

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

JOHN STAUFFACHER, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

INDUSTRY, LABOR AND HUMAN *

RELATIONS, *

Respondent. *

Case No. 81-403-PC *

* * * * *

DECISION
AND
ORDER

In an appeal letter received by the Commission on October 14, 1981, appellant sought review of his resignation:

"I had been absent from work a number of days beginning at the end of May, 1981 until July 2, 1981, when I submitted a letter to Mr. Smits giving him the option of granting me unpaid leave effective that date or of accepting such as a letter of resignation. He accepted it as my resignation."

According to the letter of appeal, the resignation went into effect on July 10, 1981.

The Commission advised the appellant that his appeal appeared to have been filed out side of the statutory 30 day time limit and that the Commission, generally, does not have the authority to hear an appeal from a voluntary resignation. The appellant responded by arguing that his "psychological state of mind was such that [he] was not capable of making a reasonable and informed decision to appeal" and that he "had no desire to resign" so the resignation was not voluntary.

Putting aside the question of whether "psychological state of mind" could conceivably be a justification for filing an appeal out side of the 30 day time limit found in s.230.44(3), Wis. Stats., the issue becomes one of whether the Commission may assume jurisdiction over an appeal from a resignation where there has been no allegation of coercion.

The Commission derives its jurisdiction from the provisions of ss.230.44 and 230.45(1), Wis. Stats. The former section establishes four specific classes of actions that may be appealed. Only one of the four is relevant to the present appeal:

(c) Demotion, lay-off, suspension or discharge. If an employe has permanent status in class, the employe may appeal a demotion, lay-off, suspension, discharge or reduction in pay to the Commission, if the appeal alleges that the decision was not based on just cause.

Resignations are not among the enumerated transactions expressly made appealable to the Commission pursuant to the statutory language above. However, in Watkins v. Milwaukee County Civil Service Commission, 88 Wis. 2d 411, 420, 276 N.W. 2d 775 (1979) the Supreme Court of Wisconsin construed a coerced resignation as a form of discharge, thereby making the resignation subject to the same review mechanisms as a discharge. The Commission has also ruled that it has jurisdiction over appeals that meet the "legal standards of a coerced resignation." Biesel v. Commissioner of Securities, Wis. Pers. Bd., 77-115 (9-15-77). Evrard v. DNR, 79-251-PC, (2-19-80).

While the appellant argues that he did not wish to resign, he fails to allege that his resignation was in anyway coerced by the respondent. "[A] separation by reason of a coerced resignation is, in substance, a discharge effected by adverse action of the employing agency." (Emphasis in the original.) Dabney v. Freeman, 358 F. 2d 533,535 (D.C. Cir. 1966) There is no indication that in the present case the respondent coerced the appellant into submitting his resignation. Any pressures on the appellant came from sources other than the respondent. In the absence of any allegation of coercion, the Commission must conclude that it lacks jurisdiction over an appeal from a resignation.

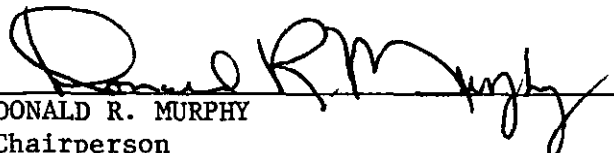
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ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: Dec. 16, 1981

STATE PERSONNEL COMMISSION


DONALD R. MURPHY
Chairperson

KMS:ers

Parties

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