

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAWN WENZEL,

Appellant,

v.

Secretary, DEPARTMENT OF REVENUE  
and Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 96-0037-PC

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DECISION  
AND  
ORDER

A hearing was held in the above-noted case on July 25, 1996. The final written argument was received by the Commission on September 13, 1996.

The parties agreed upon a statement of the hearing issue at a prehearing conference held on May 29, 1996, as shown below:

Whether respondents' decision to deny the appellant's request to reclassify her position, effective March 19, 1996, from Revenue Auditor 3 (RA3) to Revenue Tax Specialist 1 (RTS1) was correct.

Subissues: Is the correct classification RA3 or RTS1? If the correct classification is RTS1, is the appellant entitled to a regrade to that class level?

BACKGROUND

The Department of Revenue (DOR) hired Ms. Wenzel (Appellant) as an auditor in 1984. During the period relevant here, her position was classified as a RA3 and, functionally, was located in Unit B of the Central Audit Section of the Bureau of Audits in the Division of Income Sales and Excise Tax within the DOR. Her first-line supervisor was Donna Wilfong and her second-line supervisor was Greg T. Frazier, the Section Chief.

In or about 1992, the DOR began planning for the computer automation of specific functions, including some auditing tasks. A few computer programmers were performing preliminary work. DOR made the decision to seek two new permanent positions to be located in different bureaus, including one new position in the same bureau as Appellant. Specifically, on December 20, 1993, action was initiated to create a permanent position classified as a Revenue Tax Specialist (hereafter referred to as the New Position) to work

with the programmers in achieving automation goals in the Bureau of Audits. (Exh R-102) Approval to fill the New Position was obtained in March 1994.

Prior to DOR having an opportunity to develop an exam for the New Position, a hiring freeze occurred. On July 5, 1994, the bureau director requested that the New Position be exempt from the hiring freeze. (Exh. R-101) The request was denied.

The programmers continued to work on the automation effort. They went to Mr. Frazier and indicated that a need existed for staff with tax knowledge to assist in the planning and testing of new programs. Mr. Frazier discussed the matter with his Bureau Director, Lynn Williamson. They decided to see whether any existing auditor staff would be interested to volunteer to perform the duties for a "short period of time." Mr. Frazier thought the New Position would be filled on a permanent basis within 6 months.

A meeting of audit supervisors occurred on January 5, 1995. The minutes from the meeting include the following pertinent information regarding the New Position which is referred to as "User Analyst":

Revenue Tax Specialist 1 (User Analyst)  
Revenue Tax Specialist 1 (Network Coordinator)

Since the filling of these positions is on hold indefinitely pending budget resolution, we will temporarily assign individuals to work in these positions. They will work in this capacity full time. They will still report to their supervisor but may receive assignments from their supervisor, section chief and/or bureau director. Attached are the proposed position descriptions for these positions to give interested persons an idea of what will be expected of them. Persons interested in being considered for these temporary assignments should submit a letter of interest to their supervisor, stating which position(s) they are interested in and what they think they can bring to the position. The letter of interest should be submitted by January 18, 1995.

The above-noted minutes, as well as the referenced attachments, were circulated to all units (to about 100 auditors).

A number of people expressed interest in the temporary assignments, including Appellant. DOR decided that more than one person was needed and, accordingly, created a team of three people which included Appellant, Ed Pelner and Sheila Drea. On January 27, 1995, Appellant was notified of the temporary assignment. (Exh. R-104) The Division did not expect these assignments to last for more than 5-6 months.

Appellant began performing the temporary tasks on January 27, 1995, and such tasks accounted for the majority of her position's time. She did not continue to have auditor assignments but was available for consultation with the auditors and such consultation comprised about 5% of her time.

Appellant's duties as a RA 3 differed significantly from her temporary duties in the New Position. Her duties as a RA3 primarily included auditing income tax returns, preparing assessments and refunds, handling appeals and providing tax payer assistance. The duties of the New Position primarily involved working on the design, development, analysis, documentation, implementation and maintenance of the computerized systems related to audit automation. (Exh. R-106, p. 5)

Thomas Marx is DOR's Personnel Services Section Chief. He was aware that the New Position had been approved and was placed in abeyance because of the freeze. He was unaware that existing staff had been assigned to perform the duties on a "temporary" basis.

The hiring freeze ended in June 1995. The bureau made a new request to fill the New Position on a permanent basis on June 28, 1995. (Exh. R-109, p. 2) Meanwhile, the "temporary" assignments continued.

The directors of the bureaus where the new positions were to be placed, decided at the end of 1995, to coordinate test-development and interviewing efforts in the process of filling the positions. Test development was completed before the vacancies were announced in the Current Opportunities Bulletin on December 18, 1995.

On February 1, 1996, Appellant submitted a reclassification request to her first-line supervisor, Ms. Wilfong. (Exh. R-105, p. 2) The justification for the request was the continued assignment of the higher-level "temporary" duties. Appellant's request was forwarded to the second-line supervisor, Mr. Frazier, by memo from Ms. Wilfong dated February 22, 1996. (Exh. R-106, p. 2) Mr. Frazier shared the materials with the Bureau Director who, on March 15, 1996, requested an informal opinion from Terri Wilke in DOR's personnel office. (Exh. R-106, p. 1)

A meeting was held sometime after February 22, 1996, which included Mr. Marx, Mr. Frazier and Lynn Williamson. A topic of discussion included the "temporary" assignments made. Mr. Marx told them that the continued assignments were "inappropriate" in that the DOR procedures were not followed. Specifically, DOR has written procedures to follow for temporary assignments which take more than 50% of a position's time and last for more than 5 months. (Exh. A-2) Mr. Frazier had been unaware of the required procedures until this meeting, and he did not hear anyone else mention them prior to the 1996 meeting with Mr. Marx.

Appellant initiated her own reclassification request with DOR's personnel office, by memo dated March 11, 1996. (Exh. R-105) Her request complied with DOR's employee handbook which allows employees to initiate their own reclassification request if they first make such request with their supervisors and receive no reply within 30 days.

Ms. Drea was hired for the New Position sometime in March 1996. Appellant also competed but was not hired. Appellant returned to her prior auditor position effective March 20, 1996, but continues to perform some of the temporary tasks for 10% of her time.

On March 21, 1996, DOR's personnel office (Terri Wilke) sent Appellant a memo (Exh. R-107) stating as shown below:

On March 11, 1996, I received a self-initiated reclassification request from you. My understanding from your memo is that the duties that you are describing were assigned to you on a temporary basis. Temporary assignments are not a basis for reclassification, therefore, we are returning this to you without action.

He sent a similar memo to the Bureau Director. (Exh. R-106, p. 1)

Appellant was dissatisfied with DOR's decision to return her reclassification request to her. On March 22, 1996, she wrote a memo to DOR's personnel office (Exh. R-108) which stated in pertinent part as shown below:

[W]hat are my appeal rights? In the Revenue Employee Handbook . . . it reads "If your supervisor or the Personnel Services Section concludes that a reclassification is not appropriate, you will be informed, in writing, of the reasons why the request is denied and your appeal rights."

Second, I disagree with your conclusion. I have read Policy Directive 302-4.2 Acting Assignments, Temporary Assignments. If the assignment comprises 50% or more of the employee's duties or the assignment exceeds five months certain approvals must be obtained. To the best of my knowledge none of the proper approvals were made and the proper written notification was not made to me nor was it inserted into my P-file. Since the proper steps were not taken in my temporary assignment I believe I am entitled to a reclassification to Revenue Tax Specialist 1 since I performed the duties of a Revenue Tax Specialist 1 more than 50% of the time for over 13 months.

In summary, I interpret your memo of March 21, 1996, as a denial of my reclassification request. If this is not the case, please advise me in writing within 5 calendar days of today.

Mr. Marx reviewed Appellant's reclassification request after receipt of the memo noted in the prior paragraph. He issued a formal denial by memo dated April 11, 1996 (Exh. R-109), which Appellant received on April 15, 1996 (Exh. R-110). The bases for the denial were twofold: 1) that a reclassification request could not be granted on the basis of temporary assignments and 2) even if the temporary duties could be considered, the changes were not logical and gradual.

The denial memo contained the following discussion regarding a prohibition against granting reclassification requests based on temporary assignments. The emphasis shown is as it appears in the original document.

Regrade due to reclassification can not be based on a temporary assignment of duties. Chapter 332 of the Wisconsin Personnel Manual states in part:

"Where changes in a position support a reallocation under ER-Pers 3.01(2)(f) or (g), or reclassification, regrade the incumbent unless:

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d. The incumbent has not performed the permanently assigned duties and responsibilities for a minimum of 6 months.

The denial memo contained the following discussion regarding the requirement for a logical and gradual change in duties. The emphasis shown is as it appears in the original document.

. . . [E]ven if the new duties . . . had been assigned to you on a permanent basis, the assignment would have been neither logical or gradual. Chapter ER3, of the Wisconsin Administrative Code states in part:

"(3) RECLASSIFICATION. "Reclassification" means the assignment of a filled position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon a logical and gradual change to the duties and responsibilities of a position . . ."

The changes that would have occurred, even if this were a permanent assignment were not reasonably related to your previous duties and more than 50% of your permanent duties would have changed at a point in time. These are two criteria that the Wisconsin Personnel Manual uses to establish whether there was a logical change in your position. The Wisconsin Personnel Manual goes on to state that: "if more than 50% of the duties or responsibilities of a position have changed . . . the changes are not a logical change to a position but are the creation of a new position. . . Gradual changes in a position is even more restrictively defined. Chapter 332 of the Wisconsin Personnel Manual states in part:

"Generally, changes are not gradual if they:

- 1) constitute a significant portion of the position (more than 25%) and occur abruptly (over a period of less than six months); . . .

The denial memo contained the following discussion of DOR's failure to follow internal procedures in making the "temporary" assignments.

. . . As you are aware from reading our Policy Directive 302-4.2 we have a procedure related to making Temporary or Acting assignments which was not followed, in your case. That policy states that if a temporary assignment

comprises more than 50% of an employee's time or if the assignment will exceed 5 months the Division Administrator must consult with the Deputy Secretary prior to approving the temporary assignment. This process did not occur. However, this does not change the facts involved in this case which are that the assignment that was made was temporary in nature and that even if the assignment had been permanent, it is neither logical or gradual.

#### DISCUSSION<sup>1</sup>

As a general proposition, temporary job assignments provide an insufficient basis to support a reclassification request. Fredisdorf, et al. V. DP, 80-300-PC (3/19/82) Exceptions have been made to this general proposition under limited circumstances, as discussed in the following paragraph.

The Commission found that reclassification was warranted where 75% of a job changed on an anticipated temporary basis but continued for 4 years before a reclassification request was made, and continued for a total of 6 years until the need for the temporary assignment no longer existed. Burnson v. DER, 92-0096-PC && 92-0847-PC (10/24/94) Similarly, the Commission found that reclassification was warranted where the anticipated temporary assignment continued for about 5 years before a reclassification request was made and the duties were expected to continue for an unknown period into the future. Fredisdorf, Id. In contrast, reclass was not warranted where the anticipated temporary assignment lasted about 2 years and where the temporary duties were assigned by the supervisor to address performance problems of a higher-classified co-worker. Dolsen v. UW & DER, 93-0066-PC (6/21/94) (The Dolsen decision also discussed permanent changes in appellant's assignments which were made after the co-worker resigned.)

The circumstances of Ms. Wenzel's appeal are not at a level commensurate with the circumstances in Burnson, or in Fredisdorf. The record in Ms. Wenzel's case shows that DOR planned to fill the New Position through competitive examination, but that extenuating circumstances (the hiring freeze) existed which delayed the hiring process. In the meantime, Ms. Wenzel volunteered to perform the duties of the New Position knowing that DOR planned to conduct permanent hires on a competitive basis. Also, the "temporary" assignment did not last as long for Ms. Wenzel as it did in the Burnson and Fredisdorf cases.

Nor did Ms. Wenzel show that the changes resulting from the "temporary" assignment were made on a gradual or logical basis. The policy underlying the reclassification requirements of a logical and a gradual change in the position's duties was

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<sup>1</sup> The discussion section language was changed to clarify that for classification purposes, the concept of temporary job duties are a separate consideration from the requirements for a logical and gradual change in duties.


noted in Dolsen, Id., p. 2. Specifically, the civil service code requires that permanent positions be filled through competition to ensure that qualified individuals are hired. Accordingly, competition would be required for sudden and significant changes to existing permanent positions because, in fact, such changes result in the creation of a new position.

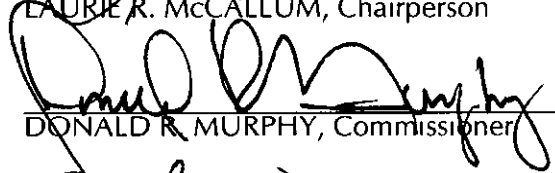
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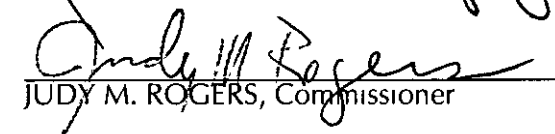
That respondents' decision denying the reclassification of Ms. Wenzel's position is affirmed and this appeal is dismissed.

Dated November 14, 1996.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

JMR

Parties:

Dawn Wenzel  
1706 Twilight Trail  
Madison, WI 53708

Mark D. Bugher  
Secretary, DOR  
125 S. Webster St., 2d Fl.  
P. O. Box 8933  
Madison, WI 53708-8933

Jon E. Litscher  
Secretary, DER  
137 E. Wilson St.  
P. O. Box 7855  
Madison, WI 53707-7855

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)