

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 EUGENE GOHL, \*  
 \*  
 Appellant, \*  
 \*  
 v. \*  
 \*  
 DEPARTMENT OF REVENUE, \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 78-67-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal of the denial of a non-contractual grievance at the third step. At the prehearing conference the respondent moved to dismiss the appeal for lack of jurisdiction and the parties have filed arguments on this motion.

FINDINGS OF FACT

1. In his appeal letter the appellant stated in substance as follows:
  - (a) His home base was reassigned from Rice Lake to Eau Claire.
  - (b) He has continued his residence in Rice Lake.
  - (c) Administrative Directive 152-1.1, Section 1V G. 5 states that the allowable mileage used for travel expenses shall not exceed the lesser of two distances - headquarters to destination and return or home to destination and return.
  - (d) This is objected to as discriminatory and the relief requested is a revision of the aforesaid directive to state that allowable mileage would originate from the headquarters location to destination and return.

(e) The appellant's grievance was denied at the third step.

2. The respondent's response at step 3 of the unilateral grievance was to the effect that Administrative Directive 152 - 1.1 was promulgated under the state uniform travel guidelines and both documents being inconsistent with the relief sought, the grievance was denied.

3. The Department of Revenue department grievance procedure, administrative directive 370 - 1.3, provides at step 4 as follows:

"If dissatisfied with the secretary's written decision in step 3, or if no decision is received and it is alleged in the grievance that the department has violated, through incorrect interpretation or unfair application, either of the following:

(1) a rule of the Director of Personnel or a Civil Service Statute C., Section 16.01 - 16.38, Wis. Stats. 1, or

(2) a function which the Director of the State Bureau of Personnel has affirmatively delegated to the Department of Revenue, the employee may file a written appeal to the Personnel Board within 15 working days of either the receipt of the step 3 decision or the expiration of the time limit for the secretary's decision."

#### CONCLUSIONS OF LAW

1. Appeals of non-contractual grievances are "subject to the rules of the secretary providing the minimum requirements and scope of such grievance procedure." §230.45(1)(c), Stats. (1977).

2. There are no such rules currently in effect.

3. Section 129 (4g), Chapter 196, Laws of 1977, provides that the rules of the director, (Wisconsin Administrative Code), shall remain in full force and effect until modified.

4. Section Pers. 25.01, Wis. Adm. Code, provides that each department shall establish a written grievance procedure that meets standards established by the director.

5. In the absence of the promulgation of rules of the secretary, Department of Employment Relations, pursuant to §230.45(1)(c), Stats. (1977),

and in the absence of modification of § Pers. 25.01, Wis. Adm. Code, current departmental grievance procedures, including that of the Department of Revenue, are controlling.

6. Responsibility for state travel guidelines is not the responsibility of the administrator of the Division of Personnel (nor was it that of the predecessor of that officer, the director of the Division of Personnel), and this subject is not governed by the Civil Service Statutes or rules. See §§ 20.916(8), Stats. (1977), 20.9168 (1975).

7. The Commission lacks jurisdiction over this appeal.

#### OPINION

As set forth in the conclusions of Law, in the absence of rules of the secretary of DER, the existing rules continue in effect. Appeals of grievances to the Commission are limited to allegations of violation of Civil Service Statutes and rules, and to functions of the administrator of the Division of Personnel. Responsibility for employee travel guidelines is not that of the administrator of the Division of Personnel but rests with the secretary of the Department of Employee relations and the joint committee on employment relations. The Statutes relative to the travel guidelines are not found in the Civil Service Statutes (Subchapter II of Chapter 230, previously Subchapter II of Chapter 16). There simply is no basis for the Commission to hear this appeal. C.F. Schultz v. DOR, Wis. Pers. Bd. No. 76-185(2/20/78).

Mr. Gohl has requested that if the DER is the agency responsible for travel guidelines, it be added as a party. This can not be done because if there is no jurisdiction over the subject matter of the appeal, the Commission cannot simply add the responsible agency and create jurisdiction.

Mr. Gohl also states that although he has followed the prescribed grievance procedure he has continually been told that "someone else" is responsible for the travel reimbursement rules and that no one will take jurisdiction over this matter. While this situation and this decision are understandably frustrating, it must be kept in mind that administrative agencies are creatures of statute and must adhere strictly to their statutory authority. The legislature has created a process for administrative review of certain kinds of personnel transactions by the Personnel Commission. It has not provided for review of decisions by the secretary of DER on travel guidelines. There are many other kinds of governmental decisions that affect state employees that are not reviewable by the Commission, e.g., a decision by the secretary of the Department of Administration to remove half of the parking spaces behind the State Office Building.

In this case it appears there is no independent administrative review available to the appellant of those matters that are of concern to him. He could, however, request the secretary of DER to take direct action on the travel guidelines. Since the joint committee on employment relations is now involved in the process he could also request their action at the appropriate point. He would have to consult Chapter 227 of the Statutes to determine what, if any, judicial remedies are available to him.

ORDER

This appeal is dismissed for lack of jurisdiction over the subject matter.

Dated: Nov 22, 1978.

Edward D. Durkin  
Edward D. Durkin  
Commissioner

Dated: Nov. 22, 1978.

Charlotte M. Higbee  
Charlotte M. Higbee  
Commissioner

Dated: Nov 22, 1978.

Joseph W. Wiley  
Joseph W. Wiley  
Chairperson