chief Proctor testified she "felt" she should have called Bloedow, but had been extremely busy and didn't do so. Also, respondent argues, while it is not questioning Gertz' or appellant's integrity, they both had access to the examination prior to taking it and this actually tainted the examination process.

It is clear that respondent was correct in removing appellant's name from the Job Service Specialist 1 register. Appellant was fully aware of the importance respondent placed upon the security of examinations. Appellant also knew that she was not to be a candidate for any examination for which she proctored. Appellant's reliance upon the lead of her Chief Proctor did not spare her of her independent responsibilities as a proctor.

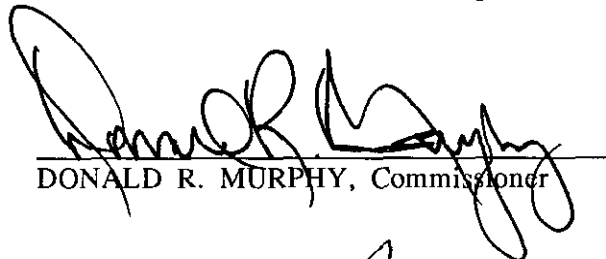
ORDER

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

Dated, May 1, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM/gdt/2


DONALD R. MURPHY, Commissioner


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.