

MUSTAFA ABDULGHANI,
Appellant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondent.

FINAL
DECISION
AND ORDER

Case No. 96-0143-PC

This matter is an appeal of a decision by respondent Secretary, Department of Transportation (DOT) reclassifying appellant's position from Civil Engineer-Transportation Journey to Civil Engineer-Transportation Senior, effective May 26, 1996 rather than in August, 1994. A briefing schedule was established ending on May 5, 1997. Respondent timely filed a brief, but appellant failed to file an initial brief and elected not to reply to respondent's brief.

The appellant began employment with DOT in March, 1989, as a Civil Engineer-Transportation 1 (CET-1), District 7, in Rhinelander, Wisconsin. He was reclassified to CET-2 in April, 1990, and transferred to District 2 in Waukesha, Wisconsin in September, 1993, where he was reclassified to CET-Journey in June, 1994.

In February, 1995, appellant made a written request to his supervisor, Neil Wienser, for reclassification to the senior level. After receiving no response from Wienser, in May, 1995, appellant discussed the matter with Wienser's supervisor, group manager, Richard Rutzen. Appellant, Wienser and Rutzen had several meetings in June, 1995. By E-mail, dated 07/11/95, Wienser advised appellant that after reviewing appellant's hourly time summary from June 10, 1994, to June 12, 1995, he concluded the summary revealed insufficient work on complex planning projects to warrant reclassification.

Based on an August, 1995, meeting where Wienser and Rutzen advised appellant they would reconsider his reclassification in December or January, by E-mail,

dated 12/14/95, to Wienser and Rutzen, appellant requested a meeting with them. Wienser replied the next day, advising appellant to review and make changes in the draft description of his position description (PD), and reminded him of a performance evaluation on the 20th, which would also be a step in presenting a request for reclassification.

On May 14, 1996, appellant E-mailed Wienser as follows:

On 5/8/96, you asked me to sign my PD. Before I proceed with signing, I suggest the following correction of the report period:

Item 12, page 1 (from approximately what date has the employe performed the work described below): The date shown (October 1, 1995) is not accurate, and should be changed. The accurate date is (February, 1994).

Since Feb, 1994 I have been assigned senior-level work. This includes:

1. Complex urban traffic corridor study for I-94 (East - West freeway): Data collection; diversion estimates; capacity analysis; impact evaluation; alternate route reviewing, etc.
2. License plate corridor study for STH 83: Reviewing data; gathering info.; organizing data entry; arranging/conducting meetings; coordinating efforts of those involved in the study; documentation; report writing; etc.

The following standards are consistent with the class specifications for the (C E trans - senior and/or advanced) in the "planning program":

1. Higher complexity of assignments.
2. Less supervision (general).
3. Greater discretion and independence.
4. Increased knowledge and skills.
5. Satisfactory performance.
6. Logical and gradual progression.

The facts presented above justify the reclass of my position to senior level effective (August, 1994). This date reflects the required six-months period.

On advice of the district personnel supervisor, Wienser submitted the reclassification request, including a PD without appellant's signature to respondent's central personnel office. The request to reclassify appellant's position to the senior level was received by that office on May 22, 1996. The effective date of the reclassification of appellant's position to Civil Engineer-Transportation Senior was established as May 26, 1996, the beginning of the pay period immediately following this receipt of the request.

As previously noted, the issue here is whether May 26, 1996 or August, 1994, is the correct operative reclassification date of appellant's position to the Senior level. While appellant elected not to file a brief, during his testimony he stated that his senior level duties started in February, 1994, when he was assigned responsibility for transportation duties for I-94, east-west freeway. Therefore, he contends, the current effective date of the reclassification is August, 1994 - six months later. Also, during his testimony, appellant stated that his supervisors failed to advise him that the July, 1995, reclassification request denial could be appealed to the agency's central office.

Citing *Regan & Blumer v. DOT & DER*, 92-0211, 0256-PC, 4/23/93, respondent argues that appellant failed to sustain his burden of proof, since under *Regan & Blumer* the Commission concluded the effective date of a reclassification is the first pay period following receipt of the application for reclassification, as evidenced here. Regarding appellant's claim of estoppel, respondent directs attention to testimony by appellant that he had been provided a DOT Employee Handbook containing information regarding the means to determine the effective date for a reclassification and the procedure for appealing a reclassification denial by a supervisor.

We agree with the respondent. The evidence does not support appellant's claim that August, 1994 is the correct effective date of his reclassification. The undisputed testimony of DOT Personnel Specialist Randy Sarver was that DOT's central office received the reclassification request on May 22, 1996, and he determined May 26, 1996, to be the effective date of appellant's reclassification in accordance with the DER Wisconsin Personnel Manual, which provides that reclassification actions shall be made effective at the beginning of the first pay period following receipt of the request.

The evidence shows that appellant first requested reclassification in February, 1995, one year after he believed he started performing at the senior level. Also, as the record shows, appellant's supervisors denied that request. Supervisor Wienser testified that appellant began performing the majority of his duties at the senior level in October, 1995. Appellant never contested his supervisor's decision, but contends he

was precluded from taking this action, because respondent failed to advise him of his right to a review of his supervisors' decision. This contention by appellant is not supported by the record. There is no dispute that by January 31, 1994, appellant had been provided a DOT Employee Handbook, containing information regarding reclassification action effective date determination and reclassification action appeal rights from decisions by supervisors. During his testimony, appellant acknowledged that he had received this handbook containing such information, but offered that he might not have read it. This record does not support a conclusion that respondent precluded appellant from preserving an effective reclassification date. See *Jones v. DHSS & DER*, 90-0370-PC, 7/8/92, p. 6, where it cites *Jabs v. State Board of Personnel*, 34 Wis. 2d 245 (1967).

Based on the record, respondents' decision must be affirmed.

ORDER

The action of respondents is affirmed and this appeal is dismissed.

Dated: November 7, 1997.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

DRM:rjb
960143Adec2

Parties:

Mustafa Abdulghani
Apt 24
1333 W Edgerton Ave
Milwaukee WI 53221

Charles H. Thompson
Secretary, DOT
PO Box 7910
Madison WI 53707-7910

Jon E. Litscher
Secretary, DER
PO 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)