

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**STEPHEN C. ELMER**, Appellant,

vs.

**Secretary, DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION**, Respondent.

Case 1  
No. 63486  
PA(sel)-10

**Decision No. 31317-A**

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**Appearances:**

**Stephen C. Elmer**, 1917 Paso Roble Way, Madison, Wisconsin 53716, appearing on his own behalf.

**David Ghilardi**, Assistant Legal Counsel, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, 2817 Agriculture Drive, Madison, Wisconsin 53718, appearing on behalf of the Respondent.

**DECISION AND ORDER**

This matter was filed with the Wisconsin Employment Relations Commission on March 19, 2004 by Stephen C. Elmer as an appeal of a non-selection decision.

By letter dated September 9, 2004, the Wisconsin Employment Relations Commission designated Dennis P. McGilligan as Hearing Examiner. Examiner McGilligan subsequently convened an administrative hearing on September 14, 2004 at the offices of the Wisconsin Employment Relations Commission in Madison, Wisconsin. Hearing was held on the following issues:

Was the decision of the Respondent not to appoint Appellant to the position of Animal Health Investigator Supervisor within the Department of Agriculture, Trade and Consumer Protection illegal or an abuse of discretion?

If the decision was illegal or an abuse of discretion, what would be the appropriate remedy?

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The parties completed their briefing schedule on November 24, 2004. The hearing examiner issued a proposed decision on April 28, 2005. No objections were filed by the requisite due date of May 31, 2005. For the reasons set forth below, the Commission concludes that the Appellant has failed to establish his claim.

Being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. Prior to the instant dispute, Stephen C. Elmer, the Appellant, worked for the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection (“DATCP”), Bureau of Meat Safety Inspection, in a number of different capacities. From November, 1981 to July 1987, he worked as a Meat Safety Inspector I, II, III. From July, 1987 to May, 1992, he served as a Meat Safety Inspector IV, Technical Specialist; and from May, 1992 to March, 1998 he served as a Meat Safety Inspection Supervisor. He finished his employment at DATCP in 1998. In July, 2000, Appellant entered into a Settlement Agreement with Respondent for the purpose of settling litigation with the Department.

2. DATCP includes a Division of Animal Health which regulates the health of the state’s agricultural livestock. The Division implements a number of different programs under both state and federal authority related to various diseases. The Division also licenses and otherwise regulates a number of different agricultural activities involved in raising, transporting, and selling livestock in Wisconsin.

3. Until approximately 2003, the Division of Animal Health’s inspectors and investigators (the compliance staff) were supervised by a single position, currently held by Tom Knauer. The position is classified as a Compliance Officer. The Division then created an intermediate position that is supervised by Knauer and serves as the immediate supervisor of the Division’s inspectors. This new position, called an Animal Health Investigator Supervisor, was open for recruitment in 2003.

4. The Animal Health Investigator Supervisor’s duties include supervision and management of field staff and field inspection activities throughout the state in an effort to gain voluntary compliance from owners, dealers, etc., with animal health rules and programs. The position requires extensive knowledge of the animal husbandry industry including trade practices related to the transfer of agricultural animals. The position also demands knowledge of federal and state laws, rules, regulations and programs intended to help the agriculture industry maintain the health of animal herds. Goals and activities of the position include: management of the unit’s field inspection activities and program area initiatives (35%); provision of technical program duties, including field investigation work for special case

assignments (20%); development, coordination and/or delivery of staff and industry training (20%); supervision and direction of staff (15%); and provision of assistance and back-up support to the Compliance Officer (10%).

5. In July 2003, DATCP's Division of Animal Health began interviewing those current employees who were eligible to fill the vacancy via transfer or reinstatement. The interview panel consisted of: a) Tom Knauer, the Division employee responsible for the recruitment process and creation of the interview panel; b) Sheila Graham, the director of the Bureau of Administrative Services in the Division; and c) Terry Burkhardt, the director of the Meat Safety Bureau in DATCP's Division of Food Safety. The interview panel first interviewed an internal transfer candidate, Thomas J. Stoebig. In August 2003, it interviewed two candidates from the layoff list, Douglas A Nelson and Kenneth R. Milbeck. Hiring decisions concerning these candidates were placed in abeyance pending completion of an open recruitment.

6. The open recruitment began with a Current Opportunities Bulletin job announcement inviting interested candidates to submit a completed state application form, a current resumé and a typewritten paper addressing three specific topics. A two-person panel reviewed this information to determine whether candidates were qualified for the position. One of the two individuals asked to rate the application materials was Gary Bauer, the chief of compliance in the Division of Food Safety and Elmer's direct supervisor at the time Elmer left DATCP approximately five years earlier. When Bauer saw the list of applicants, including Elmer, he informed Ed Porter, Human Resources Specialist and Staffing Analyst for DATCP's Bureau of Human Resources, that he could not be objective when rating Elmer's material. Porter removed Elmer's material from Bauer's set of applicant exam materials and Bauer did not rate Elmer's submission. After consulting with Porter, Knauer identified two additional raters to serve on the panel. As a result, three raters reviewed Elmer's application while four reviewed the material of the other applicants. The examination panel ranked Elmer highest and determined that he and two other candidates, Kenneth R. Milbeck and Cindy Partridge, were qualified for the position. DATCP's Bureau of Human Resources then supplied the Division of Animal Health with an unranked list of the three certified candidates along with their application materials in early December, 2003. The three candidates were interviewed on December 19, 2003.

7. The interview panel did not receive a list of the certified candidates until on or about December 15, 2003. When Terry Burkhardt became aware that the Appellant was on the list, he told Tom Knauer that "he could not evaluate" the Appellant but "did not say anything more." Burkhardt said nothing more to anyone involved in the interview process concerning this matter.

8. Tom Knauer went to Ed Porter for instructions on how to respond to Terry Burkhardt's situation. Porter sent Knauer to his supervisor, Alison Scherer, Assistant Director of the Bureau of Human Resources. Scherer initially instructed Knauer to replace Burkhardt with another panelist for the Appellant's interview so that all of the candidates would be

interviewed by a panel of three. When Knauer contacted Scherer on the morning of the interviews and told her he had been unable to secure a replacement panelist, Scherer instructed Knauer to remove Burkhardt from the panel during Elmer's interview, but have Burkhardt interview the other two candidates.

9. Terry Burkhardt stepped out of the room during the Appellant's interview. He did not discuss the Appellant with the other panelists during the interview process.

10. Sheila Graham was told a few days before the interview that Terry Burkhardt would not be interviewing the Appellant, but she was not told why. She later learned that Burkhardt felt Elmer would be uncomfortable if he (Burkhardt) interviewed him.

11. The panelists asked each candidate eight questions that had been prepared in advance, and rated the responses "unacceptable," "acceptable," or "more than acceptable." In addition to considering the responses to the questions, the panelists considered the candidates' overall qualifications in the following areas: a) regulatory/investigatory, b) supervisory and c) animal health program knowledge.

12. Two candidates stood out after the questioning: Cindy Partridge and Kenneth Milbeck. Burkhardt, Graham and Knauer rated Partridge number one and they scored Partridge uniformly high. Burkhardt, Graham and Knauer rated Milbeck next highest although their scores of the candidate varied greatly. Burkhardt gave Milbeck the highest score of the two candidates he interviewed (Milbeck and Partridge). Graham rated Partridge and Milbeck the same while Knauer ranked Partridge considerably higher than he rated Milbeck. Both Graham and Knauer ranked Elmer considerably lower than Partridge and Milbeck with Graham giving Elmer a slightly better score than Knauer.

13. Following each interview, Tom Knauer, Sheila Graham and Terry Burkhardt discussed the three candidates' answers and their thoughts on the answers. Burkhardt was in the room, but did not participate in the discussion of Appellant's interview. Partridge was considered to have the strongest interview based on her answers to the questions and her level of experience in the three areas noted above. She had worked for the Division of Animal Health for over twenty years in a variety of capacities, including inspector, investigator and animal health consultant. During the past seven years as an investigator, she had served as a team leader for other investigators, and had become knowledgeable about animal health regulatory programs and disease prevention programs. This broad-based experience in Animal Health allowed Partridge to score well in all three categories noted above in Finding of Fact Number 11. Milbeck had strong regulatory and supervisory experience, and a strong interview, but had no specific animal health-related program knowledge which was a big negative as far as the interview team was concerned.

14. The two panel members who interviewed Elmer did not consider him to have had a strong interview based on his relatively low scores on the eight questions. In terms of the general areas of experience/knowledge, Elmer had extensive program knowledge related to the slaughter of animals for human consumption, but this experience and knowledge did not always directly apply to a program designed to maintain and improve animal health agriculture programs.

15. In the supervisory area, the panelists considered Partridge's team leader experience as relevant although not as relevant or strong as the supervisory experience of both Elmer and Milbeck. The panelists also considered the supervisory category to be less important than the other two since a) supervisory duties were only 15% of the position; b) the position is a first-line supervisor position with adequate training provided by the Office of State Employment Relations (OSER); and c) the other two categories, regulatory/investigatory experience in animal health-related programs and an animal health program background, would require much more extensive training if the successful candidate did not already possess the necessary knowledge. Partridge was considered the strongest candidate in these latter two categories; Milbeck had no animal health program background; and Elmer's answers to the interview questions did not demonstrate the necessary knowledge and experience in animal health agriculture programs.

16. The panel recommended Cindy Partridge to the Division Administrator, Dr. Robert Ehlenfeldt. Dr. Ehlenfeldt agreed and sent the recommendation to the Bureau of Human Resources for final approval. Partridge was then hired into the position. She needed no training except for the mandatory first-line supervisor training presented by OSER. If either Milbeck or Elmer had been hired, they would have needed additional program training.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

### CONCLUSIONS OF LAW

1. The Commission has the authority to review a non-selection decision pursuant to Sec. 230.44(1)(d), Stats.

2. Mr. Elmer has the burden to establish that DATCP acted illegally or abused its discretion when it decided not to hire him for the Animal Health Investigator Supervisor position in the Division of Animal Health at DATCP.

3. He has failed to sustain his burden of proof.

4. DATCP did not act illegally or abuse its discretion when it decided not to hire Mr. Elmer for the Animal Health Investigator Supervisor position.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**

Respondent's hiring decision is affirmed and this matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 29<sup>th</sup> day of June, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Parties:

Stephen C. Elmer  
1917 Paso Roble Way  
Madison, WI 53716

Rod Nilsestuen  
Secretary, DATCP  
P.O. Box 8911  
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**Department of Agriculture, Trade and Consumer Protection (Elmer)**

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

This matter, which arises from the decision not to select Stephen C. Elmer for an Animal Health Investigator Supervisor position in the Division of Animal Health at the DATCP, is being reviewed pursuant to the Commission's authority under Sec. 230.44(1)(d), Stats.:

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.

In order to prevail, Mr. Elmer must show that DATCP's decision not to hire him was either illegal or an abuse of discretion.

Mr. Elmer has focused his case on his allegation that Respondent's decision was an abuse of discretion. However, in his post-hearing brief, he at least arguably contends that DATCP acted illegally when someone provided Terry Burkhardt with the information that Elmer was on the list of candidates to be interviewed on December 19th. To the extent that he has raised this issue, Elmer's contention fails. He made no attempt to offer evidence sufficient for the Commission to determine the date or manner that Burkhardt learned Elmer was a candidate. He also failed to identify any language in the civil service code that would prohibit panelists from learning the names of the candidates prior to the commencement of the interview.<sup>1</sup>

In DEPARTMENT OF CORRECTIONS (ZEILER), DEC. NO. 31107 (WERC, 12/7/04), the Commission adopted the following interpretation of an "abuse of discretion":

An "abuse of discretion" is "a discretion exercised to an end or purpose not justified by, and clearly against reason and evidence." As long as the exercise of discretion is not "clearly against reason and evidence," the commission may not reverse an appointing authority's hiring decision merely because it disagrees with that decision in the sense that it would have made a different decision if it had substituted its judgment for that of the appointing authority. (citations omitted)

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<sup>1</sup> Appellant notes in his post-hearing brief that the record does not show how Burkhardt learned Elmer was on the interview list. He suggests that Bauer might have provided the information to Burkhardt which would have been a violation of the "Exam Security Agreement" that Knauer presumably signed. Even if the Exam Agreement could be construed to bar Knauer from mentioning Elmer's name to Burkhardt, it is at least equally likely that Burkhardt and the other panelists learned the names of the candidates when they received an interview schedule several days in advance of the December 19th interview. Given that the Appellant has the burden of proof in this matter, he has failed to establish the facts necessary to find that Respondent's conduct was illegal.

Mr. Elmer argues that Respondent abused its discretion because of Terry Burkhardt's decision to recuse himself from interviewing the Appellant as well as the manner in which he informed Knauer of this decision. In this regard, Mr. Elmer argues that Burkhardt's actions were intended to discredit Elmer, bias the interview panel, and ensure he would not be hired. Mr. Elmer also argues that Respondent abused its discretion because Burkhardt participated in the interviews of the other candidates and in the panel's post-interview discussion.

However, contrary to Mr. Elmer's assertion, Knauer did not testify that Burkhardt told him he had an objection to interviewing Elmer because of past problems with Elmer and because of concern over Elmer's comfort level. Knauer's testimony was that Burkhardt came to him and said that there was one candidate (Elmer) who "he could not evaluate" but "he [Burkhardt] did not say anything more." Nothing in the record shows that Burkhardt explained the reason he was recusing himself from Appellant's interview. There is no evidence to support Mr. Elmer's claim that Burkhardt's simple request to be removed from the interview panel for Elmer's interview was an attempt to discredit Elmer, bias the interview panel and ensure Elmer would not be hired. Burkhardt provided Knauer no more information than was necessary to make his conclusion known.

Even assuming *arguendo* that Burkhardt told Knauer the reasons behind his recusal, Appellant's case must fail. Burkhardt was not obliged to provide a reason for removing himself from the interview process for Elmer, but past problems with Elmer and a desire that Elmer be comfortable in his interview are rational reasons for removing oneself from the interview panel for Elmer.

Mr. Elmer argues that Burkhardt's alleged statements as to why he didn't want to interview Elmer violated a "Settlement Agreement" between Elmer and Respondent. (Appellant Exhibit No. 14). In particular, Mr. Elmer contends that Burkhardt's decision to approach Knauer and (allegedly) state there were problems with Elmer in the past is contrary to the following provision of the Agreement:

The department shall maintain a letter of recommendation identical to the letter attached hereto and identified as Exhibit A. **The letter shall be the sole response of the department to any inquiries, whether written or oral, concerning Elmer's employment with the department.** (Emphasis in the original).

However, there were no inquiries, written or oral, in the instant dispute concerning Appellant's employment with the department. If he made them, Burkhardt's alleged statements merely explained the reason he could not interview Appellant. They did not violate the "Settlement Agreement."



Mr. Elmer next argues that Respondent's decision to allow Burkhardt to withdraw from Elmer's interview but continue to be part of the interview panel for the two other candidates interviewed on December 19, 2003, was arbitrary, capricious and an abuse of discretion. Mr. Elmer opines that Respondent should have excluded Burkhardt from the interview panel for all candidates.

About four months after conducting the first round of interviews and only three to four days prior to the December 19<sup>th</sup> interview, Respondent's Bureau of Human Resources learned of Burkhardt's objection to interviewing Elmer. The Bureau's initial response was to recommend that Burkhardt be replaced with another panelist for Elmer's interview so that the three candidates certified via open recruitment would be interviewed by three interview panel members. However, on the morning of the interview date the Bureau learned that the Division was unable to secure a replacement panelist. The Bureau then instructed Knauer to remove Burkhardt from the panel during Elmer's interview, but have Burkhardt participate in the interviews of the other two candidates.

This was a reasonable response under the circumstances. The alternative would have been to postpone the interview and start over again with an entirely new panel or new panel member to replace Burkhardt.<sup>2</sup> However, this would have been unfair to the candidates who had been waiting for months for the final decision, and would have caused wasted time and effort. In addition, there is nothing inherently unfair about using two interviewers instead of three as long as the scoring system did not unfairly penalize Elmer. The OSER guideline clearly recommends two or three interviewers. Finally, Mr. Elmer was not negatively affected by having one less interviewer. The two interviewers rated his responses almost the same. In Respondent Exhibit No. 12, a third column is added showing a *hypothetical* third interviewer rating Elmer at the highest level for all responses. Even if a third interviewer had rated Elmer as high as the rating system allowed, his overall rating would have still placed him behind the other two candidates interviewed on December 19, 2003.

Mr. Elmer argues, however, that the two panel members who proceeded with his interview, Knauer and Graham, were biased against him. The record does not support a finding that said panel members were biased. Knauer knew Elmer from when he (Knauer) worked in the field. Knauer would chat with him from time to time and knew Elmer had some conflict with the Department but Knauer was not involved in the matter and did not know the nature of the dispute. Graham did not know Elmer at all and was unaware why he had had problems with the Respondent in the past. She ultimately learned that Burkhardt felt that Elmer would be more comfortable if Burkhardt was not on the panel for his interview, but there is no evidence in the record that this influenced her actions as an interviewer.

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<sup>2</sup> A similar circumstance would occur if interviews of candidates had been scheduled over four days, and one of the panelists became ill and was unable to participate in the final day of interviews. Mr. Elmer would presumably argue that any interviews on the final day would have to be rescheduled, the process would have to start all over again with a different panel, or the ill panelist's assessments of the first three days of interviews would have to be ignored. While the Employer could conceivably choose to start all over again with an entirely new panel, it would not be an abuse of discretion ("clearly against reason and evidence") to choose not to do so.

Mr. Elmer next argues that gross inconsistencies and negligence apparent in the written records of the interviews clearly illustrate a bias against him. He refers, for example, to: 1) inconsistencies between interview panel member's benchmark ratings for the same questions; 2) marking candidates other than Elmer as "Acceptable" or "More than Acceptable" without identifying the required number of benchmarks; 3) marking candidates other than Elmer as "Acceptable" or "More than Acceptable" by identifying benchmarks without any interview notes; 4) creating new benchmarks for candidates other than Elmer in order to rank them as "Acceptable" or "More than Acceptable"; 5) failing to give him full credit for questions answered or benchmarks identified; and 6) giving other candidates credit for answering questions even though the response was inappropriate.<sup>3</sup> Many of these contentions are premised on the assumption that every statement by a candidate that is relevant to a question, benchmark or category will be reflected on each panelist's notes. Obviously, that is not a reasonable assumption. Each panelist's notes are far different from a transcript of the interview.

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<sup>3</sup> Each question listed at least several benchmarks. For example, the question asking a candidate about his/her verbal skills included the following benchmarks:

More Than Acceptable

Candidate demonstrates excellence in these characteristics

- Volume
- Clarity
- Listening habits, such as eye contact or verbal cues

Acceptable

Candidate demonstrates competence in the above characteristics, but not excellence.

Unacceptable

Candidate fails to demonstrate competence in any one of the above characteristics.

Other questions contained many benchmarks:

QA Why do organizations use individual performance appraisals? QB. What are some of the drawbacks of using them?

More Than Acceptable

Candidate provides 5 or more of the responses below.

Acceptable

Candidate provides 4 of the responses below.

Unacceptable

Candidate provides 3 or fewer of the responses below.

- To give feedback to employees
- To coach employees
- To motivate employees
- To determine compensation
- To provide legal documentation
- To provide professional development
- To decide promotions
- Other appropriate

Mr. Elmer has not shown that the failure of panel members to take notes or record benchmarks was specific to him. To the contrary, a review of the record shows that both Knauer and Graham took complete notes at times, and less complete notes at other times. Graham testified that she tried to take notes that would help her in evaluating candidates' responses. Nevertheless, the panelists were consistent in their manner of taking notes for all three candidates. Also, in some cases where the handwritten notes are sparse, the panel members have recorded a high score, indicating the failure to record benchmarks in response to a question doesn't necessarily indicate benchmarks were not recognized. This happened for Milbeck and Partridge, as well as Appellant. Graham testified that she did not always circle or mark benchmarks when she graded a candidate's response. The record further indicates that Burkhardt was consistent in his note-taking for the two candidates he interviewed.

It is true that the panel members failed to follow the rigorous directive of the OSER Resource Guide concerning note-taking.<sup>4</sup> However, OSER provides these guidelines as a "resource tool" that "consists of recommendations, which may be used at the discretion of the agency." It would have been good practice for the interviewers to take better notes and record benchmarks more accurately. However, the fact that the note-taking may have been randomly incomplete does not rise to the level of "bias."

Finally, Mr. Elmer argues that he was better qualified<sup>5</sup> than Partridge, and that Respondent's failure to select him for the Animal Health Investigator Supervisor position indicates the interview panel was biased. In support thereof, Mr. Elmer points to the results of the examination process that was completed before a certification list was created. Application materials included a State of Wisconsin Employment Application form, current resumé and a two-page narrative response in three areas as required in the Job Announcement. The candidates were not identified when their application information was reviewed and rated by a rating panel. Of those examined, Appellant received the highest score. Mr. Elmer opines this clearly establishes that when the candidates were rated fairly and equally, he was the best qualified.

The first part of the examination process was an initial screening to determine which applicants were minimally qualified for the position. Elmer received a passing grade as did two other candidates. Respondent's Bureau of Human Resources gave the list of the three unranked interview candidates to the Division in early December. The candidates were then interviewed and asked a series of questions. After each candidate was interviewed, the

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<sup>4</sup> The OSER Resource Guide provides that the interview panel "document the interview evaluations in some manner." It also provides: "At a minimum, interviewers should make detailed notes on each candidate's responses and record any significant observations of job-relevant behavior (delivery, organization of responses, extent to which responses satisfy sample or desired responses, etc.)"

<sup>5</sup> In reviewing a selection decision, the Commission's role does not include determining the best criteria to use. The Commission's scope of review in a non-selection case is "to determine whether the criteria used by respondent were reasonably related to the duties and responsibilities of the position to be filled and were uniformly applied." *POSTLER v. DOT*, Case Nos. 94-0016-PC, 94-0024-PC-ER (Pers. Comm. 10/16/95); *AFFIRMED BY DANE COUNTY CIRCUIT COURT, POSTLER v. WIS. PERS. COMM.*, 95CV003178, 10/9/96; *AFFIRMED BY COURT OF APPEALS, POSTLER v. WIS. PERS. COMM.*, 96-3350, 1/27/98.

interviewers got together and discussed the candidate's responses. This discussion focused on the candidate's experience in three main areas: animal agriculture background/experience, lead work/supervision experience and investigation/case work. This discussion went beyond the candidate's answers to the eight benchmarked questions. The interviewers arrived at a consensus as to who was the leading candidate. References were then checked for the leading candidate.<sup>6</sup> After all these steps were completed, the interview panel recommended to the Division administrator that Partridge be hired to fill the position. Contrary to Mr. Elmer's assertion, Respondent was not in a position to determine the best qualified candidate for the position until after the entire interview/selection process was completed. If the initial examination results represented the most reliable evidence of the candidate's relative qualifications for a vacant position, there would be no reason to conduct interviews at all.<sup>7</sup>

The Division requested approval to hire Cindy Partridge for the vacant Animal Health Investigator Supervisor position in the Division of Animal Health. (Appellant Exhibit No. 11). In its letter requesting approval for hire, the Division gave the following rationale:

Based on the interview, resumé and references, Cindy Partridge was the best-qualified candidate for the Animal Health Investigator Supervisor position. Cindy Partridge worked ten years for DATCP as a Pseudorabies Animal Health Inspector and eight years as an Animal Health Consultant investigating alleged complaints. She has done extensive investigations, gathered evidence to prove cases and worked with district attorney offices around the state in prosecuting several entities. Cindy Partridge has experience in obtaining special inspection warrants and affidavits and can advise or give direction to the animal health inspectors based on experience and knowledge. She also has an understanding of animal agriculture and knows some of the problems facing the livestock industry.

Mr. Elmer rejects these conclusions and makes numerous arguments why he, not Partridge, was the best qualified candidate for the position. However, for the reasons discussed below, we reject his contentions.

The Animal Health Investigator Supervisor job announcement stated, in part: "this

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<sup>6</sup> The reference check occurred after the panelists ranked the interviewed candidates. It was not an abuse of discretion to check the references of the #1 ranked candidate to confirm the assessment the panel had already made.

<sup>7</sup> Interviews are not part of the competitive examination process described in Sec. 230.15 and 16, Stats. Once the appointing authority receives the list, he/she must exercise discretion to appoint a certified candidate who, in the opinion of the appointing authority, is the best candidate based on selection criteria reasonably related to the position's responsibilities. This is a more flexible standard than applies to the competitive exam process. *POSTLER V. DOT, SUPRA.*

effort to gain voluntary compliance from owners, dealers, etc. with animal health rules.” Along with extensive knowledge of Wisconsin and USDA animal health rules, knowledge of animal diseases, animal production practices, investigative methods and research techniques, including evidence collection and effective interviewing techniques, and court proceedings and legal matters, the position required “knowledge of personnel management and supervisory techniques.” Thirty-five percent of the position’s work activities involve managing the unit’s field inspections activities and program initiatives. The position’s remaining goals are: technical program duties, including special field inspection assignments (20%); developing and delivering training for staff and industry (20%); supervising unit staff (15%); and assisting and serving as back-up to the Compliance Officer (10%).

It is true that Mr. Elmer’s supervisory experience outweighs that of the successful candidate – Partridge. However, the panelists reasonably considered lead worker experience to be relevant to the supervisory category. Partridge had experience as a lead worker for the same positions that the disputed job was to supervise. The panelists also considered the supervisory category to be less important than the other two areas because: 1) it was only 15% of the position; 2) the position served as a first-line supervisor and adequate training is provided by the OSER; and 3) the other two categories, regulatory/investigatory experience and knowledge of the animal health programs, would require much more extensive training if the successful candidate did not already possess the necessary knowledge.

In addition, while Elmer had experience in investigations, performing case work and preparing cases for prosecution, Partridge had more experience in these areas in the Animal Health Division. Partridge also prepared more cases for civil/criminal prosecution than Elmer.

It is also true that Elmer had extensive knowledge and experience providing training. However, Partridge also had experience in training in the specific area of Animal Health.

Finally, it is clear that the critical factor for the interview panel in recommending a candidate for the position was experience, background and knowledge of Animal Health issues, programs, practices, policies and procedures. In this regard, Partridge was the best-qualified candidate. Her responses to the interview questions put her into the top group with candidate Milbeck. Her knowledge and many years of experience directly related to the animal health industry and to federal and state animal health programs. This knowledge and experience was superior to all the other candidates. She had a background in investigation, regulation and case work that was at least equivalent, if not superior, to Mr. Elmer. Although she had never been a supervisor before, she had served as a team leader for years in the field, and needed minimal training to be fully functional as a supervisor. Because of her program knowledge and experience, Ms. Partridge required no training except for the brief supervisory training mandated by OSER for all first line supervisors. For the foregoing reasons, we find that there was a rational basis for Respondent to choose Partridge, not Mr. Elmer, for the disputed position. Since there was a rational basis for Respondent’s actions, we cannot say it

was “clearly against reason and evidence” for DATCP to decide in January of 2004 to select Partridge, not Elmer, for the Animal Health Investigator Supervisor position, in the Division of Animal Health, of the Department of Agriculture, Trade and Consumer Protection.

In light of the absence of evidence that Respondent acted illegally or abused its discretion when deciding not to hire Mr. Elmer for the vacant Animal Health Investigator Supervisor position at DATCP, that decision must be affirmed.

Dated at Madison, Wisconsin this 29<sup>th</sup> day of June, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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