

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KIM E. PERO,

Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,  
and Secretary, DEPARTMENT  
OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 83-0235-PC

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

The appellant submitted a letter of appeal to the Commission on November 21, 1983, entitled "Loss of Re-Classification and Complaint on Unfair Labor Practice." The letter of appeal indicates that the appellant was suspended without pay for one day, October 4, 1983. The letter of suspension states that the appellant was suspended "for the negligence [he] showed in using unauthorized leave without pay on September 23, 1983."

The appellant is employed as an officer at the Dodge Correctional Institution. His letter of appeal includes the following statement:

My reclassification date was November 2, 1983. As per policy at DCI, anyone receiving an ECR [Employee Conduct Report] within six months of a promotion, the promotion will be set back six months from the date of the disposition. I feel the suspension, the set back of re-class date, and the loss of wages, seniority, and benefits constitutes a triple-jeopardy and I feel that this is an unfair action. I should have been given one punishment or the other, but not all.

As for the memo concerning the bearing of Conduct reports and their effects on promotion, I never received a copy, but was told about it after I was written up. When I asked the shift captain if the ECR would effect my re-class date he said that it would not. This statement was made in the presence of my union steward, Sgt. McClelland. Also, this loss of re-class was not a stipulation in the disposition of the ECR. But was relayed to me through my shift captain on Oct 26, 1983. To this date I have not received anything stating that my re-class has been moved back.

Respondent Department of Employment Relations (DER) filed a motion to dismiss it as a party to the appeal, arguing that there had been no decision by the secretary of DER that would form a jurisdictional basis for an appeal:

While the appellant may speculate that the suspension may affect the reclassification of his position and his subsequent regrade, until a decision by the Secretary on a delegated or nondelegated basis is made, no appeal can be heard by the Personnel Commission.

In response, the appellant argued as follows:

In the disposition, they stated that I should receive a one day suspension, which I did. There was nothing said about my re-class being set back. The only way I found out that was through my line supervisor told me about it one week before my regularly scheduled reclass date. I then talked with a union representative. He and I then talked to the Personnel Manager at DCI. He said the reason was because of the memo that came from the DER. I never received anything in writing in reference to the denial of my reclass, to this date. Personnel was asked to give it to me, but they have not.


In the present case, the appellant has stated that his regularly scheduled reclass date was November 2, 1983. The respondents did not dispute this contention. The clear implication of the appellant's letter of appeal is that the mere passage of time in his current classification entitled him to a reclassification on November 2 as long as he had not received an Employee Conduct Report within the previous six-month period. It is also undisputed that the appellant's position was not reclassified on November 2, 1983. Someone had to have interrupted the automatic reclass process, effectively denying the reclassification that had been due on November 2. The mere fact that the appellant did not file a formal, written reclassification request with either the Secretary of DER or with DHSS's personnel shop does not alter the fact that his reclassification was effectively denied by someone with authority to halt the procedure before the reclass was granted.


This result is consistent with the Commission's decision in Barnett et al v. DOT & DP, Case No. 81-366-PC (7/27/82). There the Commission concluded it had the authority to review a decision by the Deputy Administrator, Division of State Patrol, that he did not intend to seek reclassification of the appellants' or any other inspector position because a personnel survey was being conducted that included the Motor Vehicle Inspector series. Based upon the particular facts in the Barnett case, the Commission determined that a refusal by the appellants' superior to process a reclassification request was a decision reviewable by the Commission. In both the Barnett case and the present case, someone cloaked with authority intervened in the reclassification process and actually or effectively denied a pending reclassification. Such a denial is an appropriate basis for the Commission to assert jurisdiction under §230.44(1)(b), Stats.

ORDER

The respondent's motion to dismiss is denied.

Dated: March 29, 1984 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

KMS:jat

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