

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WALT SAVELAND, Appellant,

vs.

**Secretary, WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES, and Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION**, Respondents.

Case 20
No. 66447
PA(dmrs)-11

Decision No. 32033-A

Appearances:

Walt Saveland, appearing on his own behalf.

Paul Harris, Office of Legal Counsel, State of Wisconsin Department of Health and Family Services, P. O. Box 7850, Madison, Wisconsin, 53707-7850, appearing on behalf of the Respondents.

DECISION AND ORDER

Walt Saveland filed this matter with the Wisconsin Employment Relations Commission on November 11, 2006 as an appeal of an examination action. On November 28, 2006, a pre-hearing conference was held via telephone, during which the Appellant and counsel for the Respondents agreed to the following statement of the issue:

Was the Respondent's action in June and October, 2006, deeming the Appellant to not be eligible for the position of Program Evaluation Manager in the Bureau of Milwaukee Child Welfare contrary to the civil service code?

By Order dated March 1, 2007, the Commission designated Stuart D. Levitan as Hearing Examiner. Pursuant to Secs. 227.46(1), Stats., Examiner Levitan convened an administrative hearing in Milwaukee, Wisconsin on March 27, 2007. At the close of the hearing, the Appellant made a brief oral argument; both parties waived their right to file written briefs. The hearing examiner issued a proposed decision on May 23, 2007. Written objections were filed and the final date for submitting a written response was June 20, 2007.

No. 32033-A

For the reasons set forth below, the Commission concludes that the Appellant has failed to prove his claim.

FINDINGS OF FACT

1. Among its various general government activities, the State of Wisconsin has created a Department of Health and Family Services (DHFS). The DHFS maintains and operates a Division of Children and Family Services, which has within it a Bureau of Milwaukee Child Welfare. The Bureau of Milwaukee Child Welfare conducts child protection intake and initial assessment functions in response to child abuse and neglect reports; case management services for children in out-of-home placement, and their families; foster care recruitment, licensing and adoption services; and safety services for children and their families to prevent out-of-home removal.

2. The Administrator of the State of Wisconsin Division of Merit Recruitment and Selection has delegated to DHFS authority to prepare and review application materials for the position of Child Protective Services Manager – Program Evaluation Manager (CPSM-PEM). In the late summer or early fall of 2004, the DHFS caused to be published a Job Announcement for the position of CPSM-PEM, Job Announcement Code 04-02239, with the following specifics:

Job Duties

This position evaluates activities of public and private staff responsible for providing child welfare services; directs corrective action(s) to ensure standards of performances are met; identifies and analyzes system wide trends; develops and implements management policies and procedures to ensure consistency throughout the system; provides management direction to ensure quality outcomes; and determines appropriate system-wide resource allocations as necessary for public and private staff.

Job Knowledge, Skills and Abilities

Program evaluation and management/supervisory techniques; organizational and administrative strategies which include quality and efficiency; social work principles and practices; federal and state rules and statutes; policies and procedures related to child welfare services, foster care, medical assistance; adoption and consultation techniques; organization of a coordinated, culturally competent child welfare delivery system in partnership with the community; social and psychodynamic factors concerning child welfare services; adoptive children, birth parents and adoptive families; and effective oral, written and interpersonal communication skills.

RÉSUMÉ SCREEN CRITERIA

CHILD PROTECTIVE SERVICES MANAGER PROGRAM EVALUATION MANAGER (PEM)

TO BE ACCEPTABLE, APPLICANTS MUST PASS CRITERIA NUMBER ONE
AND AT LEAST ONE OF THE THREE REMAINING CRITERIA:

1. Program Evaluation and monitoring

Acceptable: Applicant indicates significant experience (e.g., over 1 year) in program evaluation and monitoring. Response indicates experience performing such activities as conducting program evaluations, analyzing program performance standards and designing and implementing program improvement plans.

Less than acceptable: *Little or no experience in program evaluation and monitoring. May have experience assisting in activities but did not have lead-role responsibility or may have had experience limited to compliance activities related to auditing individual cases/records.*

2. Functioned as program analyst, evaluator or consultant to human services agencies.

Acceptable: Significant experience as an analyst, program evaluator, or technical consultant/advisor to public/private human services agencies (covering various aspects of human services).

Less than acceptable: *Limited or no experience functioning in above capacities.*

3. Supervisor/manager in human services setting

Acceptable: Experience as a supervisor/manager in human services setting with experience providing direct line supervision of social workers or other professional staff. Candidate has demonstrated linkages to child welfare services or other professional staff. Candidate has demonstrated linkages to child welfare services or other children/family programs through educational preparation or indirect working relationships.

Less than acceptable: *Limited or no experience functioning in above capacity.*

4. Professional work experience in child welfare setting or with other children/family programs.

Acceptable: Demonstrated case management experience working in child welfare setting or with other children/family programs. Has performed duties such as community training or social workers' training, lead worker duties, oversaw activities of interns or trainees, provided coverage for supervisory personnel during absences, or program development and coordination. Candidate has demonstrated leadership/management skills beyond casework duties or equivalent performed.

Less than acceptable: Limited or no experience functioning in above capacity.

3. On or about December 17, 2004, the DHFS Division of Management and Technology informed Appellant that he had been graded as "Eligible" for the Child Protective Services Manager position, code 0402239. Appellant was interviewed for the position, but was not hired. The following spring, DHFS issued another Job Announcement (Code 0500778) for the same CPSM/PEM position; after the application process, DHFS informed the Appellant that he had again been given a Grade/Status of "Eligible." The Appellant was again not hired, as the department chose an internal candidate. Following the hire of the internal candidate, the Appellant wrote to various department officials to critique the hiring process and other aspects of the bureau's administration.

4. On or about March 29, 2006, DHFS posted a job announcement for a CPSM-PEM (Code 0600586), with particulars that were substantially similar, and in many ways identical, to those contained in the announcement for 0402239 (Finding of Fact 2), to wit:

Job Duties

This position evaluates activities of public and private staff responsible for providing child welfare services and directs corrective action to ensure standards of performances are met. Identifies and analyzes system wide trends; develops and implements management policies and procedures to ensure consistency throughout the system; provides management direction to ensure quality outcomes; and determines appropriate system-wide resource allocations as necessary for public and private staff.

...

Job Knowledge, Skills and Abilities

Program evaluation and monitoring techniques; efficient quality service delivery strategies; social work principles and practices; federal and state rules and statutes; policies and procedures related to child welfare services, foster care and, medical assistance; consultation techniques; organization of a coordinated, culturally competent child welfare delivery system in partnership with the community; social and psychodynamic factors concerning child welfare

services, adoptive children, birth parents and adoptive families; and effective oral, written and interpersonal communication skills.

5. Notwithstanding the significant similarities between the job duties and knowledge/skills/abilities of the two positions, the Résumé Screen Criteria for position 0600586 were substantially distinct from that of position 0402239, to wit:

**RÉSUMÉ SCREEN CRITERIA
CHILD PROTECTIVE SERVICES MANAGER
PROGRAM EVALUATION MANAGER (PEM)**

**APPLICANTS MUST PASS BOTH CRITERIA TO BE CONSIDERED
ELIGIBLE:**

1. Program evaluation and monitoring

Acceptable: Applicant indicates significant experience in program evaluation and monitoring. Response indicates experience performing such activities as conducting program evaluations, analyzing program performance standards and designing and implementing program improvement plans.

2. Implementing, evaluating and monitoring policies and programs related to child welfare services.

Acceptable: Applicant indicates significant experience implementing, evaluating and monitoring child welfare or related human services policies and programs (e.g., mental health, health care, youth development). The work involved interacting with a large number and variety of agencies or organizations and entailed work related to child welfare or human services.

6. On April 16, 2006, Appellant submitted by e-mail a letter of interest and résumé in response to Job Announcement 0600586, as follows:

My professional career has been devoted to the statistical examination of social and health problems in order to develop and prescribe corrective actions. My earliest such experience focused on assisting Canadian federal officials to better plan and allocate resources for the education of native Indian young people who were dropping out of school in epidemic proportions. Subsequently, I contributed to policy examinations of income-support options for Canada and to the possibility of decriminalizing the use of marihuana.

While at the Laboratory Centre for Disease Control, in Ottawa, Canada, I concentrated on developing and exploiting statistical systems to support disease-prevention and health-promotion programs. During the same period, I

also managed computer-processing services for five years. I concluded my service in the Canadian federal government by using statistics to support the systemic implementation of affirmative action and the individual enforcement of human rights.

More recently, at the Medical College of Wisconsin, I developed interest and expertise in violence prevention, especially the prevention of domestic violence and of child-abuse and neglect. In addition to becoming personally acquainted with the people and issues of the Bureau of Milwaukee Child Welfare and the Child Abuse Prevention Network, this entailed my in-depth familiarization with some of their program statistical systems. Data from these systems may be examined from multiple angles:

- a. The costs and outcomes of childhood well-being interventions,
- b. The completeness and burden of documentation for interventions and
- c. The continuing of interventions (including both staff turnover and inter-organizational coordination).

...

Appellant attached to his cover letter his five-page, single-spaced résumé, which was headed, "Specialist in Every Step in the Production and Application of Health and Social Statistics,

- from designing and fielding data-collection instruments
- to capturing and editing data
- then analyzing, reporting and interpreting results."

As a "Summary of Noteworthy Accomplishments," Appellant cited his work in Medical Biostatistics, Independent Consulting and Government Statistics; none of which was related directly to "experience implementing, evaluating and monitoring child welfare or related human services policies and programs."

In reverse chronological order, Appellant recounted his professional career as follows:

Production and Application of Health and Social Statistics

2002-2005: Biostatistician, Medical College of Wisconsin. (Representative project: "Study and present to colleagues in family medicine the intricacies of the Health Insurance Portability and Accountability Act (HIPAA) and its practical implications for clinical and population research.")

1996-2001: Real Estate Developer, Black Jack Dealer

1990-1995: Free-Lance Consultant. (Representative project: “For the Canadian Environmental Assessment Review Office, program WORDPERFECT to index texts on the burial of nuclear waste [4,000 pages in eleven volumes], using 2,300 index terms.”)

1987-1989: Senior Research Officer, Government of Canada. (Project: “Design and manage a contract research program on pay equity.”)

1977-1986: Department of National Health and Welfare. (Representative projects: “Conceptualize and analyze the social and behavioral contingencies of health status, as well as the appropriate contributions of different kinds of statistical vehicles in monitoring, targeting and researching health problems.”)

1968-1976: Apprentice Research Officer, Government of Canada. (Representative project: “Analyze cohort labor-force patterns and interactions between aging, fertility and immigration in population forecasts.”)

Appellant noted also his University Degrees (M.A. in Sociology, Carleton College, 1973, and an A.B. in Sociology, University of Chicago, 1967) and 49 reports and publications in clinical and related health research, computerized text indexing, analysis of health statistics, analysis of social statistics, large-scale data production and large-scale data design. None of the reports appear to relate directly to implementing, evaluating and monitoring child welfare or related human services policies and programs.

7. On or about May 1, 2006, another applicant submitted a letter and résumé, detailing a 20-year career as a social worker and administrator for the Milwaukee Public School District, including service as a member of the Milwaukee Child Abuse Review Team, as a gubernatorial appointee on the Child Welfare Partnership Council and supervision of 105 school social workers and assistants.

8. The packet of materials for the PEM position, prepared by DHFS Human Resource Specialist Gregg Dalton, was forwarded to a résumé screening team consisting of DHFS/BMCW employees Tiana Robinson and Martha Johnson, both of whom had previously performed all or most of the duties of the position or classification. At the time of the résumé screening for the PEM position, Johnson was the section chief for Policy Development and Quality Improvement, with supervisory responsibility over the Program Evaluation Managers. At the time of this screening, both Johnson and Robinson each understood that, in order to receive a grade of “Eligible” on the résumé screening examination, an applicant had to meet both of the “Résumé Screen Criteria.” Johnson considered Applicant 20 (the Appellant) to have met Criterion 1 but not Criterion 2, and she thus scored the applicant as “Not Eligible.” Robinson did not consider Applicant 20 to have met either criterion, and thus also scored the

applicant as “Not Eligible.” Both Robinson and Johnson rated the applicant referenced in Fact 7 as “eligible.” Robinson and Johnson agreed on the scoring for all applicants other than the Appellant. Johnson no longer works for the DHFS.

9. Following the résumé screening examination of May 23, 2006, copies of Johnson and Robinson’s “Résumé Screening Results” for the “CPSM/PEM” position were forwarded to Dalton’s office in Madison. DHFS on June 2, 2006 mailed the Appellant a “Notice of Examination Results” on the Job Announcement Code 0600586, advising him that on the “Exam Date” of June 1, 2006, he had received a “Grade/Status” of “Not Eligible.”

10. The Appellant filed a letter of appeal with the Commission on July 11, 2006, which the Respondent challenged as untimely. On September 21, 2006, the Commission issued an Order granting the Respondent’s Motion to Dismiss on that ground.

11. Because not enough candidates that successfully passed the civil service examination and interview/reference process were available to fill all the CPSM/PEM vacancies, the DHFS in August re-announced the position. All particulars of the application process remained the same, including the position description, résumé screen criteria and screening panel. The Appellant re-applied, but was not considered; as Dalton explained in a letter dated October 12, 2006: “Since your application/examination material have been received and reviewed previously, your eligibility has already been determined as ‘Not Eligible.’” Describing the Appellant’s November 11 appeal as essentially a second appeal of his first case, the Respondent asserted in correspondence dated December 8 that the Commission lacked jurisdiction to consider the appeal, which it claimed was untimely. The Respondent did not file a formal Motion to Dismiss on this ground, and did not renew its objection at hearing.

12. The determination by Johnson and Robinson that Applicant 20 had not met Criterion 2 for the CPSM/PEM position and was therefore “Not Eligible” for appointment was reasonable.

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

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Sec. 230.44(1)(a), Stats.

2. The Appellant has the burden of establishing that Respondent’s determination that Appellant was “Not Eligible” for the Child Protective Services Manager-Program Evaluation Manager (Job Code: 0600586) was contrary to the Civil Service Code and applicable administrative rules.

3. The Appellant has failed to sustain that burden.

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

ORDER¹

Appellant's appeal is dismissed in its entirety.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of August, 2007.

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

¹ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

**Department of Health and Family Services and
Division of Merit Recruitment and Selection (Saveland)**

MEMORANDUM ACCOMPANYING DECISION AND ORDER

ISSUES

This appeal presents the following issue:

Was the Respondent's action in June and October, 2006, deeming the Appellant to not be eligible for the position of Program Evaluation Manager in the Bureau of Milwaukee Child Welfare contrary to the civil service code?

DISCUSSION

Appellant challenges Respondents' determination that Appellant's "Grade/Status" for the "CPSM" position (Job Code: 05-00586) is "Not Eligible." The relevant statutory provisions state as follows:

230.15 Appointments, promotions, changes in classified service. (1)

Subject to the restriction under s. 230.143, appointments to, and promotions in, the classified service shall be made only according to merit and fitness, which shall be ascertained so far as practicable by competitive examination. . . .

. . .

(4) All examinations, including minimum training and experience requirements for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

(5) . . . The administrator shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations and determining the relative ratings of competitors.

. . .

Timeliness

The Appellant has applied for the CPSM-PEM position four times. In December 2004 and June 2005, he received a Grade/Status of "Eligible," while in June 2006 he received a Grade/Status of "Not Eligible." In October 2006, the Respondent declined to consider anew Appellant's application when the position was re-announced, relying instead on the earlier determination of "Not Eligible."

Describing the Appellant's challenge to the October action as essentially a second appeal of his first case, the Respondent asserted in correspondence dated December 8, 2006 that the Commission lacked jurisdiction to consider the appeal, which it claimed was untimely. The Respondent did not file a formal Motion to Dismiss on this ground, and did not renew its objection at hearing.

The 30-day time limit set by Sec. 230.44(3), Stats., relates to the Commission's competency to proceed rather than to subject matter jurisdiction; as such, a timeliness objection is subject to waiver. *STERN v. WERC*, 296 Wis.2d 306, 722 N.W. 2d 594, 2006 WI APPELLANT 193. Although the Respondents did not agree on the record that the instant appeal was timely, we may consider that a party seeking to pursue such objection at this point in the process has waived its objection. *JENSEN v. DPI*, CASE NO. 99-000-PC (PERS. COMM. 2/11/2000).

Despite the dismissal of the earlier appeal on timeliness grounds, the instant appeal has been presented and argued in such a way that the focus is limited to the résumé screen conducted by Johnson and Robinson in May 2006, as relied upon by the Respondents in October. We now turn, therefore, to the question of whether the results of that screen – the determination that the Appellant was not eligible for the position of CPSM-PEM – was contrary to the civil service code. As noted above, we have determined that it was not.

Merits

Consistent with the Job Announcement, the competitive examination for the CPSM – PEM position was conducted by screening the application materials; specifically the résumé and cover letter. This résumé screening was conducted by DHFS employees Martha Johnson and Tiana Robinson, both of whom had previously performed all or most of the duties of the position or classification.

Although Appellant noted a slight deviation between the terminology in the job announcement and the screening criteria, he did not offer evidence that the criteria used in the résumé screening process were insufficiently job-related as measured by appropriate validation standards or that the résumé screening process used by Respondents was otherwise unreliable. Rather, Appellant argues that his education, training and experience establish that he is minimally qualified for the CPSM-PEM position. Appellant asks that he be found eligible for appointment to this position.

Appellant is particularly disturbed that he was twice found eligible for appointment to this same position, but later was found to be not eligible. Appellant stated he believed he was being retaliated against because he had criticized certain aspects of the DHFS performance. He also found it suspicious that the two screeners disagreed on whether or not he met criterion 1, which he noted was the only disagreement between them out of 23 applications they reviewed. However, Appellant offered no credible evidence to support this theory, which was also rebutted by testimony establishing that the materials which Robinson and Johnson reviewed had all applicants' identities redacted.

Instead, the DHFS presented testimony and evidence establishing that, although the position still had the same job duties and required skills, the application process had changed. Specifically, the Résumé Screen Criteria for the times the Appellant had been found to be eligible required the applicant to pass Criterion 1, and at least one of three other criteria; when the Appellant applied in 2006, the process had been changed to require an applicant to pass each of two criteria.

Johnson credibly testified that their determination that the Appellant was “Not Eligible” was based upon her independent conclusions that Appellant’s application materials did not establish that Appellant had met Criterion 2 of the “Résumé Screen Criteria,” which states as follows:

2. Implementing, evaluating and monitoring policies and programs related to child welfare services.

Acceptable: Applicant indicates significant experience implementing, evaluating and monitoring child welfare or related human services policies and programs (e.g., mental health, health care, youth development). The work involved interacting with a large number and variety of agencies or organizations and entailed work related to child welfare or human services.

The application materials evaluated by Johnson and Robinson during the résumé screening examination establish that the Appellant has had considerable education, training and experience in the production and application of statistics in various fields. But these materials do not reasonably establish that the Appellant has had significant professional experience in child welfare or related human services policies, as defined in Criterion 2 of the “Résumé Screen Criteria.” Johnson, a veteran bureau employee with personal experience in the position and current supervisory responsibility, testified credibly as to the importance of the skills and experience reflected in Criterion 2, and the Commission so finds.²

² In his objections to the proposed decision and order, Mr. Saveland raised two arguments. First, he contended that screening Criterion 2 (requiring an applicant to have “experience implementing, evaluating and monitoring child welfare or related human services policies and programs”) is a narrower standard than was described in the “How to Apply” paragraph of the March 2006 Job Announcement. That paragraph directed the applicant to specify “experience related to . . . (2) planning, developing, or implementing human services related programs and policies.” It is undisputed that Criterion 2 is not identical to the language in one clause of the Job Announcement. However, the question is whether the announcement language misled the Appellant so that he did not specify certain experience that would have qualified him for the position based on the criteria actually employed. There is no evidence to that effect, just as there is no evidence that Criterion 2 was not substantially related to the job responsibilities assigned to the vacant position in question. Mr. Saveland also contended that the Job Announcement, more specifically the same “How to Apply” paragraph, did such a poor job of describing the PEM position that had the position been correctly described, he would never have bothered to submit an application. The March 2006 Job Announcement included far more information about the duties and responsibilities of the position than was found in one paragraph. The announcement also described the position as one that:

- Evaluates activities of public and private staff responsible for providing child welfare services;
- Directs corrective action to ensure standards of performance are met;

In order to receive a “Grade/Status” of “Eligible,” the Appellant was required to meet both criteria in the “Résumé Screen Criteria” for the position. Johnson and Robinson’s conclusions that Appellant did not meet Criterion 2 of the “Résumé Screen Criteria” for the position were reasonable. The fact that Johnson but not Robinson found Appellant to have satisfied Criterion 1 – the only such disagreement between the screeners – has no bearing on the reasonableness of their shared conclusion that he failed to satisfy Criterion 2. By determining that Appellant’s exam “Grade/Status” for the Child Protective Services Manager-Program Evaluation Manager (Job Code: 06-00568) was “Not Eligible,” Respondents have not acted in a manner that is contrary to the Civil Service Code and applicable administrative rules.

Conclusion

The Appellant has failed to satisfy his burden of proof so this appeal is dismissed in its entirety.

Dated at Madison, Wisconsin, this 9th day of August, 2007.

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

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- Develops and implements management policies and procedures;
 - Provides management direction to ensure quality outcomes;
 - Determines appropriate system-wide resource allocations;
 - Requires knowledge of social work principles and practices;
 - Requires knowledge of policies and procedures related to child welfare services, foster care, and medical assistance;
 - Requires knowledge of social and psychodynamic factors concerning child welfare services, adoptive children, birth parents and adoptive families.

The fact that Mr. Saveland might not have decided to apply for the vacancy if he had better understood the job responsibilities does not suggest that the examination for the position was improper.

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