

STATE OF WISCONSIN

PERSONNEL COMMISSION

**SHARON J. GREUEL,**  
*Appellant,*

v.

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

**RULING ON MOTION  
TO DISMISS**

Case No. 96-0135-PC

Appellant's letter of appeal states as follows, in pertinent part:

This letter serves as my Appeal of the decision of Michael Sullivan, Secretary of the Department of Corrections to deny my exemption to the department's fraternization policy, based at least in part on a work rule violation which occurred in 1977 and which is not to remain in my personnel records for more than one year.

I also seek remedy because I was not informed of this particular departmental rule until after I accepted the Program Assistant supervisor 1 position, made a physical move from Madison to Milwaukee, Wisconsin, and had reported to work for three days.

I further object to the Department's decision to remove my name from the visitation list of my fiance, Charles L. Tyler, who is currently incarcerated at Fox Lake Correctional Institution.

The remedy I seek is approval of my request for exemption to the Department's Fraternization Policy, and an injunction against the Department prohibiting them from removing my name from the visiting list of my fiance, Charles L. Tyler. I want to be able to visit, correspond with, have phone contact, and marry Mr. Tyler without violating a work rule and facing termination from State employment as a result of this rule. I believe that the rule, itself, violates my constitutional rights as a law-abiding citizen.

In the event that this remedy is not available to me, then I want the Department's Bureau of Human Relations or the State Department of Employee Relations to reassign me to another position in Milwaukee (at the same rank and pay level) which is not subject to this rule and its attendant invasion into my personal and private affairs.

On December 9, 1996, respondent filed a motion to dismiss based on mootness and lack of subject matter jurisdiction. Respondent represented in the argument accompanying this motion that appellant had left her position in November of 1996 and accepted employment with the University of Wisconsin. Appellant was given the opportunity to respond to this motion but did not do so.

Appellant indicated in correspondence to the Commission dated September 12, 1996, that she had brought this appeal pursuant to §230.44(1)(d), Stats. This statutory section states as follows:

**230.44 Appeal Procedures. (1) APPEALABLE ACTIONS AND STEPS.** Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):

(d) *Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

It is appellant's burden to show that the actions which she is appealing, i.e., the respondent's denial of her request for an exemption to the agency's employee fraternization policy, and respondent's removal of her name from inmate Tyler's visitation list due to her employment status with respondent, were *related to the hiring process*. The types of actions which the Commission has held are so related are, for example, the hiring decision made by the appointing authority and the establishment of the starting salary upon appointment. *Taddey v. DHSS*, 86-0156-PC, 1987; *Siebers v. DHSS*, 87-0028-PC, 9/10/87; *Meschefske v. DHSS*, 88-0057-PC, 7/13/88. It is apparent that the actions appealed here had no relationship to the process of hiring

appellant for the Program Assistant Supervisor 1 position. These actions solely related to appellant's contacts with inmate Tyler during the period of time she was employed by respondent. As a consequence, the Commission does not have jurisdiction over this appeal pursuant to §230.44(1)(d), Stats.


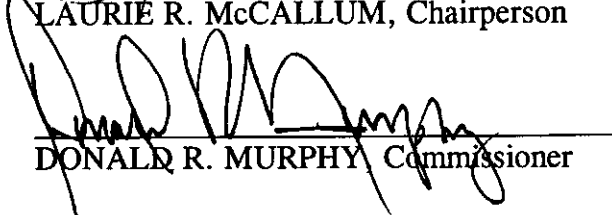

Even if appellant had been successful in showing that the Commission had jurisdiction over this appeal, the appeal would be considered moot. An issue in an appeal such as this is moot when the decision of the issue cannot have any practical legal effect or where there is no longer any actual controversy. When it is concluded that the only issues in the appeal are moot, the appropriate action is an order dismissing the appeal. Here, the remedies sought by the appellant are exemption from respondent's employee fraternization policy and addition of her name to inmate Tyler's visitation list. Since appellant is no longer employed by respondent, not only is respondent's employee fraternization policy no longer applicable to her, but her employment by respondent would no longer have an impact on her ability to visit inmate Tyler. As a consequence, any decision by the Commission could not have any practical legal effect. *Friedrichs v. DOC*, 96-0023-PC, 1996.

ORDER

Respondent's motion is granted and this appeal is dismissed.

Dated: January 16, 1997 STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson  
  
DONALD R. MURPHY, Commissioner  
  
JUDY M. ROGERS, Commissioner

Parties:

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Secretary, DOC  
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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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