

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DONNA L. SANFORD,

Appellant,

v.

Secretary, DEPARTMENT OF  
TRANSPORTATION, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 94-0548-PC

\* \* \* \* \*

RULING ON APPELLANT'S  
PETITION FOR REHEARING

A Proposed Decision and Order was mailed to the parties on September 22, 1995. Ms. Sanford submitted written objections to the proposed decision by letter dated October 19, 1995. The Commission considered her objections and addressed them in the Final Decision and Order mailed to the parties on November 20, 1995. By letter dated December 1, 1995, Ms. Sanford filed a petition for rehearing.

DISCUSSION

Petitions for Rehearing are governed by s. 227.49(3), Stats., the text of which is shown below.

- (3) Rehearing will be granted only on the basis of:
  - (a) Some material error of law.
  - (b) Some material error of fact.
  - (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

The reasons advanced by Ms. Sanford as reasons underlying her petition for rehearing are contained in her letter of December 1, 1995, as shown below along with the Commission's reply.

1. Engineering Special Specification relevant in 1992 were the specifications written in 1990. One of the reasons for the case being dismissed is that I don't do Professional

work in accordance with the Wis. State Statutes and Fair Labor Act as noted in this specification. This specification also states that Engineering Specialist Journey and above are exempt from this Statute. Since that was a determining factor in dismissing this case, I feel that an error of fact has been made.

Reply to first argument:

The classification specification (Class Spec) for Engineering Specialist - Transportation Series includes the following language in pars. A. and B. of the Introduction section:

[From par. A.] **Purpose of This Classification Specification.** . . . Positions allocated to this series must meet the current definitions of professional in s. 111.81, Wis. Stats., and the Fair Labor Standards Act. (Positions classified at Journey level and above are exempt. Positions at Entry and Developmental levels will be evaluated on a position by position basis to determine their status.)

[From par. B.] **Inclusions.** This series encompasses positions performing professional work in the field of architecture/engineering, located primarily within the Department of Transportation. These positions perform professional work in the field of architecture/engineering in the planning, design, construction, operation and maintenance of transportation facilities. . . .

Ms. Sanford interprets the cited language in the Purpose section of the Class Spec as meaning that positions do not have to meet the statutory requirements of professional in s. 111.81, Stats. Her interpretation is incorrect. The term "exempt" is a term of art used in the Fair Labor Standards Act (FLSA) -- either a position is covered under the FLSA or it is exempt. Accordingly, it is most probable that use of the word "exempt" in the Purpose section of the Class Spec was intended as a reference only to the FLSA. This conclusion is further supported by the repeated professional requirement in the Inclusions section of the Class Spec without qualifiers. (See, par. B above).

Ms. Sanford interprets the Class Spec as not requiring professional status for positions at the Journey level and above. Her interpretation conflicts with the language in the Inclusions portion of the Class Spec, as discussed in the previous paragraph. Her interpretation also would result in requiring professional engineering work for the Entry and Developmental

levels (the lowest levels) on a position-by-position basis, and not requiring professional engineering work for any position at the Journey and above level (the highest levels). Such an interpretation could produce absurd results.

2. In our initial Pre-hearing conference it was determined that the 1990 Engineering Specialist Specifications were the relevant specifications for this case, yet DER based their initial determination about my reclass based on the current 1994 Specifications. They also used evidence of actions taken in 1995 as part of that decision. The reclassing of the Maintenance Technicians to PA's was done in June of 1995. There was nothing retroactive about it. As the instructions of the Commissioner were that what was happening in 1992 was the basis for all evidence I feel there has been an Error of law.

Reply to second argument:

The 1990 Class Specs were used by the Commission in reaching its Final Decision and Order. The effective date of the classification transaction which Ms. Sanford complained of was December 13, 1992. Accordingly, it was her duties in 1992, which were the proper focus of the hearing. The other information raised by Ms. Sanford is irrelevant to the issue defined for her appeal.

3. In hearing is there was (sic) testimony as to who was responsible for the processing of contract documentation. There was no mention of a PA being responsible for the processing. I wish to present further evidence that details what the PAs work consisted of. I feel this would be strong enough evidence to reverse the dismissal.

Reply to third argument:

Ms. Sanford raised a similar argument in her written objections to the Proposed Decision and Order, which were addressed by the Commission in its Final Decision and Order (as the "Fifth Objection"). The findings in paragraph 5<sup>1</sup> of the Proposed Decision and Order are supported by the record and were adopted without change in the Commission's Final Decision and Order.

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<sup>1</sup> The Final Decision and Order incorrectly cites to paragraph 6 of the Proposed Decision and Order.

In context of her current Petition for Rehearing, Ms. Sanford has not shown that the information she wishes to add to the record has the potential to reverse or modify the Commission's final decision. The bottom line would remain the same; to wit: the classification level she seeks requires the performance of professional engineering duties, which are not performed by her position.

4. I wish to bring out further evidence to refute that because the specifications state Construction in the Specifications as where the positions belong doesn't mean that they can't be in another section.

Reply to fourth argument:


The information Ms. Sanford seeks to add to the record was available to her prior to the hearing already held. Further, this additional information does not have the potential to reverse or modify the Commission's final order and decision for the same reasons as noted in reply to the prior argument.

ORDER

Ms. Sanford's Petition for Rehearing is denied.

Dated December 20, 1995.

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

JMR

  
JUDY M. ROGERS, Commissioner

Parties:

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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.

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