

1988

Department of Transportation v. Billie J. McConnell : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

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UTAH DEPARTMENT OF
TRANSPORTATION,

Appellant,

vs.

BILLIE J. MCCONNELL and the
PERSONNEL REVIEW BOARD OF
THE STATE OF UTAH,

Respondents.



Case No. 880282-CA
Argument Priority 14.a

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APPEAL OF THE FINAL DECISION OF THE UTAH PERSONNEL REVIEW
BOARD, AN ADMINISTRATIVE AGENCY OF THE STATE OF UTAH

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REPLY BRIEF OF APPELLANT

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SUMMARY OF ARGUMENT

The argument that the PRB properly considered and ruled on the equivalence of Mr. McConnell's qualifying experience as a technician contradicts the record because the PRB did not address or decide the issue which was raised in the appeal before it.

The argument that the 1985 class specification and its interpretation clearly apply to his application is inconsistent with the facts because the 1985 class specification was superseded by the 1987 class specification and its interpretation.

On its face the 1987 class specification requires "four years of professional experience." The only way the PRB could interpret the 1987 class specification as not being different from that of the 1985 class specification is to ignore the professional experience issue which would have disposed of the matter.

The argument that Finding of Fact No. 15 is merely advisory and is dicta and does not change the PRB ruling ignores the record which has no evidence showing that the UDOT interpretation of the 1987 class specification was different than DPM's interpretation of the 1987 class specification. The evidence is that the two interpretations are consistent.

To be considered for a merit position an applicant must meet the MQ's established by the class specification for the position. Finding of Fact No. 14 finds that McConnell was eligible for all engineering positions because he passed the E.Q.E. and is to be considered by UDOT for the position. Such a finding is in conflict with DPM's rule and the PRB's decisions.

ARGUMENT

I. Respondent's argument that the PRB properly considered and ruled on the equivalence of Mr. McConnell's qualifying experience as a technician contradicts the record.

First, Mr. McConnell's reliance on Finding of Fact No. 10 and Conclusion of Law No. 3 illustrates the error UDOT raises on appeal. To conclude

that McConnell had 10–12 years of "professional experience" which satisfies minimum qualifications ("MQ's") of the 1987 class specification the personnel review board ("PRB") and its hearing officer would have to decide whether such experience was "professional". The PRB sidestepped the issue. See the April 15, 1988 Personnel Review Board Decision, p. 12.

Second, the PRB failed to address the dispositive issue which was at issue when UDOT appealed and briefed the issues before the PRB. One of the primary MQ's of the 1987 class specification is whether McConnell had "four years of professional experience." Neither the PRB nor its hearing officer made a finding that McConnell had four years of professional experience or indicated evidence in the record which supports such a finding or conclusion in its decision.

Third, UDOT's notice of appeal and brief before the PRB frame issues which are other ways of stating the professional experience issue. Issues 2 and 3 in the notice of appeal deal specifically with the qualification of McConnell for consideration for the Associate Engineer III position. The brief states UDOT's position that to qualify for consideration for the position McConnell had to meet the MQ's in the 1987 class specification. He did not meet them. He did not have four years of professional experience.

Fourth, McConnell's argument that the 1985 class specification and its interpretation clearly apply to his application is inconsistent with the facts. The 1987 class specification became effective January 1, 1987. On May 18, 1987 UDOT advertised the position, albeit erroneously. On May 20, 1987 McConnell made application for the position. The approval of the January 1, 1987 class specification by the department of personnel management ("DPM") made the 1985 class specification obsolete. The 1985 class specification was superseded by the 1987 class specification. Therefore, its interpretation was of no efficacy. An interpretation of a different and superseded class specification can not be applied to the later 1987 class specification. The 1987 class specification must be interpreted on its own.

Therefore, the MQ's for the position were set by the 1987 class specification which required "four years of professional experience." The PRB and its hearing officer failed to resolve the dispute over the MQ's. As a result its findings of fact and conclusions of law in regard to the experience qualification are in error.

II. Respondent's position in regard to the whole record standard of the Administrative Procedure Act that the fact that there is obvious differences between the 1985 class specification and the 1987 class specification is of no consequence is an erroneous conclusion drawn from the record.

Finding of Fact No. 8 of the April 15, 1988 PRB order limits the finding to the "wording of the 1987 class spec." It states that the wording of the class specification did not "reasonably lend itself to an interpretation different from the one applied to the 1985 class spec." The 1987 class specification requires "four years of professional experience." Thus, the issue as to qualification for consideration for the position is whether the applicant has submitted experience which meets the quantitative and qualitative elements of the requirement. To qualify for consideration for the position McConnell submitted up to twelve years experience as qualifying experience. UDOT determined that the experience was not professional experience and therefore disqualified him from consideration for the position. It is that decision which was reviewed by the PRB.

The PRB finding ignores the express wording of the 1987 class specification. The only way the PRB could interpret the 1987 class specification language as not being different from that of the 1985 class specification is to ignore the professional experience issue which would have disposed of the matter. Such a flaw is prejudicial to the agency.

III. Respondent's argument that Finding of Fact No. 15 in the April 15, 1988 PRB decision is merely advisory and does not impact the decision ignores the standard of review which is of the whole record.

In order for the PRB and its hearing officer to find as it did in Finding of Fact No. 15 it had to have evidence in the record which supports such a finding.

McConnell's argument that the finding is merely advisory and constitutes dicta and does not change the PRB ruling is not consistent with the standard of review under the whole record standard.

In order to make the finding the board had to have evidence before it of an interpretation by UDOT of the language of the 1987 class specification that was different than DPM's interpretation of the 1987 class specification. The evidence in the record is that UDOT's interpretation was consistent with DPM's interpretation.

McConnell's argument therefore ignores the status of the record in the matter.

IV. McConnell's argument that the effect of the PRB ruling is to allow him to be qualified for consideration for the position but does not mean that he qualified for the promotion conflicts with DPM's rule and prior PRB decisions.

In order to be considered for the position McConnell had to meet the minimum qualifications established by the 1987 class specification. He had to have "four years of professional experience." If McConnell is arguing that Finding of Fact No. 14 of the April 15, 1988 PRB decision merely allows him to make application for the position, UDOT agrees. Anyone can submit an application for a position. However, to be considered, i.e., interviewed, evaluated, or rated etc., the minimum qualifications of the 1987 class specification must be met.

Finding of Fact No. 14 goes beyond such position. It reasons that successful passing of the E.Q.E. establishes eligibility for engineering positions and that the interpretation of "plus four years of professional experience" as post-E.Q.E. experience conflicts with such eligibility. This is the only construction of the language of the finding that supports its use in the decision. Such construction conflicts with previous PRB decisions and PMR Rule 7.d.(2)(f) that the class specification is supreme. See *Gallegos v. Office of Recovery Services*, Case No. 2 PRB 20 (1986); *Craythorn et al. v. Office of Community Operations*, Case No. 4 PRB/H.O. 60 (1986); and *Lund v. Division of Health Care Financing*, Case No. 3 PRB 24 (1987).

It ignores the professional experience requirement of the class specification. As a matter of law it is a wrongful finding.

CONCLUSION

Underlying each of the findings of fact and conclusions of law at issue in this appeal is the dispositive issue of whether McConnell had four years of professional experience. This issue was on appeal before the PRB and the board failed to decide this issue. Such failure is substantially prejudicial to UDOT.

DATED this 2nd of March, 1989.

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MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, on this 2nd day of March, 1989 , to:

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