

TOM ACKLEY,

Petitioner,

vs.

MEMORANDUM DECISION

Case No. 01-CV-0157

WISCONSIN PERSONNEL COMMISSION,  
DEPARTMENT OF NATURAL RESOURCES,  
and DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondents.

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### NATURE OF ACTION

This is a proceeding commenced on October 2, 2001, under Wis. Stat. §§ 230.87 and 227.52-227.57, to review a decision of the Wisconsin Personnel Commission. The Commission concluded, in an appeal proceeding under Wis. Stat. § 230.45 (1)(a), that the duties and responsibilities of petitioner Tom Ackley's position do not satisfy the criteria for classification of Forestry Technician-Advanced, and do not compare favorably for classification purposes to the Forestry Technician-Advanced level positions offered for comparison purposes in the hearing record. Accordingly, the Commission upheld the decision of the Department of Natural Resources (DNR) and the Department of Employment Relations (DER) to reallocate Ackley's position to the Forestry Technician classification rather than to the Forestry Technician-Advanced classification. The final decision and order in the hearing was issued August 1, 2001. Ackley filed a petition for re-hearing pursuant to Wis. Stat. § 227.49, which was denied on September 5, 2001.

Ackley has filed a brief in support of his appeal. Counsel for the Commission has also filed a brief. Counsel for the DNR and the DER informed the court and the other parties that his clients wish to adopt the brief filed by counsel for the Commission.

### FACTS

The classification specifications for Forestry Technician and for Forestry Technician-Advanced are set forth in detail on pages 1-4 of the Commission's Decision issued on August 1, 2001 and will not be repeated by the court.

In its Decision, the Commission found that in order to be classified at the Advanced Level, positions must perform paraprofessional forest management and/or fire control activities. The Commission also reviewed the language of the definition section as well as the description of duties assigned to representative Advanced level positions which provides a general description as well as specific examples of the types of duties and responsibilities which would qualify as paraprofessional forest management and fire control activities.

Utilizing these and parallel information from the Technician specifications as a guide, appellant's position and positions offered by the appellant for comparison purposes were analyzed, and duties and responsibilities set forth by the Commission on pages 6-10 of its Decision were concluded to qualify as paraprofessional forest management (FM) or fire control (FC) activities or general administrative (GA) duties, such as Advanced level duties and responsibilities.

In accordance with the foregoing comments, the Commission analyzed the language of the classification specifications and Ackley's position descriptions together with those of four other individuals who were reallocated to Forestry Technician-Advanced. The analysis of Ackley and the four other individuals resulted in the following determinations by the Commission:

- a. Tom Ackley: FC=12.5%; FM=4.15, totalling 16.65%
- b. Mark Johnson: FC=26.49%; FM=25%; GA=1.67%, totalling 53.16%
- c. Gary Krause: FC= 25.6%; FM=20%; GA=10%, totalling 55.6%
- d. Robert Lent: FC=22.4 %; FM=20%; GA=20%, totalling 62.4%
- e. Terri Schwerdtfeger: FC=20.78%, FM=30%; GA=2%, totalling 52.78%

Based on the above determinations, the Commission concluded that the duties and responsibilities of Ackley's position do not satisfy the criteria for classification at the Advanced level, and do not compare favorably for classification purposes to the Advanced level positions offered for comparison purposes in the hearing record.

#### ISSUE

Could the Commission reasonably determine that Ackley's position was properly reallocated to the Forestry Technician classification, rather than to Forestry Technician - Advanced Classification?

#### DECISION

Before addressing the above issue, the court must determine the applicable standard of review to be utilized by the court.

The "great weight" standard, which provides the highest level of deference, is accorded to any agency's conclusion of law or statutory interpretation when the following four elements are met:

"(1) the agency is responsible for administering the statute, (2) the agency's conclusion or interpretation is long standing, (3) the agency employed its specialized knowledge or expertise in forming the conclusion or interpretation, and (4) the agency's interpretation provides consistency and uniformity in the application of the statute." Knight v. LIRC, 220 Wis. 2d 137, 148, 582 N.W.2d 448, 453 (Ct. App. 1998).

The Knight court stated that under the "great weight" standard, we must uphold the agency's interpretation if it is reasonable and if it is not contrary to the clear meaning of the

statute. Further, we will sustain an agency's reasonable interpretation even if there is a more reasonable interpretation available. See Margoles v. LIRC, 221 Wis. 2d 260, 265, 585 N.W.2d 596 (Ct. App. 1998).

Ackley contends in his brief that the "...errors in the Commissions Brief are substantial and therefore should not be afforded great weight deference but set aside as irrational"

In the case at bar and, as per §§ 230.44(1)(b), 230.45(1)(a), the court finds that the Commission is specifically statutorily charged with the review of classification decisions and, in fulfilling its statutory duty, has developed expertise in construing and applying class specifications in reclassification appeals. Therefore, the court finds that the Commission's decision is entitled to the "great weight" standard and it will only be set aside if irrational.

As per § 227.57(6), Wis. Stats., the Commission's findings of fact must be affirmed by the court if they are supported by substantial evidence. The foregoing statute reads as follows:

If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

In her brief, counsel for the Commission notes that the rule that the Commission's findings must be affirmed if they are supported by substantial evidence is also set forth in Wisconsin case law and cites several cases in support thereof. It is not required that the evidence be subject to other reasonable, equally plausible interpretations. Hamilton. ILHR Dept., 94 Wis.2d 611, 617, 288 N.W.2d 857 (1980).

Counsel for the commission also cites case law which states that where two conflicting views of the evidence may each be sustained by substantial evidence, it is for the agency to determine which view of the evidence it wishes to accept. See Robertson Transport Co. v. Public Service Comm., 39 Wis.2d 658, 159 N.W.2d 636 (1968).

The weight and credibility of the evidence are matters for the agency, and not for the reviewing court, to evaluate. See Bucyrus-Erie Co. v. ILHR Dept., 90 Wis.2d 408, 418, 280 N.W.2d 142 (1979); Wis. Stats. § 227.57(6). When more than one inference reasonably can be drawn, the finding of the agency is conclusive. See Vocational Technical & Adult Ed. Dist. 13 v. ILHR Dept., 76 Wis.2d 230, 240, 251 N.W.2d 41 (1977).

On review, a court may not make an independent determination of the facts. See Hixon v. Public Serv. Comm., 32 Wis.2d 608, 629, 146 N.W.2d 577 (1966).

A court may not "second guess" the proper exercise of the agency's fact-finding function even though, if viewing the case *ab initio*, it would come to another result. See Briggs & Stratton Corp. v. ILHR Department, 43 Wis.2d 398, 409, 168 N.W.2d 817 (1969). The court must search the record to locate substantial evidence that supports the agency's decision. See Vande Zande v. LIHR Department, 70 Wis.2d 1086, 1097, 236 N.W.2d 255 (1975).

In summary, the Commission's counsel cited Hamilton, 94 Wis.2d at 618:

The agency's decision may be set aside by a reviewing court only when, upon an examination of the entire record, the evidence, including inferences therefrom, is found to be such that a reasonable person, acting reasonably, could not have reached the decision from the evidence and its inferences.

Counsel for the Commission argues that, based on the foregoing discussion, the Commission's determination in this case is reasonable.

Ackley argues that the Commission's determination was based on incorrect facts and an improper analysis of his position description and that, a correct interpretation of these facts would reveal that, he should have been classified as a Forestry Technician-Advanced.

It is agreed by the parties that classification decisions must be based on the "best fit" of the duties within the existing classification. It is also agreed that the "best fit" is determined by the majority (more than 50%) of the work assigned to and performed by the position when compared to the class concepts and definition of the specification or through other methods of position analysis.

As noted above, the Commission considered the testimony at the hearing and the documentary evidence submitted as exhibits and also relied on the definition of paraprofessional provided in the Forestry Technician-Advanced classification in determining these duties. The Commission conducted a position specific review of the goals and activities assigned to the petitioner and to those assigned to persons assigned at the advanced level. The Commission determined what percentage of time was spent on goals and activities assigned constituting paraprofessional duties, i.e., advanced level duties and determined that Ackley spends 16.65% of his time on paraprofessional duties. As noted above, the Commission also found that the other four employees, who were reallocated to Forestry Technician-Advanced, did spend a majority of their time on paraprofessional duties with the range being from 52.78% to 62.4%.

In his brief, Ackley argues that, as per Exhibit A-8, his Position Description (PD) contains over 50% FM and FC. Therefore, he concludes that his position qualifies him as being reallocated to Forestry Technician-Advanced. Ackley, however, does not specify as to how he arrived at this figure. A review of the foregoing exhibit indicates that suppression of forest fires=15%, fire pre-suppression=30%, and prevention of forest fires=10%, total 55%. The court is not sure if the aforementioned figures are the ones being referred to by Ackley; however, they do exceed 50%, as per his argument. However, as noted above in this decision and the decision of the Commission, the Commission went through a much more detailed analysis of Ackley's position and the classification specifications and also included in the analysis a comparison with the percentage of Advanced level duties assigned to the four individuals who were reallocated to the Advanced level.

Ackley also argues that the classification specifications do not provide for a percentage breakdown between the various duties performed. Counsel for the Commission does not appear to address this argument. The court finds that assigning a specific percentage to the various duties performed by Ackley and the other four individuals represents a logical way in which to assess the various positions and arrive at objective

findings that can be understood by a reviewing authority. Accordingly, the court finds that the foregoing objection by Ackley is without merit.

The Commission concludes by noting that, not only does Ackley's position devote a significantly smaller percentage of time to forest management duties, which tend to be paraprofessional duties within the meaning of the Advanced classification, but his position also devotes a significantly smaller percentage of time, than the other positions, to higher level fire control duties such as those involving independent planning, inspection training and report preparation. The Commission also points out that Ackley's position devotes a larger percentage of time (35%) to maintenance duties, which are specifically identified at the Technician level, than Krause (15%), Lent (18%), and Schwerdtfeger (25%).

Accordingly, the Commission concludes that the duties and responsibilities of Ackley's position do not satisfy the criteria for classification at the Advanced level, and do not compare favorably for classification purposes to the Advanced level positions offered for comparison purposes in the hearing record.

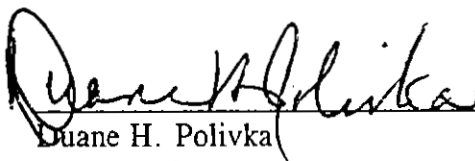
The court agrees with the above conclusion.

Accordingly, the court finds that Ackley's testimony and the documentary evidence presented at the hearing provide substantial evidence from which the Commission could make its factual determination that Ackley's position varied sufficiently from those of the employees whose positions were reallocated to the Advanced level to justify his reallocation to the Technician level. In addition, the court finds that the Commission's application of the agency's standards, i.e., the classification specifications, to the presented facts and the comparison of the position of Ackley to that of the Advanced level positions was rational.

Accordingly, the Commission's decision is affirmed.

Dated this 3rd day of May, 2002.

BY THE COURT

  
Duane H. Polivka  
Circuit Judge

cc: Tom Ackley - pro se  
Asst. Atty. Gen. Jennifer Sloan Lattis - Wis. Personnel Commission  
✓ Asst. Atty. Gen. David C. Rice - DNR & Dept. of Employment Relations