

STATE OF WISCONSIN

PERSONNEL COMMISSION

**LEE JAMES STARCK,**  
*Appellant,*

v.

**Chairperson, UNIVERISTY OF  
WISCONSIN HOSPITALS AND CLINICS  
BOARD,**

*Respondent.*

Case Nos. 99-0054-PC & 99-0064-PC

FINAL DECISION AND  
ORDER

A proposed decision and order (PDO) was issued in the above-noted cases on February 17, 2000. Neither party filed objections to the PDO. The full Commission adopts the PDO as its final decision with changes to one paragraph as flagged by a footnote. The changes were unrelated to credibility issues.

The above-noted cases were consolidated for hearing on December 9, 1999. The appellant was given until February 4, 2000, to submit a post-hearing brief but decided not to do so. The parties previously had agreed that if the appellant decided not to file a post-hearing brief then the examiner would issue a proposed decision and order based on the hearing record without the benefit of written arguments.

The parties agreed to the statement of the hearing issue for case number 99-0054-PC, on July 2, 1999 (see Conference Report dated 7/6/99). The parties agreed to the statement of the hearing issue for case number 99-0064-PC, on August 13, 1999 (See Conference Report dated 9/3/99). The issues are recited below:

Case #99-0054-PC: Whether the respondent committed an illegal act or an abuse of discretion in not appointing the appellant in May 1999, for the vacant position of Hospital Supply Clerk - 3<sup>rd</sup> Shift.

Case #99-0064-PC: Whether respondent committed an illegal act or an abuse of discretion in not appointing appellant for the Mailing Clerk 1 position in question.

## FINDINGS OF FACT

### Hospital Supply Clerk

1. Complainant took an examination for the position of Hospital Supply Clerk (HSC) with a sufficient resulting score to be invited for an interview on May 12, 1999. Douglas O'Connor, HSC Supervisor and Craig Dalton, Reprocessing Supervisor conducted the interviews. Mr. O'Connor had the final hiring authority.

2. The duties of the position were described in the job announcement (Exh. R-7), as noted below:

In concert with the Central Services team, this individual is responsible for the efficient stocking of requested supplies, equipment, linen and patient meal carts in a large, complex university hospital and associated clinics. Responsible for ordering, inventorying, issuing and delivering medical and surgical supplies to nursing units, clinics and various medical center areas. Required knowledge includes basic arithmetical concepts; ability to check, compare and verify accuracy of paperwork; and attention to detail. Hospital Supply Clerks perform their duties in one of several areas of Central Services: operating room support, central area, decentral area or receiving.

3. The main criterion Mr. O'Connor was looking for in a candidate was prior work in a hospital setting. It was viewed as a plus if a candidate had prior work at respondent's hospital and familiarity with the computer ACCO system used for delivering supplies. Respondent's hospital is a fast-paced environment with life and death situations arising. Severe consequences could result if the medical supplies and equipment were not where they are expected to be. It typically takes a year to train a HSC to become familiar with the supplies, equipment and the hospital's complex layout. It would take longer to train a new HSC who had never worked in a hospital before.

4. Each candidate was asked the same questions at the interview. The interviews generally took 30 minutes, but the appellant's interview took one and one-half hours. Mr. O'Connor described the appellant as the "oddest candidate" he has ever interviewed. The appellant had a difficult time listening to the questions. The

answers he gave were not always relevant to the question asked. The appellant had a tendency to “ramble on” to the point that Mr. O’Connor found it difficult to control the interview and to ask the prepared interview questions. For example, at one point the appellant spoke about his wife’s personal situation and such information was not relevant to any interview question. The appellant’s answers to questions 23 and 24 conflicted in part in that he said one of his strengths was “good self esteem” and one of his weaknesses was “lacks confidence.” The appellant described “punctuality” as a weakness. The appellant explained that punctuality had been a problem in a prior job but the problem was corrected after he received counseling. Mr. O’Connor evaluated the conflicting information and problems with punctuality as negative responses. Mr. O’Connor also concluded that the appellant was not a team player due to the appellant’s description during his interview about a prior work situation at a paper factory.

5. The appellant had prior experience with inventory and supplies but not with medical supplies. The appellant said during his interview that he had some experience in a small hospital environment but his resume did not reveal any work experience in a hospital environment.

6. Mr. O’Connor offered the HSC position to John Lecy. Mr. Lecy had been interviewed back in February 1999, when a HSC vacancy existed. Mr. O’Connor did not re-interview Mr. Lecy in May 1999, when interviews were held for the HSC vacancy for which the appellant also competed. Mr. Lecy’s name appeared on the certification list for the May 1999 vacancy. Mr. O’Connor was not required to re-interview Mr. Lecy. The prepared interview questions were revised between the interviews held in February and in May, but without substantial change.

7. Mr. Lecy had prior work experience at respondent’s hospital as a Custodian II, starting on October 5, 1997 and through this position gained some familiarity with the hospital’s complex layout and with the ACCO system used by HSCs to deliver supplies. Mr. O’Connor saw Mr. Lecy every day when Mr. Lecy was working as a custodian. Mr. O’Connor considered Mr. Lecy to be the top candidate for the HSC vacancy in May 1999 because of his prior work at the hospital, his high

work ethic, his familiarity with medical terminology, his communication skills and his ability to be a team player. Mr. O'Connor spoke with Mr. Lecy's first and second-line supervisors to obtain a reference. Both supervisors gave him a good reference.

#### Mailing Clerk

8. Complainant took an examination for the position of Mailing Clerk 1 (MC) with a sufficient resulting score to be invited for an interview on or about June 24, 1999. Dennis Wrobel, who supervised the mailing room, conducted the interviews and had the final hiring authority. Mr. Larry Lange, Decentral Area Supervisor, sat in on the interviews as a witness.

9. The duties of the MC position are noted below as published in the newspaper (Exh. R-7):

In concert with the Central Services Mail Room team, incumbent is responsible for the following duties: Sort and facilitate delivery of all incoming interdepartmental and US Postal Service mail for the hospital and for all internal and external clinics; immediately hand deliver all incoming drugs requiring refrigeration; use Peoplesoft software to accurately locate and sort all inpatient mail; take mail to loading dock at scheduled times for pick-up, and return all incoming campus mail to mailroom; lift and manipulate large mail containers (up to 50 pounds); assist supervisor in training and directing the mail delivery person, mail room volunteers, and individuals that are on temporary assignment through Worker's Compensation; deliver all mail when regular delivery person is not available; contact UW Truck Services for pick-up and delivery of items that do not qualify as Campus Mail; maintain daily record of Postage-Due amounts and incoming/outgoing mail volume; print bar code labels using Peoplesoft; maintain extensive mail code list using Microsoft Excel; operate postage meter machine to process time sensitive mail items, certified mail, and mail brought to mailroom after the Department of Administration cut-off times; other duties as assigned.

10. The main criterion Mr. Wrobel was looking for in a candidate was recent mailroom experience with the ability to pay attention to details and prioritize tasks.

11. Mr. Wrobel used a prepared set of questions for each interview. Each interview took about 20 minutes, including the appellant's. Mr. Wrobel noted the

appellant was well dressed and came very prepared for the interview having a copy of his resume and application with him. Overall, Mr. Wrobel felt the appellant had a good interview although he noted that the appellant “talked his head off” sometimes responding to questions with irrelevant information. He did not eliminate the appellant from further consideration based on his performance at the interview.

12. Mr. Wrobel hired Timothy Witkowski for the MC position. Mr. Witkowski held various mail-delivery positions in the public and private sectors since October 1994. His present employer provided a good reference. (Exh. R-29) After interviews, Mr. Wrobel also credited Mr. Witkowski with the abilities to pay attention to details and to prioritize, as well as a willingness to perform any task and someone who would fit in with his co-workers.

13. The appellant had short-term experience as a mail processor for a variety of companies. He conceded that he was less qualified in this regard when compared to Mr. Witkowski’s level of experience. The appellant’s resume indicated he had “USPS” training, meaning training at the US Postal Service. Mr. Wrobel, however, could not recall that the appellant explained this during his interview. The appellant also had some relevant education, such as a Transportation and Distribution Management course he took. The appellant, however, failed to explain at his interview what he learned in the class and how the coursework related to the duties of the MC position.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these cases pursuant to §§230.45(1)(a) and 230.44(1)(d), Stats.

2. It is the appellant’s burden to establish that respondent committed an illegal act or an abuse of discretion by hiring someone other than the appellant for the HSC and MC positions. He failed to meet this burden.

#### OPINION

These cases were filed under §230.44(1)(d), Stats., the text of which is shown below in relevant part (emphasis is as appears in the original document):

(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.

The appellant did not articulate a specific claim of illegality, nor was such a claim supported by evidence in the hearing record. The focus, accordingly, is on whether an abuse of discretion occurred. The appellant in opening arguments claimed that an abuse of discretion occurred in that standard hiring policies and procedures were not followed; the interview questions were not evaluated reasonably; and the appellant, the most qualified candidate, was not hired. He failed to establish any of these claims.<sup>1</sup>

An abuse of discretion has been defined as a discretionary decision exercised to an end or purpose not justified by, and clearly against, reason and evidence. *Murray v. Buell*, 74 Wis. 14, 19, 41 N.W. 1010 (1889), *Bernfeld v. Bernfeld*, 41 Wis. 2d 358, 365, 164 N.W. 2d 259 (1969). Also see *Lundeen v. DOA*, 79-0208-PC, 6/3/81 and *Kelley v. DILHR*, 93-0208-PC, 3/16/95. The appellant has failed to show that an abuse of discretion occurred in either of the hiring decisions for the HSC or MC vacancies.

Mr. O'Connor hired Mr. Lecy for the HSC vacancy. Mr. O'Connor's assessment that Mr. Lecy was better qualified for the position than the appellant had a reasonable basis in fact, as noted in ¶¶4-7 of the Findings of Fact. The Commission cannot say that the hiring decision was exercised to an end or purpose not justified by and clearly against reason and evidence.

Mr. Wrobel hired Mr. Witkowski for the MC position. Mr. Wrobel's assessment that Mr. Witkowski was better qualified for the position than the appellant had a reasonable basis in fact, as noted in ¶¶12-13 of the Findings of Fact. The Commission cannot say that the hiring decision was exercised to an end or purpose not justified and clearly against reason and evidence.

---


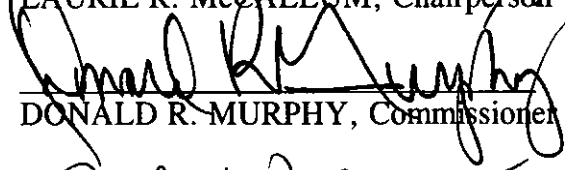

<sup>1</sup> This paragraph was restructured for clarity. The final sentence was added to emphasize that all of the appellant's arguments were considered and rejected.

ORDER

These cases are dismissed.

Dated: April 7, 2000.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson  
  
DONALD R. MURPHY, Commissioner  
  
JUDY M. ROGERS, Commissioner

JMR:990054A+decl.doc

Parties:

Lee James Starck  
107 Gordon Ct.  
Mukwonago, WI 53149-1708

Jack Pelisek  
Chairperson, UWHCB  
600 Highland Ave.  
Madison, WI 53792

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