

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

B.D. JACOBSON,

Appellant,

v.

LABOR AND INDUSTRY REVIEW
COMMISSION, and Secretary,
DEPARTMENT OF INDUSTRY, LABOR
& HUMAN RELATIONS,

Respondents.*

Case No. 78-192-PC

* * * * *



DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss on the ground of lack of subject matter jurisdiction. In an interim decision and order in this matter dated December 4, 1979, the Commission dismissed "so much of the appeal as is an appeal of personnel actions taken by the Department of Industry, Labor and Human Relations."

OPINION

In her appeal letter filed September 8, 1978, the appellant stated, in part, as follows:

"Appeal is hereby made pursuant to section 230.44(1)(d) and (3), Wisconsin Statutes. My employer, the State of Wisconsin, has discriminated against me because of my sex in the conditions of my employment and in wages, although my job as an attorney requires the same skill, effort and responsibility as those of my male attorney peers.

Attached is a more detailed history of the matter. In a nutshell, when I transferred from the Supreme Court to DILHR in November of 1974, my supervisor, Mel Jarchow, accorded me no credit for seniority, erroneously and/or discriminately placing me on the salary schedule at a far lesser wage rate than that to which I was entitled.

This supervisor did accord seniority and/or experience credit to male attorneys. As a result my wages are not equal to those of male attorneys who had attained ten and three-fourths' years seniority and because of this supervisor's prior discriminatory practices, the employer's pay plan for attorneys perpetuates a past unlawful practice and constitutes an ongoing discrimination. I can never overcome the original discrimination because under our pay plan, which is nondiscriminatory, I am eligible for a fixed maximum raise each year.

I became aware of this discrimination upon investigation after an incident of discrimination against my (sic) because of my sex occurred in my office on August 9, 1978."

In her attachment to this appeal letter, the appellant states that on September 2, 1976, she "transferred to the position of review attorney for the Industry, Labor and Human Relations Commission (now known as Labor and Industry Review Commission), at no increase in wages. She further states that "In July of 1977 the Commission became a separate agency. I signed a transfer form after being assured by my supervisor that my signature on the form was merely a routine procedure and had no effect on my job."

In her brief filed with the Commission on August 18, 1980, on the issue of subject matter jurisdiction, appellant argues, in part, as follows:

"The compensation plans for both represented and nonrepresented attorneys did provide a hiring rate for experienced attorneys. Appellant did have such experience when appointed to the position of hearing examiner. The appointing authority failed to fix appellant's compensation pursuant to the compensation plans, all in violation of secs. 230.09, 230.10 and 230.12, Wis. Stats., and secs. Pers 4.01, 5.01 and 5.02 of the Wis. Adm. Code.

When the pay is fixed illegally or by abuse of discretion, then an appeal by an employee to the Personnel Commission may be made under sec. 230.44(1)(d). Appellant contends that the appointing authority's action was taken because of discrimination against her sex.

An appeal filed under sec. 230.44(3) may be heard if the appeal is filed within 30 days after the appellant is notified of the action. Appellant was unaware of the illegal fixation of her salary until she began investigation following discriminatory action by LIRC concerning job assignments, that placed her at a disadvantage for advancement purposes. The appointing authority has control of work assignments of each employee within a particular department. (Sec. 230.06(1)(b).) Appeal of improper work assignments is an appeal under sec. 230.44(1)(d). The present appeal is an appeal of both actions of the appointing authority.

Subsection 16.03(4)(a), 1975 Wis. Stats., was renumbered subsec. 230.44(1)(d). Under the 1975 Statutes, appeals of illegality or abuse of discretion were to the director of the bureau of personnel in the department of administration. Under the 1977 Statutes such appeals are to the Personnel Commission. Appellant has filed her appeal with the Personnel Commission.

The setting of an employee's starting wage rate is an appealable "personnel action...related to the hiring process" within the meaning of sec. 230.44(1), Stats. (sec. 16.03(4)(a), 1975 Stats.) when illegality or abuse of discretion is alleged. See Schallock v. Voigt, State Personnel Board, Case No. 74-22, Nov. 25, 1975."

Section 230.44(1)(d), Stats., provides as follows:

"Illegal action or abuse of discretion. 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."

The determination of salary and the assignment of duties following transfers as here alleged are not personnel actions "after certification... related to the hiring process in the classified service." Appellant's statement,

"Subsection 16.03(4)(a), 1975 Wis. Stats., was renumbered subsec. 230.44(1)(d). Under the 1975 Statutes, appeals of illegality or abuse of discretion were to the director of the Bureau of Personnel in the Department of Administration. Under the 1977 Statutes, such appeals are to the Personnel Commission."

is incorrect.

Pursuant to Chapter 196, Laws of 1977, section 16.03(4), Wis. Stats. (1975), was repealed, See sec. 25m of Chapter 196, and sec.230.44(1)(d), Stats. (1977) was created, see sec.121, Chapter 196. Section 230.44(1)(d) is much narrower than sec.16.03(4), and it cannot be said that the broader appeal rights contained in the latter subsection were retained in the new law. See, e.g., Wing v. UW, Wis. Pers. Comm. No. 78-137-PC (4/19/79).

There is no basis for appeal pursuant to sec.230.44(1)(d), Stats., nor under any other provision of sec.230.44.

Furthermore, this appeal is untimely, at least as it relates to the determination of appellant's salary. She states that, in accordance with sec.230.44(3), an appeal may be heard "if the appeal is filed within 30 days after the appellant is notified of the action. Appellant was unaware of the illegal fixation of her salary until she began investigation following discriminatory action by LIRC concerning job assignments...." The date of notice is not the date that the appellant learns of something that leads to the belief that a transaction was improper. See, e.g., Bong & Seemann v. DILHR & DP, Wis. Pers. Comm. 79-167-PC (11/8/79).

ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated Sept. 12, 1980

Charlotte M. Higbee
Charlotte M. Higbee
Chairperson

Donald R. Murphy
Donald R. Murphy
Commissioner

Gordon H. Brehm (ing)
Gordon H. Brehm
Commissioner

B.D. Jacobson v. LIRC & DILHR
Case No. 78-192-PC
Page 5

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