

After careful consideration of the record, including all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The Appellant, Barney E. Laird (hereinafter "Laird"), is a classified employee of the Department of Corrections (hereinafter "DOC"). On June 7, 2005, the DOC filed a Request to Evaluate Qualifications, commonly known as an OPM-9 Form on behalf of Laird with the Office of Personnel Management (hereinafter "OPM"). Laird requested his qualifications for Correctional Chief of Security III be reviewed for promotion purposes. His qualifications were rejected by OPM because he "lacks the required thirty-six (36) months of qualifying supervisory experience in a correctional institution". (See Exhibit No. 8)
2. The parties stipulate that OPM did complete the evaluation of Laird's qualifications and OPM was responsible for the final decision.
3. The education and experience requirements for Correctional Chief of Security Level III contained in the Job Family Descriptor consists of five years of experience in correctional or security work for a government agency or private corrections agency, including three years which must have been in a supervisory capacity in a correctional institution. (See Exhibit No. 1)
4. OPM conceded that Laird's employment as a Correctional Officer II (Sergeant) for approximately 18 months from 1986 to 1988 would be used in the qualification review but Laird's other employment experience is not eligible to be considered.
5. Appellant asserts that his current employment as a Correctional Trades Supervisor and Construction/Maintenance Administrator II from 1988 to the present should have been considered as he was employed in corrections work in a government agency , namely James Crabtree Correctional Center in Helena, Oklahoma. He further asserts that his service as the Chief of Police at the Watonga Police Department should also be considered. Finally, Laird asserts that his present position involves supervisory responsibility in a correction institution.
6. Laird testified that as part of his current position with the DOC and for the last 16 years, he has worked on a daily basis inside the correctional institution. He stated his opinion that his job duties were directly related to maintaining the security of the institution. He testified that he supervised other DOC employees as well as inmate work crews. As part of his job, Laird stated that he did everything any other correctional officer would do, including inmate counts, controlling contraband and inventory of tools, did "shake-downs" of the inmates and maintained control and order in dealing with the inmates as well as DOC employees. Laird further argues that the Job Family Descriptors for other classifications clearly set forth more specific experience and if OPM had intended specific correctional or supervisory experience to apply to the Chief of Security position,

they would have so stated. The example expounded by Laird was that of Correctional Case Manager, where the experience in a correctional facility specifically requires “direct and routine contact with inmates”. (See Exhibit No. 15)

7. OPM offered the testimony of two subject matter experts.
 - a. The first witness, Hank Batty, the Appellee’s Table Representative offered testimony on his background and experience, including 26 years of experience at OPM and 20 years of experience reviewing applicant’s qualifications. He further testified that he had personally been involved in developing hundreds of Job Family Descriptors. Appellant had no objection to Mr. Batty’s status as an expert witness. Specifically, Mr. Batty testified that he was involved in a recent revision to the Job Family Descriptor for Chief of Security to include experience in private correctional facilities. Mr. Batty stated that since at least 1985, there is a long-standing administrative policy of distinguishing between law enforcement and correction experience for qualification reviews. This was requested by the various law enforcement agencies such as OSBI. Law enforcement experience is related to investigation, regulation, protection and arrest, as opposed to the security and monitoring of persons already in custody which is correctional experience. (See Exhibit No. 5) He testified that the two are not interchangeable and one can not be used as a substitute for the other.
 - b. The second subject matter witness was Tom Impson. Mr. Impson is a 17 year OPM employee and for the last three years has been Director of Applicant Services. He stated that he is directly involved in the administration of tests, the review of qualifications and the development of job family descriptors. For the last 8 years, Mr. Impson acted as OPM liaison to DOC and had reviewed thousands of qualifications. Appellant had no objection to Mr. Impson’s status as an expert witness. He testified that OPM’s position is that the position of Construction/Maintenance Administrator II could be found in many state agencies outside of a correctional institution, that it is construction or maintenance primarily, not correctional and because Laird is employed by DOC does not mean that he is performing correctional job duties.
 - c. The opinions of the subject matter experts on the the education and experience requirements of the Job Family Descriptor are consistent.

CONCLUSIONS OF LAW

1. The parties stipulate that the Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause and the filing of the Petition for Appeal was timely.
2. The only proper parties for this matter are the Appellant Laird and the Appellee OPM.

3. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
4. The Appellant in this case had the burden of proof having alleged a violation by Appellee OPM of the Oklahoma Merit Rules. Specifically, Appellant asserted that Appellee OPM improperly interpreted additional requirements which were not set out in the Job Family Descriptor. As a result, Appellant asserts that he was improperly disqualified for consideration of appointment to the classification of Correctional Chief of Security Level III.
5. Merit Rule 530:10-9-9 Disqualification, states in part that an Appointing Authority or the Administrator may permanently or temporarily refuse to certify, disqualify or remove a person's name from a register if the person lacks any of the education, experience, or certification requirements for the job.
6. OPM has the statutory responsibility to develop and maintain a "uniform occupation code system, grouped by job titles or duties, for all classified and unclassified state positions" pursuant to 74 O.S. §840-1.6A(16).
7. The Education and Experience requirement in the Job Family Descriptor for Correctional Chief of Security Level III contains two specific requirements.
 - a. First, the employee must have at least five years of experience in correction or security work for a government agency or private correctional agency. Laird meets that requirement. His employment from 1977 to 1984 with the Watonga Police Department must be considered. Even though this judge accepts the distinction between "correctional" and "law enforcement" experience, the experience requirement here states "security work for a government agency" is eligible. OPM offered no evidence to support that "security" was to be considered anything other than the usual meaning. As such, police work is undoubtedly "security" and OPM conceded at the hearing that the City of Watonga would be considered a governmental agency. This police experience, along with Laird's position as Correctional Officer II support a finding that he has at least five years of correctional or security work in a government agency.
 - b. The second requirement is that three years of that experience must have been in a supervisory capacity in a correctional institution. Although Laird has supervised employees in a correctional institution, it is clear that the nature of the work performed by Laird and the employees under his supervision was of a general, maintenance or construction nature. This is evidenced by Laird's performance ratings which contain little or no reference to any role of a "correctional" nature. (See Exhibits No. 6a to 6p) It is the long-standing and consistent application of the standard of OPM which gives great weight to the interpretation of this requirement. Again, applying the distinction between law enforcement and correctional experience, it is reasonable to interpret this supervisory requirement as "correctional" in nature albeit that the definition could have been written in a

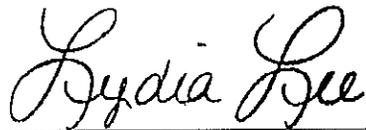
more concise manner. The testimony that other applications were consistently subjected to the same interpretation is compelling. As the parties agreed at the hearing, Laird's experience as Correctional Officer II is eligible for consideration. The evidence further shows that "supervisory" experience is defined by state law at 74 O.S. Section 840-1.3 to be supervision of other state employees, therefore, Laird's supervision of inmate work crews cannot be considered. The real crux of this case is OPM's assertion that an applicant for the Correctional Chief of Security should have the requisite experience "of a correctional" nature, even though the Descriptor may not be as clear as it could be in specifying that requirement. Appellant Laird's assertion that any person who is employed by DOC is performing "correctional" work is without merit. The particular job duties must be considered. The evidence supports a finding that Laird's experience as Correctional Trades Supervisor and Construction/Maintenance Administrator II from 1988 to the present as well as his employment with the Watonga Police Department is not "correctional" supervision and cannot be counted to meet the requirements for Correctional Chief of Security, Level III.

8. The evidence shows and this Judge concludes that although the Appellant has the requisite five years of experience in correctional and/or security work in a government agency, he has only fourteen months of supervisory experience of a correctional nature. The burden of proof in this case was placed upon Appellant, pursuant to OAC 455:10-9-2. The preponderance of evidence does not indicate a violation of Merit Rule 530:10-9-9 as alleged. Accordingly, Appellant Laird has failed to prove by a preponderance of the evidence that Appellee OPM violated the Oklahoma Merit Rules as stated herein.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Barney E. Laird, MPC 05-283 be **DISMISSED**.

This Order entered this 7th day of October, 2005.



Lydia Lee
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