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MIKE FORD,

Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,  
and Administrator,  
DIVISION OF PERSONNEL,

Respondents.

Case No. 82-243-PC  
83-0011-PC

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MIKE FORD

Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 83-0020-PC

\*\*\*\*\*

DECISION  
AND  
ORDER

These matters are before the Commission upon respondent DHSS's motion to dismiss. The parties have been provided an opportunity to file briefs. Because none of the parties have requested an evidentiary hearing, they have waived any right to a jurisdictional hearing.

FINDINGS OF FACT

1. At all times relevant to the appeals, the appellant has been employed by the Office of Information Systems (OIS) in DHSS and has been classified as a Management Information Supervisor 6 (MISUP 6).
2. Until November of 1982, the appellant's working title was Chief, Technical Support Section.
3. During approximately November of 1982, OIS was reorganized.

4. By letter dated November 18, 1982, the appellant was informed by the Director of OIS, William E. Shelton, that:

the reorganization of the Office of Information Systems and the Wilson Street Regional Computing Center results in the elimination of the Technical Support Section, OIS and the transfer of functions and positions to other sections within OIS. Therefore, effective Monday, November 22, 1982 I am transferring you to an MISUP 6, supervising the Capacity Planning Unit, reporting to Phil Koenig.

5. The Administrator, Division of Personnel approved the transfer.

6. On December 17, 1982, the appellant filed an appeal (Case No. 82-243-PC) of the decision described in Mr. Shelton's letter.

7. On December 15, 1982, the appellant received a letter signed by Carol Georgi, Staff Specialist, Division of Management Services, DHSS, which stated:

This letter is to confirm your reassignment to the Management Information Supervisor 6 position, pay range 01-17 in Executive Services, Department of Health and Social Services, effective November 28, 1982.

When an employe is reassigned, his or her salary may remain the same which in your case is \$17.403 per hour.

Your position is not included in a certified bargaining unit.

We trust your assignment will prove to be challenging and rewarding to you.

8. On January 13, 1983, the appellant filed an appeal (Case No. 83-0011-PC) of the action described in Ms. Georgi's letter.

9. On February 10, 1983, the appellant filed a third appeal with the Commission. (Case No. 83-0020-PC). This appeal was submitted to the Commission as the final step in the non-contract grievance procedure and also was premised upon the November 19, 1982 letter from Mr. Shelton. The grievance stated as follows:

On November 19, 1982 I received a letter from Mr. William E. Shelton indicating that I had been transferred to a MISUP6 position supervising the Capacity Planning Unit, reporting to Phil Koenig effective Monday, November 22. I spoke with Mr. Shelton later in the day and requested a copy of the position description and received it from him. Prior to having received the letter I had written a note to Mr. Shelton asking if he had processed my reclass request from February 1, 1982. My grievances are several. First, I grieve the inaction on the part of Mr. Shelton with respect to my reclassification request. Secondly, I grieve the inadequate notification of transfer. Thirdly, I grieve the transfer action itself which does not meet the conditions for transfer set by the rules of the Administrator, State Division of Personnel. Fourthly, I grieve the absence of any explanation of my recourse to this action in the letter from Mr. Shelton.

10. The terms "reassignment" and "transfer" were used interchangeably by the appointing authority in taking the action being appealed from.

#### CONCLUSIONS OF LAW

1. The Commission lacks authority to review the decision of respondent DHSS to fill the position by transfer.

2. The Administrator's decision approving the transfer pursuant to §230.29, Stats., is a personnel decision appealable to the Commission under §230.44(1)(a), Stats.

#### OPINION

On December 17, 1982 the appellant filed a letter of appeal (Case No. 82-243-PC) with the Commission of the personnel transaction described in Mr. Shelton's letter dated November 18th. Appellant alleged that he was not given adequate prior notification of the transaction, that the transaction did not meet the definition of "transfer", that the transaction ignored a pending reclassification request and that the letter failed to indicate whether the transaction had been approved by the Administrator as well as any appeal rights available to the appellant.

In a second appeal (Case No. 83-0011-PC) filed with the Commission on January 13, 1983, the appellant responded to a December 15th letter from respondent which had referred to the November 28th transaction as a "reassignment." The appellant again alleged that the respondent's letter of December 15th had failed to provide adequate notification and also stated that there was "no provision in the rules of the Administrator or State statutes which defines or authorizes" a "reassignment".

Case No. 82-243-PC

The term "transfer" is defined in §Pers 15.01, Wis. Adm. Code, as follows:

Pers 15.01 Definition. A transfer means the voluntary or involuntary movement of an employe from one position to a different position assigned to a class having the same pay rate or pay range maximum or to a position in a class assigned to a counterpart pay rate or pay range and for which the employe is qualified to perform the work after customary orientation provided for newly hired workers in such positions.

Specific authorization by the Administrator, Division of Personnel, is required for any transfer. §230.29, Stats. The term "authorization" is defined in §Pers 15.02, Wis. Adm. Code, as follows:

Pers 15.02 Authorization by administrator. Authorization by the administrator as required under §230.29, Stats., means that the conditions of transfer as defined in §Pers 15.01, Wis. Adm. Code, have been met.

It is clear that the Administrator approved of the instant transactions as a transfer. Therefore, the appellant is entitled to obtain review of the Administrator's transfer decision as provided in §230.44(1)(a), Stats.: "Appeal of a personnel decision of the administrator ... shall be to the Commission."

The action of the appointing authority in deciding to fill the new position by transfer and/or to propose to the administrator that the appellant be transferred into the new position are not actions that are appealable to the Commission. In Miller v. DHSS, Case No. 81-137-PC (10-2-81), the Commission made the following comments regarding the relative roles of the appointing authority and the administrator in a transfer decision:

The initial decision whether to fill a position by competition or transfer, and the decision as to when to fill a position, are decisions of the appointing authority. See §230.06(1)(b), stats. If the appointing authority decides to fill a position by examination, then the administrator is responsible for the examination and certification process, see §§230.16, 230.25, stats. If the appointing authority decides to fill a position by transfer, then the administrator is responsible for approving or disapproving the transfer, see §230.29, stats., and the administrator's decision is limited to the issue of whether the transaction satisfied the limited criteria set forth in the statute and rule. See §§ Pers 15.01 and 15.02, Wis. Adm. Code; Stasny v. DOT, Wis. Pers. Commn. 79-217-PC (1/12/81).

Case No. 83-0011-PC

The second letter of appeal filed by the appellant resulted from a letter dated December 7, 1982 sent by a staff specialist within DHSS to the appellant. The letter stated, in part:

This letter is to confirm your reassignment to the Management Information Supervisor 6 position, pay range 01-17 in Executive Services, Department of Health and Social Services, effective November 28, 1982.

Ms. Georgi's letter is the only document suggesting that the appellant was reassigned rather than transferred. The transfer letter and the approval of the transfer by the administrator indicate that the appellant was in fact transferred rather than reassigned.

Even if Ms. Georgi's letter is accurate and a "reassignment" did occur, there would be no basis for the Commission to assert jurisdiction over a reassignment appeal. There is no indication that the reassignment was a decision of the administrator, delegated by the administrator, an enumerated disciplinary action or a post-certification action related to the hiring process (See §230.44(1)(a) through (d), Stats.).

Case No. 83-0020-PC

Appellant's third appeal reached the Commission via the non-contractual grievance route. A copy of the first-step grievance indicates that the appellant grieved four different matters, as set out in Finding of Fact #9.

In order for the Commission to have jurisdiction over an appeal from the denial of a non-contractual grievance, the grievance must relate to the conditions of employment (as provided in §230.45(1)(c), Stats.), and must allege a violation of civil service law or rules. DOT v. Personnel Comm. (Kennel, Brauer & Murphy), 79 CV 1312 (Dane County Circuit Court, 7-21-80).

The first of the four matters grieved by the appellant refers to Mr. Shelton's alleged inaction with respect to a reclassification. Because appellant has failed to allege a violation of statute or rule with respect to this aspect of the grievance, the Commission lacks jurisdiction to consider it. The Commission reaches the same result with respect to the second (inadequate notification of transfer) and fourth (absence of explanation of method for review of transfer action) matters identified on the grievance.

The third matter reads as follows:

Thirdly, I grieve the transfer action itself which does not meet the conditions for transfer set by the rules of the Administrator, State Division of Personnel.

In the case of Harley v. DOT & DP, Case No. 80-77-PC (5-15-80), the Commission determined that it had jurisdiction to review an appointing authority's decision to require the appellant to accept reassignment or transfer rather than to initiate layoff procedures. In Harley, the appellant had alleged that:

[M]y involuntary transfer, which is a direct result of the method by which the reduction in force and reorganization of Transportation Districts 2 and 9 was completed by the Department, is illegal, in violation of applicable Civil Service statutes and guidelines, arbitrary, inequitable, and an abuse of discretion. The method utilized by the Department to accomplish the reorganization and reduction of staff in District 2, and the resultant transfer order, denies me certain rights granted by Section 230.24(2)(b) of the Wisconsin Statutes and Chapter Pers. 22 of the Wisconsin Administrative Code. In addition, the transfer imposes considerable inequitable and unreasonable hardships upon myself and my immediate family.

In contrast, the appellant in the present case has merely alleged that his transfer action failed to meet the conditions for transfer established by administrative rule. It would appear that the appellant is referring to §Pers. 15.01, Wis. Adm. Code, which defines "transfer". As has already been noted, it is the administrator rather than the appointing authority who must apply the definition in order to authorize the transfer as required by §230.29, Stats. The only requirement placed on the appointing authority is that he or she obtain the administrator's authorization. If an appointing authority designated a personnel transaction as a transfer without obtaining the authorization of the administrator, the employe could presumably grieve the matter. Denial of the grievance would be appealable to the Commission assuming the employe had alleged violations of §230.29, Stats., and §Pers 15.02, Wis. Adm. Code. In the present case, authorization for the transfer was, in fact, obtained. There are no statutory restrictions or any limitations in the administrative rules

regarding the procedures or standards to be used by the appointing authority in proposing the authorization of a transfer. Therefore, the appellant has failed to allege at least an arguable violation of the civil service code or rules (Wing v. UW, Case No. 78-137-PC (4-19-79)) and the appeal from the denial of the non-contract grievance must be dismissed.<sup>FN</sup>

ORDER

Cases numbered 83-0011-PC and 83-0020-PC are dismissed for lack of subject matter jurisdiction. Case number 82-243-PC is dismissed as to respondent DHSS, only, due to lack of subject matter jurisdiction.

Dated: June 9, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

KMS:lmr

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<sup>FN</sup> Because the appellant already has a direct appeal before the Commission of the administrator's decision (Case No. 82-243-PC), it is unnecessary to analyze whether the Administrator's decision can also be reviewed under §230.45(1)(c), Stats.