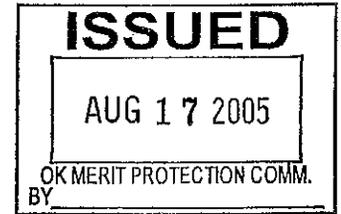


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



BOBBY L. GOODSON, )  
Appellant )

vs. )

CASE NO. MPC 05-154

DEPARTMENT OF CORRECTIONS, )  
and STEVE YOUNG, )  
Appellees. )

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on August 11, 2005 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Bobby L. Goodson, appeared in person and represented himself. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Michele Miniotta, Assistant General Counsel, and agency representative Warden Lenora Jordan, Warden of the Oklahoma State Reformatory (hereinafter referred to as "OSR") in Granite, Oklahoma. Appellee, Steve Young was present and represented by Amanda Salisbury, Esq.

Appellant, a correctional officer at Oklahoma State Reformatory in Granite, Oklahoma, filed this appeal after he applied for the posted position of Correctional Security Manager II and another candidate, with less seniority than Appellant, was selected. Appellant alleges that DOC Policy OP-110235(IV)(C)(4)(d), which considers seniority as a factor in promotion decisions in the event of a tie score, violates 74 O.S.

§840-4.16(2), providing that seniority should be a factor in promotional decisions when merit, ability and capacity are relatively equal among applicants.

Prior to the hearing, Appellee filed a Motion to Quash the Subpoena of Ron J. Ward, Director of DOC, who is on leave pending his retirement and is unavailable. Upon the parties' entering into a stipulation, Appellant withdrew the subpoena, rendering the Motion to Quash moot.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted and are incorporated herein and made a part hereof. Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

#### **FINDINGS OF FACT**

Appellant, Bobby L. Goodson is a Lieutenant at Oklahoma State Reformatory (hereinafter "OSR") and has been employed with DOC since January 3, 1989. Appellant applied for a posted vacancy announcement for a Correctional Security Manager, Level II (Captain) position on October 7, 2004. Chief of Security William Monday appointed an initial interview panel comprised of three members, all from facilities other than OSR. Qualified applicants were interviewed by the panel and ranked based on their answers to six predetermined interview questions. The questions had assigned scores from 0 to 5 points each and an applicant could score a maximum of 30 points per interviewer or a combined maximum of 90 points from all three interviewers. After adding the interviewers' scores, the three highest scoring candidates were selected for a second round of interviews. Appellee Stephen Young, Terry Cody, and Appellant were the three highest scorers.

A second round of interviews, with a new set of six interview questions, was held before Chief of Security William Monday and Deputy Warden Phillip Brandon. The three candidates were again scored and ranked based on their answers. Appellant scored a total of 45 points – 23 from Deputy Warden Brandon and 22 from Chief Monday – and was the second highest scorer. The high scorer, Appellee Stephen Young, scored a total of 47 points – 22 from Deputy Warden Brandon and 25 from Security Chief Monday. As the high scorer, Stephen Young was selected for promotion and was appointed to the rank of Captain (Correctional Security Manager II) effective November 1, 2004.

Appellant has been employed with DOC since January 3, 1989 -- approximately 15 years, nine months at the time of his application. Appellee Young began his tenure with DOC on June 8, 1998, for a total of approximately six years, four months. Seniority was not taken into consideration in the promotion selection, in accordance with DOC operating procedures providing that in a final interview seniority will be a factor in the event of a tie score.

The sole issue before this Administrative Law Judge is whether the DOC operating procedure is contrary to state statute stating the intent of the Legislature that any guidelines pertaining to promotion should give preference to seniority as a factor in promotional plans when merit, ability and capacity are relatively equal among applicants. Appellant argues that considering seniority only in the event of a *tie score* is contrary to the state statute providing that seniority is a factor when the merit, ability and capacity are *relatively equal*.

## DISCUSSION

At first blush it would appear that DOC's procedure in the event of a "tie score" is inconsistent with "relatively equal", and implies *exactly* equal rather than *relatively*, or less than exactly, equal. However, "relatively equal" refers not to a number or score, but to a candidate's merit, ability and capacity. The score used by DOC is a means of numerically assigning value to each applicant's knowledge, skills, and abilities as they relate to the job for which the applicant is applying. Stated another way, the scoring system used by DOC is a measurement (though imprecise and subjective) of a candidate's merit, ability, and capacity, as determined by each interviewer. Since no two candidates are identical, an interviewer may find Candidate "A" stronger in one area than Candidate "B", and Candidate "B" stronger in a different area, and still score the two candidates the same. Because they have strengths and weaknesses in different areas from each other, and their scores are tied, their merit, abilities and capacities are "relatively equal".

The State Legislature does not define "relatively equal" and the parties have provided no authority to assist this administrative law judge in defining it here.

## CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.
2. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.
3. The burden of proof in this case was placed on Appellant pursuant to Merit Rule 455:10-9-2(f)(2) to show by a preponderance of the evidence that Appellee

violated state law or Merit Rules. Appellant has failed to meet his burden of proof in this case.

4. 74 O.S. §840-4.16(2) states that it is the intent of the Legislature that any guidelines pertaining to promotion adopted by the Administrator [of the Office of Personnel Management] give preference to seniority as a factor in promotional plans when merit, ability and capacity are relatively equal among applicants.

5. DOC Policy OP-110235(IV)(C)(4)(d) provides that during the final interviews with the appointing authority or designee, seniority will be a factor in the event of a tie score.

5. Appellant, Bobby Goodson, has failed to show by a preponderance of the evidence presented at the hearing that Appellee DOC's operating procedure providing that seniority will be a factor in the event of a tie score is inconsistent with or in violation of 74 O.S. §840-4.16(2) providing for seniority as a factor when merit, ability and capacity are relatively equal.

#### ORDER

*IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED* by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED**.

DATED: this 16th day of August, 2005.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
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