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STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS J. BOINSKI,
 Petitioner,

v.

Chancellor, UNIVERSITY OF
 WISCONSIN-MILWAUKEE

Respondent.

Case No. 92-0233-PC-ER, 92-0702-PC

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RULING
 ON
 MOTION

These matters are before the Commission on the respondent's motion in limine, which respondent summarizes as follows:

Respondent, University of Wisconsin-Milwaukee, by its attorney, moves the Personnel Commission in limine for an order excluding, in its entirety, a psychiatric evaluation prepared by Dr. Herzl Spiro, which relies substantially on a Minnesota Multiphasic Personality Inventory (MMPI) prepared by Dr. Jay Chrostowski, a licensed psychologist, from use in these proceedings, and prohibiting counsel for the appellant/complainant from making any direct or indirect reference to this psychiatric evaluation or the MMPI. Counsel for the respondent has been informed that the MMPI has been lost.

The psychiatric evaluation in question includes the "[c]ompletion of MMPI and review of materials by Dr. Jay Chrostowski" as one of four categories of "Material Upon Which Case Study is Based." The evaluation also includes a one paragraph conclusion which reads:

Lieutenant Boinski's removal from duties as a police officer strikes me as totally inappropriate. I have reviewed both the MMPI that Lieutenant Boinski took in Dr. Jackson's office an here. It is an essentially normal MMPI. It is a highly truthful MMPI in that the questions which refer to his current situation are accurately answered. Both Dr. Chrostowski and I are in agreement that the MMPI is that of a normal individual without a psychiatric diagnosis.

While the evaluation by Dr. Spiro clearly relies on the MMPI which is lost, the unavailability of the MMPI itself does not preclude testimony about it or about the conclusions based, in part, upon it.

The Commission's consideration of evidence in these matters is determined by §227.45(1), Stats., which provides that in contested cases,

an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony.... The agency or hearing examiner shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact.

It may be that the absence of the MMPI will have an effect on the weight accorded to testimony which is premised on that test. However, based upon the general language of §227.45(1) as well as the §PC 5.03(5), Wis. Adm. Code, the examiner declines to exclude all testimony of Dr. Spiro and declines to prohibit counsel for the appellant/complainant from making any direct or indirect reference to Dr. Spiro's psychiatric evaluation or the MMPI.

ORDER

Respondent's Motion in Limine is denied.

Dated: April 19, 1993 STATE PERSONNEL COMMISSION


KURT M. STEGE, Hearing Examiner

KMS:kms
K:D:temp-5/92 (Boinski)