

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MARIE L. CARLIN,

Appellant,

v.

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

Respondents.

Case No. 94-0207-PC

* * * * *

FINAL
DECISION
AND
ORDER

A hearing was held in the above-noted case on March 23, 1995. The parties chose to present oral closing arguments rather than to submit post-hearing briefs.

The issue for hearing was agreed to by the parties at a prehearing conference held on January 17, 1995, as shown below:

Whether respondents' decision was correct establishing January 9, 1994, as the effective date of her reclassification from PA1 to PA3; or should the effective date be 3/3/93 when appellant allegedly sent her initial written request to Jane Grant, or 3/11/93 when she sent a second memo to personnel with a copy to Ms. Grant.

FINDINGS OF FACT

1. Marie Carlin works for the Department of Health and Social Services (DHSS) at Mendota Mental Health Institute (MMHI). In March 1993, she was classified as a Program Assistant 1 (PA-1). She felt she had a good chance to be reclassified to a PA-3, because her counterpart position at Central Wisconsin Center (CWC), a different DHSS institution, had been reclassified to a PA-3 in 1992.
2. Ms. Carlin received and read a copy of the DHSS employe handbook (Exh. Jt. 1), prior to March 1993. The topic of reclassification is covered in the handbook on p. B-3 and B-4, as shown below in pertinent part. Ms. Carlin did not consult the handbook for guidance. (Bold face type does not appear in original.)

A position may be reclassified to a different classification if a logical and gradual change occurs in the duties and responsibilities of the position . . . Supervisors may request, through their appointing authority [meaning MMHI here], that their employing unit personnel office review an employee's position to see if a reclassification is warranted. In some situations an employee may wish to initiate a request for review. This request must be made in writing to the employee's supervisor and should clearly indicate that the employee wishes to have their position reviewed for proper classification. If the supervisor does not give the employee a written response within 30 days, the employee may submit a copy of the original request to the employing unit personnel office along with a statement requesting assistance in having the request reviewed. Employees should bear in mind that the effective date of the reclassification action is determined by the date it is received in the employing unit personnel office.

3. In March of 1993, Ms. Carlin's first-line supervisor (on an acting basis) was Bill Duckwitz and her second-line supervisor was Jayne Grant.
4. On March 3, 1993, Ms. Carlin wrote a memo (Exh. R-2) to Ms. Grant requesting reclassification to a PA-3 (hereinafter, referred to as the First Reclass Request). Referenced in the First Reclass Request and attached to it was a copy of the position description (PD) of her counterpart position at CWC. So far, Ms. Carlin's actions were consistent with the information contained in the employee handbook because Ms. Grant was her supervisor. The handbook does not state that the request must be sent only to the first-line supervisor.
5. Ms. Grant received Ms. Carlin's First Reclass Request and referred it to the acting first-line supervisor, Mr. Duckwitz, for action. Mr. Duckwitz never received the referral and Ms. Grant never followed up to ensure Mr. Duckwitz received it. Accordingly, respondents took no action in regard to Ms. Carlin's reclassification request.¹

¹ Ms. Carlin testified that Ms. Grant may have advised Ms. Carlin to send the First Reclass Request to Ms. Grant and that Ms. Grant would take care of it. The examiner did not credit this testimony for several reasons including: 1) Ms. Carlin's own uncertainty about this testimony, 2) Ms. Grant's contrary action of referring the matter to Mr. Duckwitz for action rather than taking care of it herself, and 3) Ms. Carlin's testimony that other independent reasons would have existed for her to send the request to Ms. Grant rather than Mr. Duckwitz. Specifically, Ms. Carlin indicated she felt Ms. Grant was the logical choice because Ms. Grant was most familiar with Ms. Carlin's position and her desire for reclassification. Also, Ms. Grant previously had served as the Acting Director of Personnel at MMHI which lead Ms. Carlin to believe Ms. Grant would know the correct procedures to follow for reclassification requests.

6. On March 11, 1993, Ms. Carlin sent a memo (Exh. R-3) to MMHI's personnel office addressed to "Personnel" (without designating any individual). She did not hand-deliver the request to the personnel office. Instead, she sent it by inter-departmental mail. Her memo contained a written request for reclassification of her position to PA-3 (hereafter, referred to as the Second Reclass Request). There was no PD or any other information attached to the Second Reclass Request. MMHI Personnel office never received Ms. Carlin's Second Reclass Request. Accordingly, no action was taken. If MMHI's personnel office had received the request, Carol Georgi from the personnel office would have contacted Ms. Carlin promptly to provide advice and assistance.
7. Ms. Carlin did not send the Second Reclass Request to the personnel office as part of the reclassification procedure noted in the employe handbook. In fact, her memo to personnel predated the 30-day waiting period mentioned in the employe handbook. Rather, Ms. Carlin explained she sent the memo to the personnel office feeling that it would create a second avenue of potential action for her reclassification.
8. Ms. Carlin did not follow the procedure in the employe handbook by sending a reclassification request to MMHI Personnel when she did not hear back from Ms. Grant within 30 days after her First Reclass Request.
9. Sometime in December 1993, or early January 1994, Ms. Carlin checked on the status of her reclassification request with MMHI Personnel and met with Ms. Georgi. Ms. Georgi indicated she had no knowledge of any reclassification request filed by Ms. Carlin in 1993. They pulled Ms. Carlin's official personnel file (P-file) and found no indication of a pending reclassification request. They also discovered several documents missing from her P-file. Ms. Georgi attempted to confirm the existence of the 1993 reclassification request by speaking with Ms. Grant and Mr. Duckwitz who both denied any knowledge of Ms. Carlin's 1993 reclassification request. Accordingly, Ms. Georgi worked with Ms. Carlin and Ms. Carlin's (new) first-line supervisor, Mr. Ziegler, to ensure that a written request with proper supporting documents was submitted to MMHI's personnel office (hereafter, Third Reclass

- Request). The Third Reclass Request was received by MMHI's personnel office on January 7, 1994.
10. DHSS disseminated directives to supervisors regarding the proper procedures for filing reclassification requests via: 1) a supervisory manual (Exh. R-7) dated May, 1991, and 2) a memo to supervisors (Exh. R-1) dated February 25, 1992. Ms. Carlin was not a supervisor. She had no knowledge of either supervisory directive prior to January 1994.
 11. As noted in par. 2 above, the employe manual indicates the effective date of reclassification occurs: a) after a supervisor fails to respond to an employe's written request within 30 days, and b) thereafter the employe submits a written request to MMHI Personnel.
 12. The supervisory directives referred to in par. 10 above, require the employe to take the same 2 steps as listed in the employe manual, plus a third step. The supervisory directives say the effective date occurs: a) after a supervisor fails to respond to an employe's written request within 30 days, b) and thereafter the employe submits a written request to MMHI Personnel, and c) after MMHI Personnel has the following supporting documentation - an updated PD, a Position Action Request (PAR), and a written statement of Justification in support of the request.
 13. Although Ms. Carlin was unaware of the supervisory directives, she knew before she submitted her First Reclass Request that such request required an updated PD for her position which was not developed until the Third Reclass Request in 1994. She acknowledged that the PD of the CWC counterpart position was not the same as an updated PD for her own position.
 14. The effective date of a reclassification request in this case is the payroll period following MMHI's personnel office's receipt of the request. MMHI's personnel office did not receive Ms. Carlin's request until January 7, 1994. The correct effective date is January 9, 1994.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to s. 230.44(1)(b), Stats.
2. Appellant had the burden of persuasion regarding the effective date issue.

3. Appellant failed to meet her burden.
4. Respondents' decision was correct establishing January 9, 1994, as the effective date of appellant's reclassification from PA1 to PA3.

DISCUSSION

DHSS established that the effective date of a reclassification request is determined by the date the request is received by the employing unit's personnel office. This measurement as the effective date is recited in DHSS' employee manual (Jt. Exh. 1) and in the supervisory manual (Exh. R-7).

DHSS' policy on what constitutes a complete request for reclassification is inconsistent between its employee and supervisory manuals. As a general rule, the Commission will not hold an employe to procedural details related to filing a reclassification request which are not reasonably known to the employe. See, Spilde v. DER, 86-0040-PC (10/9/86). Accordingly, Ms. Carlin will not be held to the "third step" procedure described in the supervisory MANUAL. Ms. Carlin, however, reasonably should have known about the procedure explained in the employee handbook. Yet she failed to consult the handbook or to follow the procedure described therein. Ms. Carlin also failed to follow the procedure as she understood it.

The date of Ms. Carlin's First Reclass Request (March 3, 1993) cannot be used to establish an effective date because the request was received by Ms. Grant in her role as Ms. Carlin's second-line supervisor. The request was not received by MMHI's personnel office, which is the triggering event for establishing an effective date under DHSS' policy.

The date of Ms. Carlin's Second Reclass Request (March 11, 1993) cannot be used to establish an effective date of the following pay period, because MMHI's personnel office never received the request.

The only reclassification request received by MMHI's personnel office was Ms. Carlin's Third Reclass Request of January 9, 1994. Accordingly, this later date should be used to establish the effective date, which respondents already have done.

Basically, the Commission agrees with appellant that it would have been better if Ms. Grant had consulted Ms. Carlin directly after receiving the First Reclass Request to inform Ms. Carlin that her request was incomplete. In the alternative, it would have been better if Ms. Grant had followed up to ensure

that Mr. Duckwitz had received the First Reclass Request. However, these observations have the benefit of hindsight and are not tantamount to legal obligations owed by respondents.

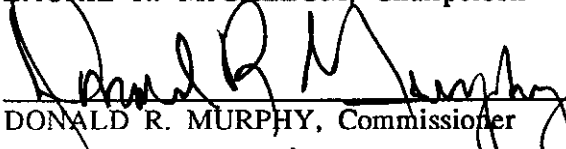
ORDER

That respondents' decision was correct establishing January 9, 1994, as the effective date of Ms. Carlin's reclassification request from PA1 to PA3; and that this case be dismissed.

Dated June 22, 1995.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, 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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats. 2/3/95