

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 LINDA R. PULLEN, *
 *
 Appellant, *
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 v. *
 *
 Secretary, DEPARTMENT OF INDUSTRY, *
 LABOR AND HUMAN RELATIONS, *
 *
 Respondent. *
 *
 Case No. 79-72-PC *
 *
 * * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss on the ground that the appellant lacks standing. The parties have filed written arguments by way of a letter dated March 3, 1980, from respondent, and April 10, 1980, from appellant, which have been reviewed by the Commission. The following findings are made for the sole purpose of deciding the issue of appellant's standing.

FINDINGS OF FACT

1. The Commission incorporates by reference the findings contained in its Decision and Order dated September 14, 1979, a copy of which is attached hereto.

2. The reclassification of Talmadge Wilson's position does not constitute a cause of "injury in fact" to the appellant.

CONCLUSION OF LAW

The appellant lacks standing to pursue this appeal.

OPINION

In the Commission's Decision and Order dated September 14, 1979, the Commission retained jurisdiction over so much of this appeal as relates to the reclassification of Talmadge Wilson's position. The statutory basis to hear such an appeal would be either §230.44(1)(a) or 230.44(1)(b), Stats.

There is no provision in either §230.44 or 230.45 setting forth criteria for standing to appeal pursuant to §§230.44(1)(a) and (b). Therefore, the Commission must look to the standing provisions in Chapter 227, Stats., to resolve the standing issue. See, e.g., Heil v. DP, Wis. Pers. Comm. 78-13-PC, (12/20/78).

Both §227.01(6), defining "party" and §227.01(8), defining "person aggrieved" utilize the concept of an "adverse affect" or "substantial interests" of the person or agency.

In applying §227.01(8), the Wisconsin Supreme Court held in Wisconsin's Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 10, 230, N.W. 2d 243 (1975), that the first question to be asked is "Does the challenged action cause the petitioner injury in fact?"

In order to resolve the issue of appellant's standing, the Commission looks to the factual scenario as set forth by the then Deputy Administrator, State Division of Personnel, in his letter dated August 30, 1978, which was quoted in the September 14, 1978, Decision and Order at Finding # 2. The key fact with respect to standing, which appears to be undisputed, is that the appellant "passed the examination but was not in a certifiable range for selection."

If the appellant's score on the exam had been such that she had

been certified or was certifiable, an argument could be made that she would have or might have been considered for appointment, but for Mr. Wilson's lateral transfer into the downgraded position and the subsequent upward reclassification of the position. However, the appellant having scored outside the certifiable range, there appears to be no way that the appellant could have been considered for appointment regardless of whether Mr. Wilson were transferred into the position as indicated by the Dupty Administrator.

The appellant argues in her letter of April 10, 1980, that she suffered mental anguish as a result of Mr. Wilson having received the position without having passed the exam as she did.

In evaluating whether this mental anguish could constitute "injury in fact" under §227.01, Stats., it is helpful to review a recent decision of the Wisconsin Court of Appeals, Cornwell Personnel Associates v. DILHR, 92 Wis. 2d 53 (1979).

That case involved an employer (Cornwell Personnel Associates) whose unemployment reserve account was not affected by a DILHR decision awarding unemployment compensation benefits to a claimant who had worked for the employer but whose claim was drawn from the account of a prior employer. The court held that Cornwell lacked standing and that there was no injury in fact as against Cornwell's claim that as a contributor to the fund it had an interest in seeing that the unemployment compensation act is properly administered and that persons do not receive benefits improperly, and that if persons wrongfully received benefits, all employers may be required to contribute more to the fund. The court stated: "Its claim is purely speculative." 42 Wis. 2d at 62.

If this type of claim is too speculative to provide injury in fact, the mental anguish of Ms. Pullen also must be considered to be insufficient.

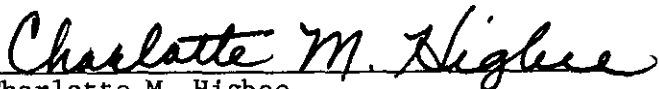
While the Commission concludes that pursuant to §227.01, Stats., the appellant lacks standing and this appeal must be dismissed on that basis, it does wish to point out that by so doing it is neither passing any judgment on the transaction in question nor in any way belittling the extent of appellant's concern. However, the Commission only can proceed with appeals for which all the statutory requirements, including standing, are present.

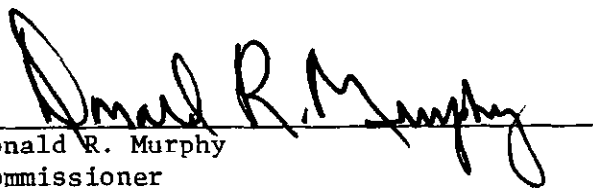
ORDER


The respondent's motion to dismiss on the ground that the appellant lacks standing is granted, and this appeal is dismissed on that basis.

Dated: May 15, 1980.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner