

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHARLES HAAKMA, Appellant,

vs.

Secretary, WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case 15
No. 67860
PA(sel)-51

Decision No. 32466

Appearances:

Charles Haakma, appearing on his own behalf.

James A. Stewart, Chief Legal Counsel, Department of Veterans Affairs, P. O. Box 7843, Madison, Wisconsin 53707-7843, appearing on behalf of the Department.

DECISION AND ORDER

This matter is before the Wisconsin Employment Relations as an appeal of two hiring decisions. The parties stipulated to the following statement of the issue for hearing:

Whether Respondent's decisions not to select the Appellant for the vacant positions for Building/Grounds Supervisor and Facilities Maintenance Specialist were illegal or an abuse of discretion.

A hearing was conducted on June 26, 2008 before Kurt M. Stege, a member of the Commission's staff serving as the designated Hearing Examiner. The parties chose to make closing arguments rather than filing post-hearing briefs. The Examiner issued a proposed decision on July 1, 2008, and no objections were filed by the due date of August 1, 2008.

For the reasons that are explained below, the Commission affirms the Respondent's decisions.

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

FINDINGS OF FACT

1. The Appellant, Charles Haakma, is a disabled veteran.
2. The Department of Veterans Affairs, which is the Respondent in this matter, operates the Veterans Home in Union Grove, as well as the Southern Wisconsin Veterans Memorial Cemetery.

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Buildings/Grounds Supervisor vacancy

3. Thomas Elias retired from a Buildings/Grounds Supervisor position at the Memorial Cemetery and Respondent sought to fill the vacancy. The position description for the position includes the following summary:

Under the general supervision of the Cemetery Operations Supervisor this position is responsible for the cemetery operation activities related to: grounds care, building maintenance, equipment maintenance, repairs, improvements, etc. A primary responsibility includes oversight of the daily maintenance of the cemetery grounds which are comprised of special and unique landscape designs, buildings, and other permanent or seasonal features. There is a high expectation for attention to detail in grooming to be handled in such a way as to be cognizant of the special circumstances and needs of visitors to the property. This position arranges and provides for plot verifications, assists directly in the preparation of gravesites, burials and activities after services. Additionally, this position has daily contact with families, funeral directors, contractors and other state agencies.

A primary role of the position is to supervise permanent/seasonal employees, and correctional inmates. Duties include assigning and reviewing the work performed; training and employee development; and responding to employee problems or discipline.

This position oversees recordkeeping processes relating to supply and parts inventories, burial activities, quality assurance for headstones, marker delivery, placement and up-keep of existing headstones and markers.

4. Appellant was not among the names of candidates certified for the Supervisor vacancy. Based on Appellant's status as a disabled veteran, the Respondent nevertheless chose to interview him for the position.

5. Appellant and eleven other candidates were interviewed on December 19 and 20, 2007. The interview panel consisted of Gary Dierks (Military Funeral Honor Team Supervisor), Dave Carroll (Building and Grounds Supervisor at the Union Grove Veterans Home) and Marian Lewandowski Jr. (Cemetery Director and the supervisor for the position in question).

6. The panel asked the same questions to all candidates. Most of the approximately 16 questions had "indicators," i.e. desirable responses. However, the "indicators" are not of record.

7. None of the questions asked for the candidate's age, veteran status or disability.

8. During his interview, Appellant did not indicate he had experience working in a cemetery and described a very limited experience operating and maintaining the heavy equipment used at the Memorial Cemetery.

9. The panel concluded that the interviewed candidates were unsatisfactory and Mr. Lewandowski submitted a written request of Respondent's human relations staff for additional names from the register:

None of the candidates interviewed had any past or current cemetery experience. The majority of the candidates had very limited experience operating, let alone maintaining, the types of heavy equipment utilized by the cemetery. The grounds maintenance related experience of the candidates trended towards maintaining small residential properties. The position description has four critical areas pertaining to knowledge, skills and abilities. The panel felt that none of the candidates were able to meet enough of those areas to have the background necessary to handle the position.

The SWVMC [Southern Wisconsin Veterans Memorial Cemetery] is experiencing and will continue to experience, over the [next] several years, a very heavy workload due to the number of WW II veterans passing away. This position requires a candidate to have the skills and experience necessary to begin performing the job immediately. The time and resources do not exist to train this supervisor from the ground up to do the job.

It is very common to request additional names from a register. Mr. Lewandowski's request was granted.

10. Respondent conducted 10 more interviews on January 23 and 24, 2008 for the Supervisor vacancy, asked the same 16 questions and relied on the same "indicators" when judging the responses.

11. The panel unanimously recommended hiring Bradley Toth for the vacancy. Mr. Toth, a candidate from the second round of interviews, had already been working at the cemetery for approximately one year. Two of the three panelists were familiar with Mr. Toth and his work. Mr. Lewandowski prepared a memorandum that outlined the interview process and explained the basis for the panel's recommendation. The memorandum read, in part:

The panel has recommended hiring Bradley Toth as best overall candidate to having [sic] sufficient background experience to effectively perform the requirements for the position. Mr. Toth was rated based on his overall qualification, skills and experience. Candidate has the day to day knowledge of cemetery operations and importance [sic] pertaining to equipment operation and care. He currently works in various environments and previous employment has shown he is able to continue to work in all weather conditions critical throughout the seasons. Mr. Toth has shown initiative and leadership while

employed at [the cemetery], fundamentally he enjoys working with people and has [led], supervised groups in previous employment at SBC. He has owned and operated his own rental properties, maintaining electrical, plumbing and building structures. He has experience with various computer programs maintaining financial records for his [rental] units. Mr. Toth is familiar and proficient with all heavy equipment utilized by the cemetery.

Facilities Maintenance Specialist vacancy

12. Approximately 45 days later, Respondent went through another selection process to fill a vacant Facilities Maintenance Specialist position at the Wisconsin Veterans Home in Union Grove.

13. The position description for the Specialist position includes the following summary:

Under the general supervision of the Buildings & Grounds Supervisor and lead direction from Facilities Maintenance Specialist-Advanced, this position performs routine to complex diagnostic, repair, maintenance, modification and installation activities of mechanical and/or electrical nature. This covers building systems, components and equipment throughout the facility, including auxiliary systems and equipment. Auxiliary systems and equipment include large-scale industrial food service equipment, laundry, floor care, security systems and specialized medical equipment. Items encompass lighting, power switches, outlets, transformers, security devices, nurse call and/or other communications systems, hot water systems, pumps, plumbing, drainage, chillers, valves, air ducts, pipes, blowers, dampers, flues, etc., both mechanical and electrical parts. The incumbent needs to be knowledgeable of electrical systems, communication devices, heating, ventilation, air-conditioning, and refrigeration equipment.

Work is unique to the healthcare environment, adhering to safety codes, institution policy, plans and specifications, following both written and verbal instructions. The position is responsible for recordkeeping and administrative tasks associated with maintenance activities. The position will work with other maintenance staff and works to help coordinate the entire maintenance and facility repair operation for this institution, including general buildings and grounds activities. Daily interaction and communication with staff, members, and visitors to the facility should be expected.

14. Appellant was one of 13 individuals certified for the vacancy. Six were interviewed on February 27, 2008. The panel consisted of: Mike Plautz, Custodial Services Program Supervisor; Danny Hemm, Facilities Maintenance Specialist – Advanced; and Dave Carroll, Buildings and Grounds Supervisor.

15. After the conclusion of the interviews, the panel recommended that Michael Lui be hired for the vacancy. Mr. Carroll submitted a memorandum to that effect, which included the following information:

Mr. Lui has over 10 years of experience in performing maintenance, labor and mechanical duties to include electrical, plumbing, and HVAC. Mr. Lui earned a diploma in Electronics Servicing from Gateway Technical College. He has experience/knowledge using and repairing equipment such as lawn mowers, snow blowers and lawn trimmers. He owned five apartment buildings for over 12 years and performed all preventative and corrective maintenance himself. He knows how to dry wall, paint, and perform other maintenance duties as he has owned his [own] restaurant and apartment buildings.

Mr. Lui had been working at the Union Grove Veterans Home as a Laborer for approximately one year. All three panelists were at least somewhat familiar with his work in that role. Mr. Carroll had supervised Lui.

16. The panel for the Specialist position asked the same questions to all candidates. Most of the questions had “indicators,” i.e. desirable responses. However, the “indicators” are not of record. None of the questions asked for the candidate’s age, veteran status or disability.

17. The panelists did not consider Appellant to be as strong a candidate as Lui for the Specialist position.

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 this matter pursuant to Sec. 230.44(1)(d), Stats.
2. The Appellant has the burden to establish that Respondent’s hiring decisions were illegal or an abuse of discretion.
3. Appellant has not satisfied his burden.
4. Respondent’s hiring decisions were neither illegal nor an abuse of discretion.

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

ORDER¹

Respondent's decisions not to select the Appellant for the positions of Building/Grounds Supervisor and Facilities Maintenance Specialist are affirmed and this appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th of August, 2008.

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.

Department of Veterans Affairs (Haakma)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This matter arises under Sec. 230.44(1)(, Stats., which provides:

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 DOC (ZEILER), DEC. NO. 31107 (WERC, 12/2004), the Commission adopted the following description 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.)

Mr. Haakma is appealing from selection decisions for two vacancies at Respondent’s facilities in Union Grove. The first vacancy was a Buildings/Grounds Supervisor position at the Southern Wisconsin Veterans Memorial Cemetery, and the second was for a Facilities Maintenance Specialist position at the adjacent Veterans Home. In both instances, the Appellant was a candidate for the position but individuals who were already working for the agency were selected. Appellant contends that these results show that the decision-makers were biased and that the decisions were contrary to the concept of “equal opportunity” in employment.

The Appellant has the burden of establishing, via the evidence presented at hearing, that the hiring decisions were illegal or were clearly against reason and evidence. Appellant litigated his claim by asking each interview panelist to read the questions that were asked as well as the handwritten notes they took of the Appellant’s responses. The Commission has not been supplied with the criteria (“indicators”) that the panelists were told to rely upon when considering the quality of a candidate’s response. In addition, we lack the interview notes for the successful candidates. In the absence of the rating criteria, we are in a poor position to be able to assess whether the panelists reached reasonable conclusions as to the relative strength of the candidates or even whether their qualifications were so inadequate as to reasonably justify a conclusion that additional names needed to be obtained off the register. During the hearing, Appellant made sure that the witnesses were aware of the skill set identified in the job announcement for the position or classification. However, there is no evidence the panelists were told to apply this skill set description when rating the candidate’s responses. Appellant is implicitly asking the Commission to apply our own hiring standards, rather than the ones that were actually established for the numerous questions posed by the panel. We have already noted that the Commission’s role on appeal is not to simply substitute our own judgment for that of the Respondent. See DWD (JUNCEAU), DEC. NO. 32050 (WERC, 8/2007).

It is not inconceivable that one or more of the panelists rated Toth or Lui (the successful candidates who also happened to already work for the facility) higher than was

warranted by their responses to the specific questions. It is also not inconceivable that at least one panelist rated the external candidates lower than the responses warranted. However, evidence has not been presented that would establish either conclusion.²

Appellant also focuses on Lewandowski's testimony that he did not know any of the candidates for the cemetery position.³ Lewandowski's statement was clearly incorrect, because he had served as the second-level supervisor for Bradley Toth, the person who was selected. We acknowledge that this is an obvious error in Lewandowski's testimony, but it is not enough to show that the selection decision, which was premised on a recommendation by a panel of three interviewers, one of whom was Lewandowski, was an abuse of discretion.

Appellant has also made the argument that the decision not to select him for either vacancy was somehow due to his status as a disabled veteran, or because of his age. Even assuming that the successful candidates did not fit within any of these categories (facts which were not clearly established), there is nothing other than the existence of these differences to support a conclusion that the distinctions served as a basis for the hiring decisions. There is simply no basis for concluding that the panelists, either consciously or unconsciously, considered age, disability or veteran status when they were considering the various applicants. Therefore, we reject the argument that the selection decisions were somehow attributable to these factors.

The State's examination and selection processes have been established in order to comply with the policy that the State is to "maintain a system of personnel management which fills positions in the classified service through methods which apply the merit principle, with adequate civil service safeguards." Sec. 230.01(2), Stats. Appellant's firm belief that he was the best candidate for two vacancies is insufficient to show that the Respondent's hiring decisions were either illegal or an abuse of discretion.

Respondent's decisions must be affirmed.

Dated at Madison, Wisconsin, this 29th day of August, 2008.

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

²The Commission modifies the proposed decision by reiterating that the Appellant has the burden of proof in this type of case.

³The Commission has rephrased this sentence in the proposed decision.