

EDWARD FRIEDRICHS,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING ON
MOTION TO
DISMISS**

Case No. 96-0023-PC

On August 22, 1996, respondent filed a motion to dismiss this appeal. The parties were permitted to file briefs and the briefing schedule was completed November 1, 1996. The following findings are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

1. On September 18, 1995, appellant received notice of a three-day suspension without pay. Appellant served this suspension on October 10, 11, and 12, 1995. This suspension related to the medical care given by appellant to inmate Curtis Blocker.

2. On March 19, 1996, appellant filed an appeal of this suspension with the Commission.

3. On April 19, 1996, the Commission conducted a prehearing conference relating to this appeal and the parties agreed to the scheduling of a hearing on August 20, 1996.

4. The hearing was convened, as scheduled, at 9:00 a.m. on August 20, 1996, by Laurie R. McCallum, Chairperson, the designated hearing examiner. Prior to the taking of testimony, counsel for respondent represented that respondent intended to retract the subject suspension and issue in its stead a written reprimand. Based on this representation, the parties agreed that this appeal should be dismissed once this course of action was effected. As a result, counsel for respondent agreed to file a letter

summarizing the actions respondent had taken in this regard, and the hearing examiner agreed to wait until this letter was filed before recommending to the Commission that this appeal be dismissed.

5. At 10:10 a.m. on August 20, 1996, appellant's representative phoned the hearing examiner and advised her that he had learned from respondent's counsel that respondent was not going to issue a letter of reprimand to replace the retracted suspension but was instead going to issue a new letter of suspension.

6. The suspension of which appellant received notice on September 18, 1995, and which appellant served on October 10, 11, and 12, 1995, was retracted by respondent on or around August 20, 1996.

7. A letter notifying appellant that he was suspended for three days as the result of the medical care he had given inmate Curtis Blocker was issued by respondent on October 10, 1996.

An issue in an appeal such as this is moot when the decision of the issue cannot have any practical legal effect or where there is no longer any actual controversy. When it is concluded that the only issue in the appeal is moot, the appropriate action is an order dismissing the appeal. Here, it is undisputed that the remedy sought by the appellant and the only remedy available to him in an appeal of a disciplinary suspension, i.e., the rejection of the suspension, has been carried out by respondent and any decision by the Commission could not have any practical legal effect. There can no longer be any actual controversy here because the subject matter of the appeal, i.e., the suspension imposed in October of 1995, no longer exists. *See, Maday v. DOC & DER, 92-0838-PC, 6/23/93.*

Appellant cites *Powers v. UW, 88-0029-PC, 5/10/90, aff'd Dane Co. Circ. Ct, Powers v. Wis. Pers. Comm., 90CV3023, 2/12/91; and Liethen v. WGC, 93-0095-PC, 10/20/93*, in support of his argument that the issue in this appeal is not moot. However, these cases are inapposite since they deal with the issue of the sufficiency of

disciplinary notice and not with the issue of the effect of the retraction of the subject disciplinary action.

It should also be noted that the dismissal of this appeal does not deprive appellant of a mechanism to have the suspension imposed pursuant to the letter of October 10, 1996, reviewed whether by the Commission or according to the review mechanism established by the applicable collective bargaining agreement.

Appellant requests oral argument before the Commission on this motion to dismiss. However, it is the practice of the Commission to grant oral argument in appeals such as this only under circumstances where an evidentiary hearing has been held by an individual hearing examiner. That is not the situation here. The Commission has reviewed the information and the arguments provided by the parties in reaching this decision.


ORDER

This appeal is dismissed.

Dated: November 22, 1996 STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the

Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

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