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 LYNN M. ADAMS,
 Appellant,
 v.
 Executive Secretary, HIGHER
 EDUCATIONAL AIDS BOARD,
 Respondent.
 Case No. 80-54-PC
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DECISION
 AND
 ORDER

The issue before the Commission is whether we have authority to hear appeals concerning termination of probationary employees.

The appellant, Lynn M. Adams, an employe of the respondent, Higher Educational Aids Board (HEAB) appealed her termination. The respondent objected, alleging the Commission lacked subject matter jurisdiction to hear appellant's appeal because at the time of termination she was on probation.

The following findings are based upon evidence presented at a hearing on respondent's motion.

FINDINGS OF FACT

1. On May 17, 1979, the appellant was hired as a Typist 2 by the Higher Educational Aids Board. Later in August, 1979, her job class title was reallocated to Clerical Assistant 1 as the result of a statewide clerical survey.

2. During the course of appellant's original six month probationary period, she received two job performance evaluations. In both instances, the appellant was evaluated as not meeting the required performance standards of this position. However, the latter evaluation indicated that a newly

appointed supervisor would be assigned to work closely with appellant and assure adequate training, in an effort to bring her work to an acceptable level.

3. Prior to the end of appellant's original probationary period, the respondent made a request to the State Division of Personnel (DP) to extend appellant's probationary period. On November 12, 1979, the DP Administrator granted a three month extension of appellant's probationary period in accordance with §230.28(1)(a), Wis. Stats., and Pers. 13.02(3), Wis. Adm. Code.

4. After November 5, 1979, appellant's work was closely monitored and reviewed by her supervisor. Appellant was advised by letter dated January 18, 1980, that her work remained below expected standards. On February 6, 1980, appellant's supervisor, in an employe training evaluation report, recommended termination. Appellant was terminated from employment of respondent by letter dated February 7, 1980, effective February 15, 1980, two days before the completion of her extended probation.

5. Appellant made a timely appeal to the Commission of her termination by respondent.

CONCLUSION OF LAW

1. The Commission has authority to hear matters as provided in §230.45, Wis. Stats.

2. The appellant has the burden of proving that the Commission has subject matter jurisdiction in this appeal.

3. The appellant failed to prove this Commission has subject matter jurisdiction of this appeal.

4. The appellant was a probationary employe at the time she was terminated from employment by respondent.

5. The Commission does not have subject matter jurisdiction of this appeal.

OPINION

The appellant makes two arguments: that she was a permanent employe when discharged and, alternatively, that the Commission has jurisdiction over probationary employes. Both arguments fail.

The argument that appellant was a permanent employe when discharged is unsupported by the evidence. Appellant presented no evidence showing that respondent's appointing authority, as required by law, failed either directly or by delegation, to request extension of appellant's probation. Nor was there sufficient evidence to rule the Division of Personnel administrator illegally extended such probationary period.

Regarding appellant's second argument, there has been considerable litigation on the issue of whether this Commission has authority to hear appeals concerning discharges of probationary employes.

The Court of Appeals, District IV, decided June 25, 1981, in Board of Regents v. Wisconsin Personnel Commission (Steve Dropik), No. 80-1411, and Edwin Young v. Personnel Commission and Chester Miller v. Personnel Commission, No. 80-1684 that the Commission lacks the authority to hear such appeals. This ruling was reaffirmed by the Court of Appeals, August 24, 1981, in State ex rel DHSS v. Wisconsin Personnel Commission (Wagaman), No. 80-1762. Subsequently, the State Supreme Court denied petitions for review and motions for reconsideration of these decisions.

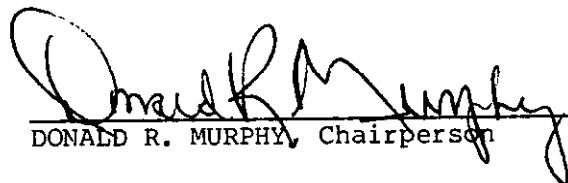
The Commission is bound by the decision of the appellant court.

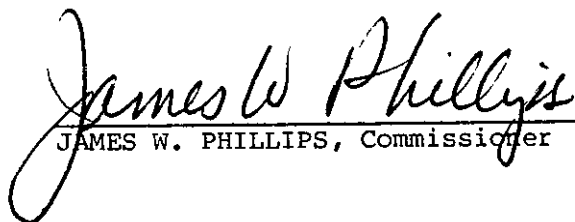
ORDER

Respondent's motion is granted and appellant's appeal is dismissed
for lack of subject matter jurisdiction.

Dated: April 29, 1982 STATE PERSONNEL COMMISSION

DRM:jmf


DONALD R. MURPHY, Chairperson


JAMES W. PHILLIPS, Commissioner

Parties:

Lynn M. Adams
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