

**STATE OF IOWA
PUBLIC EMPLOYMENT RELATIONS BOARD**

DONALD WELLS, Appellant, and STATE OF IOWA (DEPARTMENT OF TRANSPORTATION), Appellee.	CASE NO.: 102666
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DECISION AND ORDER

This case is before the Public Employment Relations Board (PERB or Board) on Appellant Donald Wells’ (Wells) petition for review of a proposed decision and order issued by Administrative Law Judge Laura Jontz (ALJ).

Wells initiated the above-captioned case with the filing of a state employee grievance appeal with the Board, which the Board transferred to the ALJ. Wells, a Highway Technician Associate employed by the Iowa Department of Transportation (IDOT), contends he was improperly denied a promotion¹ to Garage Operations Assistant (GOA). The ALJ presided over the February 14-15, 2023 evidentiary hearing, and, on May 10, 2023, issued a proposed decision and order that dismissed Wells’ grievance appeal.

On May 30, 2023, Wells filed a petition for review. Following briefing, the appeal came before the Board for oral arguments via Google Meet on November 20, 2023. Attorney Mark Sherinian appeared and presented argument on behalf

¹Pursuant to Iowa Administrative Code rule 11—50.1, a “promotion” means the acceptance of an offer of employment by a hiring authority to a classification with a higher pay grade.

of Wells. Attorneys Andrew Hayes and Annie Myers appeared and presented argument on behalf of the State.

Pursuant to Iowa Code section 17A.15(3), on an appeal from an ALJ's proposed decision, the Board "has all the power which it would have had in initially making the final decision" The Board may reverse or modify any finding of fact made by the ALJ if supported by a preponderance of the evidence and may reverse or modify any conclusion of law made by the ALJ that the Board finds to be in error. *Id.* In considering this appeal, the Board utilized the record as submitted to the ALJ.

Based on a review of the record and considering the parties' written and oral arguments, the Board adopts the ALJ's findings of fact and conclusions of law with additional discussion.

FINDINGS OF FACT

The ALJ's findings of fact, as set forth in the proposed decision and order attached as "Appendix A," are fully supported by the record. We adopt the ALJ's findings as our own.

CONCLUSIONS OF LAW

Likewise, we agree with the ALJ's conclusions of law and analysis as set out in "Appendix A" and adopt them as our own with the following additional comment.

Wells brought this appeal under the provisions of Iowa Code section 8A.415(1), which provides that decisions under this section "shall be based upon a standard of substantial compliance" with Iowa Code chapter 8A, subchapter

IV and the administrative rules promulgated by the Iowa Department of Administrative Services (DAS). Wells contends the IDOT's violated several principles of the State's hiring and promotion systems by failing to promote him in or about October 2021. Wells primarily asserts the IDOT failed to substantially comply with Iowa Code section 8A.413(7) – a statute that directs DAS to promulgate an administrative rule that provides “[f]or promotions which shall give appropriate consideration to the applicant’s qualifications, record of performance, and conduct.”²

As discussed by the ALJ, Wells applied for an open GOA position with IDOT and was determined to have met the minimum qualifications for the position. IDOT offered Wells, along with one other candidate for the position, the opportunity to interview for the position, and Wells accepted. IDOT composed an interview panel of three individuals. IDOT prepared interview questions, scoring criteria, and a scoring matrix. As testified to by IDOT employee Jennifer Musgrove, to ensure a “fair and consistent process,” each interviewee is asked the “exact same question with the exact same question set, same rubric, same scoring.” (Hrg. Tr. p. 393). The interview panel asked each interviewee a series of “mandatory questions” (*e.g.*, “can you perform the essential functions of the

²Following the evidentiary hearing, on March 31, 2023, Wells filed a motion for leave to amend his grievance to conform to the evidence offered at the hearing. In part, Wells sought to amend his grievance to include a claim that the IDOT failed to substantially comply with one of its internal policy, which Wells identified as Policy No. 210.02. On April 10, 2023, the ALJ denied Wells’ motion, and, in his May 30, 2023 Petition for Review, Wells did not specifically identify the ALJ’s denial as an issue on appeal. However, even had Wells intended to include the ALJ’s April 10, 2023 order within his appeal, the Board agrees with the ALJ’s conclusion that IDOT Policy No. 210.02 is neither a statutory provision within Iowa Code chapter 8A, subchapter IV, nor a DAS rule, and, consequently, the Board does not possess jurisdiction to determine IDOT’s substantial compliance with IDOT Policy No. 210.02.

positions”), and eleven “behavioral-based”³ questions (*e.g.*, “tell us about a time that best illustrates your ability to be dependable even when it’s inconvenient”). The panel also provided the interviewees hard-copies of the questions for reference during the interviews. Each “behavioral-based” question had a maximum score of five points.

The interview panel used a consensus scoring method, meaning that as a group, the panel discussed each interviewee’s response to each question and selected a final group score for that question. Consequently, the maximum score each interviewee could receive is fifty-five. The interview panel determined Wells’ interview warranted a score of twenty-eight points, while the winning candidate earned a score of forty-eight points.

As noted by the ALJ, both parties cite to *Moser v. State of Iowa (DOT)*, 19-ALJ-102190 in support of their position; however, in *Moser*, which involved a similar hiring process, the ALJ denied the state employee grievance found substantial compliance with Iowa Code section 8A.417(3). Following our own diligent search, we have been unable to locate any prior Board decision finding a hiring authority failed to substantially comply with section 8A.417(3) under like circumstances. Further, during oral argument, the Board asked counsel for both parties whether either was aware of any such authority and both responded in the negative. Naturally, there may be a case in which the Board will find an

³According to Ms. Musgrove, behavioral-based questions are composed in a manner to allow an interviewee to share the interviewee’s past experiences with the interview panel. (Hrg. Tr. p. 392).

agency failed to substantially comply with section 8A.417(3); however, for the reasons set forth by the ALJ, this is not that case.

ORDER

For the reasons set forth above, the Public Employment Relations Board AFFIRMS the Proposed Decision of the Administrative Law Judge Laura Jontz dated May 10, 2023 and Appellant Donald Wells' state employee grievance appeal is hereby DISMISSED.

Dated this 25th day of January, 2024.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: /s/ Matthew Oetker
Matthew Oetker, Board Chair