

NICHOLAS E. BRISKEY,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 91-0016-PC

DECISION
AND
ORDER

This matter is before the Commission as an appeal of a discharge decision. The letter of appeal, filed on February 6, 1991, reads as follows:

I request a review of my discharge from Central Wis. Center 317 Knutson Drive. Madison 53704 and the alleged causes, people involved, and the time frames and reasons for such time.

A member of the Commission's staff responded in a letter which acknowledged receipt of the appeal and went on to state:

On March 13, 1991, you stopped in at the Commission's office. During the course of our conversation it became apparent that you had previously filed an appeal of the same discharge action in 1989. That appeal, Case No. 89-0108-PC, was dismissed with prejudice by the Commission on April 12, 1990. A copy of that dismissal was mailed by the Commission to your attorney in that proceeding, Steven Porter.

The appellant was provided an opportunity to file written arguments as to why he felt the Commission had the authority to hear his new appeal. The appellant's response read, in part, as follows:

On the 13th was the first I became aware of previous hearings and or discussions with my attorney/Steven Porter. I would and will continue for a review of the real facts.

The materials from the file in Case No. 89-0108-PC¹ show that that appeal arose from the discharge of the appellant from his position as Institutional

¹A copy of all the materials from this file have been provided to the appellant.

Supervisor at Central Wisconsin Center by letter dated August 9, 1989. A status conference held on April 5, 1990, and the conference report reflects that the appellant was represented by Attorney Steven Porter and that the following agreement was reached:

Respondent, in consideration for appellant's agreement to withdraw the instant appeal, agreed to withdraw the Motion to Compel and the Motion for Attorney's Costs and Fees. Chairperson McCallum indicated that she would recommend to the Commission, in view of these agreements, that this appeal be dismissed with prejudice.

The dismissal order issued by the Commission on April 12, 1990, referred to the agreement set forth in the Conference Report.

The Commission has no choice in the present matter other than to dismiss the appeal. The new appeal was filed well beyond the mandatory 30 day time limit established in §230.44(3), Stats. In addition, the previous appeal which arose from the same personnel transaction, was dismissed by the Commission "with prejudice." According to Black's Law Dictionary, 5th Edition:

This term as applied to judgment of dismissal is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff.

The Commission lacks the authority to address any allegation by the appellant that his counsel failed to properly represent appellant's interests.²

²On April 3, 1991, when the Commission had convened a closed meeting pursuant to §19.85(1)(a) and (g), Stats., to consider this and other cases, the appellant filed a letter which stated:


I continue to seek review of my dismissal [sic] from C.W.C. & H.H.S - of 20 yrs. Was unaware of previous mtgs and ability to attend. Which caused the time lapse. Is a non-closed section to be scheduled that I may attend?

In light of the clear failure to comply with the mandatory filing period of 30 days and the absence of any additional contentions beyond those raised in the appellant's earlier written response, the Commission can perceive no purpose that might be served by scheduling a conference or hearing prior to the issuance of this dismissal order.

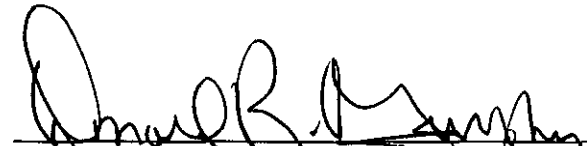
ORDER

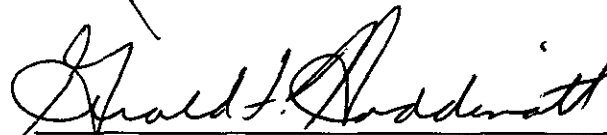
This matter is dismissed due to lack of jurisdiction.

Dated: April 5, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Nicholas E. Briskey
1926 Sachtjen Street
Madison, WI 53704

Gerald Whitburn
Secretary, DHSS
P. O. Box 7850
Madison, WI 53707