

X appeal from Schmidt v DHS
88-0131-PC, 6-4-93
- Schmidt v Wis Pers Comm.
93CV 654 Winnebago County Cir. Ct
4-28-94

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**COURT OF APPEALS
DECISION
DATED AND RELEASED**

PERSONNEL COMMISSION

NOTICE

July 19, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1545

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

KATHY SCHMIDT,

Plaintiff-Appellant,

v.

WISCONSIN PERSONNEL
COMMISSION,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Winnebago County:

ROBERT HAWLEY, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. Kathy Schmidt appeals from a circuit court judgment affirming the Wisconsin Personnel Commission's determination that the Winnebago Mental Health Institute did not abuse its discretion when it decided not to hire her as a laundry worker. We affirm.

Pursuant to a complaint filed by Schmidt in November 1988, the Wisconsin Personnel Commission (the Commission) held a hearing to address whether Winnebago's failure to hire her to fill a Laundry Worker 2 position was an abuse of discretion under § 230.44(1)(d), STATS.¹ The Commission made the following findings of fact. In August 1988, a Laundry Worker 2 position opened at Winnebago. The position required distributing and inventorying linen and patient clothing, operating a sewing room, and performing miscellaneous assigned duties. In September 1988, Winnebago's personnel assistant, Margaret Cox, temporarily filled the position with Mary Blount, a limited term employee who had Laundry Worker 1 status. In the Laundry Worker 1 position, Blount's second-level supervisor was Frank Mazanka, the head of Winnebago's housekeeping or environmental services department and Blount's son-in-law. Because Blount was on the list of persons to be considered for the permanent position, Cox advised Barbara Kuhn,

¹ Section 230.44, STATS., provides, in pertinent part:

(1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45 (1) (a):

....

(d) *Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

Winnebago's management services director and Mazanka's supervisor, that Mazanka should have nothing to do with the selection process.

Eight candidates, including Blount and Schmidt, were interviewed for the position. Each performed a practical test consisting of various job-related tasks and answered a series of interview questions about their experience in the various skills required for the position. Blount received the highest total score on the tests and received "excellent" references for quality and quantity of work, learning and initiative, and "good" references for her ability to get along with others. She was also rated highly dependable. The Commission found Blount was hired because she had good references and applicable laundry service experience.

Schmidt's score placed her fourth on the list of candidates.² The Commission found that Schmidt had been employed at Winnebago as a food service worker since 1965 and that she had no work experience in laundry or linen service and no transfer rights to a Laundry Worker 2 position. The Commission found "[t]here is simply no basis on this record to conclude that [Schmidt] was better qualified than Ms. Blount who, as a [limited term employee], had previously performed similar duties to those assigned to the vacant position." Schmidt filed a complaint challenging the selection process.

² The two runners-up were other food service workers who did not score as high as Blount in the dependability category.

The Commission found that Mazanka was excluded from the selection process. There was testimony from persons involved in the selection process that Mazanka did not influence the process. The Commission considered evidence offered by Schmidt that Mazanka had been involved, either directly or indirectly, in the selection process but did not find this evidence persuasive. The Commission found that the November 1989 investigation of Mazanka and Kuhn for misconduct had only "a circumstantial relationship" to the employment decision.³ The Commission concluded that Schmidt did not meet her burden to prove that the decision not to hire her for the Laundry Worker 2 position was an abuse of discretion.

We review the Commission's decision, not that of the circuit court, and we will affirm the Commission's findings of fact if they are supported by credible and substantial evidence in the record. See *Hoell v. LIRC*, 186 Wis.2d 603, 612, 522 N.W.2d 234, 238 (Ct. App. 1994). If reasonable minds could arrive at the same conclusion reached by the Commission, we will affirm. See *Farmers Mill of Athens, Inc. v. DILHR*, 97 Wis.2d 576, 579, 294 N.W.2d 39, 41 (Ct. App. 1980). It is the Commission's function to weigh and determine the credibility of the evidence and to draw inferences from it. *Id.* at 580, 294 N.W.2d at 41. If more than one inference may reasonably be drawn from the evidence, the Commission's choice among or

³ Kuhn and Mazanka ultimately resigned from their positions at Winnebago.

between inferences is conclusive. *Id.* We will give weight to the Commission's conclusion that Winnebago did not abuse its discretion in declining to hire Schmidt if that conclusion is supported by substantial evidence in the record. *See Seep v. Personnel Comm'n*, 140 Wis.2d 32, 38-39, 409 N.W.2d 142, 144 (Ct. App. 1987).

We turn to Schmidt's appellate arguments. Schmidt argues that evidence that Blount's score sheet was altered shows that the hiring process was somehow tainted. The Commission found that Blount's score was altered to reflect only the maximum number of points available.⁴ The Commission found that this was not a significant factor in the employment decision. Even corrected, Blount's score still exceeded Schmidt's.

Schmidt argues that the Commission created evidence regarding test scoring and results. We disagree with Schmidt's characterization of the Commission's analysis. The Commission was unable to determine the method by which the applicants' tests were scored. Consequently, it applied several possible methods to the raw scoring data and found, in each instance, that Blount's score exceeded Schmidt's. In so doing, it interpreted evidence in the record and, in the process, confirmed that Blount had the highest overall score.

⁴ Blount's original score erroneously exceeded the number of possible points for the test question.

Finally, Schmidt argues that Mazanka's "corrupt[ing] influence" tainted the selection process and that there is no credible evidence that Mazanka was outside the selection process. She points to Kuhn's alleged misconduct and the participation in the process of Joseph Selner, a subordinate of Mazanka's. She also chastises the Commission for relying upon Mazanka's own statement that he was not involved in the selection process.

It was for the Commission to weigh the evidence. *See Farmers Mill*, 97 Wis.2d at 580, 294 N.W.2d at 41. Schmidt overlooks the Commission's findings that Bill Hebert was involved in the selection process and he was unaware that Blount and Mazanka were related. The Commission also found that there was no significant disparity between Hebert's and Selner's rating of the same candidate. We reject Schmidt's contention that the evidence mandates a finding that Mazanka's influence permeated the selection process. The Commission found that the investigation of Mazanka and Kuhn had only "a circumstantial relationship" to the hiring decision. Based on this record, reasonable minds could have arrived at the same conclusion as the Commission on this question. *See id.* at 579, 294 N.W.2d at 41.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.