

KATHERINE J. OTIS,
Appellant,

v.

**Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,**
Respondent.

**RULING
ON
MOTION FOR
SUMMARY
JUDGMENT**

Case No. 00-0176-PC

This matter is before the Commission on respondent's motion for summary judgment.

In a ruling issued on February 23, 2001, the Commission established the following issue for hearing:

Whether the assessment of applicants for Insurance Examiner-Entry (and specifically the respondent's conclusion that appellant was ineligible based on her experience and education) was conducted in accordance with §230.22, Stats, and ch. ER MRS 8, Wis. Adm. Code. If not, what is the remedy?

The facts set forth below are made solely to resolve the present motion and are undisputed unless specifically noted to the contrary.

FINDINGS OF FACT

1. The State of Wisconsin has established an "Entry Professional Program", the purpose of which is "to provide agencies a means by which they can compete on campuses and in the general labor market for the best available candidates and to assist agencies in advancing their affirmative action goals." §ER 8.01, Wis. Adm. Code.

2. The Entry Professional Program is authorized by §230.22, Wis. Stats., and both the Secretary of the Department of Employment Relations and the Administrator of the Division of Merit Recruitment and Selection (respondent) have exercised their authority to implement administrative rules to effectuate the program.

3. Respondent's rules on this topic include §ER-MRS 8.20:

(1) This subchapter implements s. 230.22(3), Stats., which authorizes the administrator to establish separate recruitment, evaluation and certification procedures for entry professional positions. This authority is intended to give appointing authorities of state agencies flexibility to recruit, assess and certify persons for entry professional positions so that the state can compete with other employers for the most qualified candidates.

(2) In accordance with ss. 230.15(1) and 230.16(4), Stats., all appointments under this subchapter shall be made only according to merit and fitness and all examinations shall be job-related in compliance with appropriate validation standards.

Respondent has also issued §ER-MRS 8.23:

(1) The appointing authority shall develop a plan to assess applicants and establish an employment register. The appointing authority shall obtain approval of the plan from the administrator before announcing the position vacancy or beginning recruitment activities. The administrator shall determine whether the plan complies with this subchapter's requirements and intent and whether the plan includes valid, job-related criteria.

(2) All applicants shall be admitted to the initial assessment process, but only those applicants who meet the assessment criteria for the position may be given further consideration.

(3) The assessment plan shall include the assessment techniques and criteria to be used to rate applicants. The assessment techniques and criteria shall include an evaluation of the applicant's qualifications which *may be based on an evaluation of advanced educational achievements and relevant experience*, written examination, oral examinations, performance exercises, an evaluation of writing samples or other methods approved by the administrator. Additional assessment techniques may be used after the initial applicant evaluation to decrease or increase the number of applicants to be given further consideration in the hiring process.

(4) The assessment techniques may result in applicants being categorized into groups such as "eligible" or "ineligible" or other rating categories approved by the administrator.

(5) No more than 25% of all vacancies in all entry professional positions, on an annual basis, may be limited to person with degrees from institutions of higher education, as defined in s. 108.02(18), Stats., or degrees under an associate degree program, as defined in s. 38.01(1), Stats. Vacancies may not be limited to persons with degrees without the approval of the administrator (Emphasis added.)

4. For more than 5 years, Objective Inventory Questionnaires have been used as a method to assess applicants for Entry Professional Program positions.

5. The Insurance Examiner-Entry classification specification describes entry level professional positions.

6. The Insurance Examiner-Entry classification is included in the Entry Professional Program.

7. At a point relevant to this appeal, the Office of the Commissioner of Insurance (OCI) had a vacancy for an Insurance Examiner-Entry position.

8. OCI submitted various documents/materials for approval by respondent and by the Secretary of the Department of Employment Relations. Those materials included an: a) exam, b) certification statement, c) Recruitment Activity Plan, d) exam plan checklist, and e) benchmarks.

9. Respondent approved these documents/materials.

10. An Objective Inventory Questionnaire was chosen as the method to identify applicants. The Objective Inventory Questionnaire had three specific sections: 1) Minimum Qualification Instruction Sheet and Statement; 2) Relevant Experience Inventory; and 3) Employment Preference.

11. All applicants for the Insurance Examiner-Entry classification received an Objective Inventory Questionnaire and were required to return it along with a current resume.

12. The applicants were advised that in order to be eligible for certification, they had to pass section 1) of the Objective Inventory Questionnaire, which required completion of (or being in the process, i.e. within 4 months, of completing) a 4-year college degree from an accredited educational institution, 4 or more years of *professional* work experience in specified areas or a combination of college level course work and professional work experience equal to at least 4 years.

13. Appellant completed an Objective Inventory Questionnaire for the Insurance Examiner-Entry position.

14. With respect to section 1) of the Objective Inventory Questionnaire, appellant checked item "D" which states: "Combination of college level course work and 'professional work experience', as defined in C above, equals or exceeds a total of 4 years." Appellant checked a box indicating she had 2 years of college-level course work and 4 years of "professional work experience."

15. Appellant listed the following in section 1):

(Professional Duties): Information and complaints for all types of insurance. Consumer Hot line service for complaints on all lines of insurance problem solving. Process incoming form's mail to determine if insurance products comply with Wisconsin insurance laws. Give service to consumers and insurance companies in compliance with state insurance laws.

(Accredited Educational Institution):

MATC, Madison, WI from '80 to '83 (2½ years); Real Estate including Marketing, Accounting, Business Law.

LOMA [Life Office Management Association] Courses, Madison, Wisconsin

16. In her resume, appellant described her duties as an employee of the Office of the Commissioner of Insurance as follows:

Program Assistant III, OCI, Madison Wisconsin, November 1995 to Present; *Paraprofessional* assistance to facilitate examiner's reviews

Program Assistant II, OCI, Madison Wisconsin, June 1994 to November 1995; *Paraprofessional* assistance for market regulation staff to analyze consumer insurance problems [Emphasis added.]

17 Appellant received no more than 2½ years of credit for her MATC coursework. As a consequence, she needed at least 1½ years of professional work experience to pass section 1) of the Objective Inventory Questionnaire.

18. Appellant did not receive credit for her LOMA coursework because it is not considered to be an academic credit course.

19. Appellant did not receive credit from raters for her duties at OCI because they were considered to be paraprofessional rather than professional.

20. The raters concluded that appellant was not minimally qualified for the Insurance Examiner-Entry position.

21. The position descriptions for appellant's Program Assistant positions at the Office of the Commissioner of Insurance describe her duties as "paraprofessional."

22. The classification specifications for the Program Assistant series identify the work in that series as "paraprofessional" rather than professional.

23. Appellant did not have at least 1½ years of professional work experience.

24. Appellant did not satisfy section 1) of the Objective Inventory Questionnaire

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)(a), Stats.

2. Respondent has the burden to show it is entitled to summary judgment.

3. Respondent has sustained its burden.

4. There is no dispute of material fact and respondent is entitled to judgment as a matter of law.

5. Respondent acted in accordance with §230.22, Stats., and ch. ER MRS 8, Wis. Adm. Code, when it concluded that appellant was ineligible for the Insurance Examiner-Entry position.

OPINION

The Commission uses the following standard in reviewing a motion for summary judgment:

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgment the court does not decide the issue of fact; it decides whether there is a genuine issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt.

Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

Grams v. Boss, 97 Wis.2d 332, 338-339, 294 N.W.2d 473 (1980), citations omitted.

Appellant did not respond to respondent's motion for summary judgment. In her letter of appeal, she makes it clear that her appeal arises from the "decision to disqualify my prior experience with the [Office of the Commissioner of Insurance] as not meeting the 'equivalent experience or training' criteria." She does not place into dispute the respondent's submissions that show her work at the Office of the Commissioner of Insurance was at the "paraprofessional" rather than the "professional" level.

There is no suggestion that respondent failed to comply with a particular provision in §230.22, Stats., or ch. ER MRS 8, Wis. Adm. Code, when it evaluated the appellant's application materials.

Given her 2½ years of academic training, appellant needed 1½ years of professional work experience. Even though appellant may feel that her work as a Program Assistant should be considered "professional," it did not rise to that level. Appellant's resume and position description, as well as the classification specifications for the Program Assistant series are all consistent with a "paraprofessional" level of responsibilities, rather than a "professional" level of responsibilities. None of appellant's experience met the requirement of 1½ years of professional-level work. Therefore, she did not meet the minimum requirements for appointment to the Insurance Examiner-Entry position. Because appellant was not minimally qualified, respondent is entitled to summary judgment in this matter

In light of this conclusion, the Commission does not reach respondent's additional contention that no remedy is available to the appellant in this matter.

ORDER

Respondent's motion for summary judgment is granted and this matter is dismissed.

Dated: June 13, 2001 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:000176Arul2


JUDY M. ROGERS, Commissioner

Parties:

Katherine J Otis
95 Beach Street
Edgerton, WI 53534

Michael Soehner
Assistant Administrator, DMRS
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)