

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DWIGHT C. MEINHOLZ,

Complainant,

v.

Secretary, DEPARTMENT OF  
TRANSPORTATION,

Respondent.

Case No. 90-0147-PC-ER

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RULING ON  
MOTION TO  
DISMISS

This matter is before the Commission on respondent's motion to dismiss filed December 10, 1990.

This charge of handicap discrimination<sup>1</sup> alleges that complainant injured his arm while working on August 15, 1990, and that notwithstanding that he had medical clearance to resume use of his arm on August 20, 1990, he was given notice on August 24, 1990, of his layoff, while someone else had been hired in his place.

Respondent argues that the Commission's jurisdiction over this matter is preempted by the exclusivity provision of the Worker's Compensation Act,<sup>2</sup> §102.03(2), stats:

Where [the] conditions [in sub (1)] exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer.

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<sup>1</sup> Complainant also checked the box on the charge of discrimination form for retaliation based on Fair Employment Activities. It is not alleged nor is it at all apparent that complainant engaged in any Fair Employment Activities ("opposed any discriminatory practice under this subchapter or because he or she has made a complaint, testified, or assisted in any proceeding under this subchapter," §111.322(3), stats.) prior to his layoff, and it must be presumed that this box was checked erroneously.

<sup>2</sup> Respondent also contends that this charge of discrimination fails to state a claim under the Fair Employment Act because complainant's alleged temporary disability does not constitute a handicap. Since the Commission agrees that its jurisdiction is preempted by operation of §102.03(2), it does not reach this contention.

The Worker's Compensation Act provides a remedy for employes who are unlawfully denied re-employment following a covered injury:

Any employer who without reasonable cause refuses to rehire an employe who is injured in the course of employment, where suitable employment is available within the employe's physical and mental limitations, [must] pay to the employe the wages lost during the period of such refusal, not exceeding one year's wages. §102.35(3), stats.

It is clear that where an employe is injured on the job and the employer then refuses to rehire that employe because of that injury, the Worker's Compensation Act provides the sole remedy regardless of whether the employe alleges that the injury caused a handicap or perceived handicap that motivated the employer. Schachtner v. DILHR, 144 Wis. 2d 1, 422 N.W. 2d 906 (Ct. App. 1988); Norris v. DILHR, 155 Wis. 2d 337, 455 N.W. 2d 665 (Ct. App. 1990). In this case, complainant suffered an on-the-job injury, was unable to work for a short period of time, and then was laid off. Although it is unclear whether complainant's employment relationship with DOT actually was interrupted prior to the time that he was notified of his layoff,<sup>3</sup> it seems clear that functionally he was denied re-employment following a work-related injury and that he would have been able to have pursued a claim under the Worker's Compensation Act for an alleged violation of §102.35(3), stats. See Link Industries v. LIRC, 141 Wis. 2d 551, 556, 415 N.W. 2d 574 (Ct. App. 1987) ("We include that 'rehire' under §102.35(3) means that if an employee is absent from work because of an injury suffered in the course of employment, the employe must be allowed the opportunity to return to work if there are positions available and the previously injured employee can do the work.") Dalco Metal Products v. LIRC, 142 Wis. 2d 595, 605, 419 N.W. 2d 292 (Ct. App. 1987) ("termination is the functional equivalent of a refusal to rehire.") Therefore, the exclusivity provision of the Worker's Compensation Act comes into play and usurps Commission jurisdiction over this charge of discrimination.

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<sup>3</sup> DOT alleges that complainant was a limited term employe. It is unclear whether complainant was on any sort of sick leave while unable to work due to the injury.

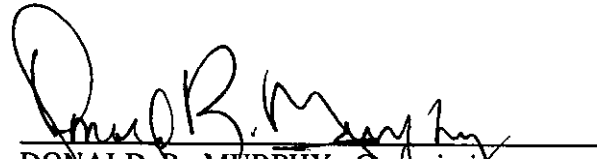
ORDER

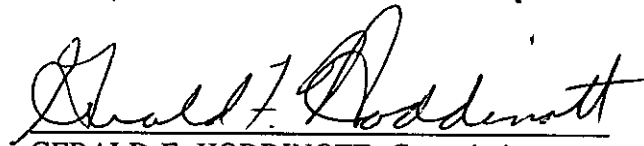
This charge of discrimination is to be dismissed on the ground that the Commission's jurisdiction is superseded by operation of the exclusivity provision of the Worker's Compensation Act, §102.03(2), stats. Complainant will have 20 days from the entry of this order in which to advise the Commission if its presumption that the retaliation box on the charge form was checked in error, see note 1, was incorrect. The Commission will then enter either a final order dismissing all of this case or an order dismissing so much of this case as involves the claim of handicap discrimination.

Dated: January 11, 1991 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT/gdt/2

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner