

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALLEN BEDYNEK-STUMM, Appellant,

v.

Executive Director, BOARD ON AGING AND LONG TERM CARE, Respondent.

Case 1
No. 62940
PA(sel)-5

Formerly Case No. 03-0017-PC

Decision No. 31295-A

Appearances:

Allen Bedynek-Stumm, P.O. Box 44771, Madison, WI 53744, appearing on his own behalf.

Mark Saunders, Deputy Legal Counsel, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864, appearing on behalf of the Board on Aging and Long Term Care.

RULING ON PETITION FOR REHEARING

On August 10, 2005, the Commission issued a Final Decision and Order in this matter, concluding that the Appellant had failed to show Respondent had either acted illegally or abused its discretion when it did not hire him for a Clerical Assistant 2 position. On August 30, Appellant filed a Petition for Rehearing. Respondent has not filed a response.

As provided in Sec. 227.49(3), Stats.:

Rehearing will be granted only on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Appellant identifies 13 separate arguments in support of his petition. The vast majority of these arguments have previously been rejected by the Commission. However, the following argument warrants comment:

12) The fact that the Appellant was rated as “. . . overqualified. . .”, by the [interviewer, George Potaracke, Executive Director of the Bureau of Aging and Long Term Care] evidences that the Appellant was rated on-the-spot, as possessing qualifications surpassing those of the younger, female; [Janet Josvai, the successful candidate].

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For the WERC, or any official Agency, with unlimited powers-to-discriminate against anyone-at-will, the insult that the Appellant “. . . that an overqualified applicant would only briefly remain . . . if hired, or an expectation that an overqualified candidate would not encounter the . . . barriers to reentering the workforce . . .”, is simply indicative-of-a-loss-of-reality, & caused irrefutable-harms to the Appellant. The WERC lacks even remote proof that this speculation is possible.

Appellant’s argument relates to the following text in the Commission’s Final Decision and Order:

[W]e find it more likely than not that Potaracke commented to the effect that Appellant appeared to be overqualified for a clerical position in light of his previous employment, which included serving as an Employment Examiner for the U.S. Office of Personnel Management; as a Lecturer for the Department of Psychology, University of Wisconsin-Madison, Campus Extension Services; Director of Pupil Services and Special Education; and several other instructor and teacher positions involving special education. However, even if Potaracke commented to Appellant about the professional nature of his prior employment, the question remains whether it is an abuse of discretion not to hire a candidate if the decision is based, at least in part, on the conclusion that the candidate is overqualified for the position. Appellant appears to take the view that the answer to this question is self-evident. The Commission disagrees. Respondent would not be acting “clearly against reason and evidence” if its hiring decision, at least in part, was based on an expectation that an overqualified applicant would only briefly remain in the position if hired, or an expectation that the overqualified candidate would not encounter the same barriers to reentering the work force as a woman over 55 who did not have experience filling “high-powered” positions. (Emphasis added.)

The question raised by Appellant is whether the Commission improperly speculated that Mr. Potaracke reasoned the Appellant was a less desirable candidate because he would likely leave the position shortly after hire or because Ms. Josvai, a 60-year-old female who lacked experience filling professional-level positions, would have a more difficult time obtaining a first job.

The Appellant has misunderstood the relevant language from the Commission’s Final Decision. The Commission did not find that Mr. Potaracke actually relied on either of these two theoretical reasons when he hired Ms. Josvai rather than Mr. Bedynek-Stumm for the vacant position. The Commission merely found that Potaracke “commented to the effect that Appellant appeared to be overqualified for a clerical position in light of his previous employment.” Potaracke’s comment that the Appellant appeared “overqualified” was consistent with his notations from Appellant’s interview (“Has strong professional background. Clerical support position may not be appropriate.”) and from Ms. Josvai’s interview.

(“Seeking to polish clerical skills.”) The Commission understands Mr. Potaracke’s “overqualified” comment to refer to his conclusion that Ms. Josvai’s somewhat outdated clerical skills would more likely be enhanced by experience in Respondent’s Clerical Assistant 2 position than would Appellant’s “professional” skills.¹

Appellant’s comments during the interview emphasized his “strong professional background” rather than his clerical experience. The Commission believes that this was the source of Potaracke’s “overqualified” statement and also believes it was highly relevant to the decision of whether Ms. Josvai’s clerical skills or Mr. Bedynek-Stumm’s “professional” skills would likely be updated by working in the position.

Therefore, the Commission rejects the Appellant’s arguments and issues the following

ORDER

Appellant’s petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of September, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties:

Allen Bedynek-Stumm
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George Potaracke
Executive Director, BOALTC
214 North Hamilton St.

¹ Potaracke testified the primary reasons for hiring Josvai was that she presented herself as a person who could benefit from the training that the job could offer and she would fit into the needs of the agency. He also stated that her personality was such that she would work well with the agency’s existing employees. All are relevant selection criteria.

Madison, WI 53703-2118