

STATE OF WISCONSIN

PERSONNEL COMMISSION

DENNIS J. SHESKEY,
Complainant,

v.

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondent.

**RULING ON
DISQUALIFICATION
MOTION**

Case No. 98-0063-PC-ER

This case is before the Commission to consider complainant's disqualification motion. The facts recited below appear to be undisputed unless specifically noted to the contrary.

FINDINGS OF FACT

1. *Sheskey v. DER*, 98-0063-PC-ER was filed on March 6, 1998, and amended on May 1, 1998.
2. On May 10, 1999, complainant filed a "disqualification motion PC 5.01(4)," which stated as shown below:

As I filed a discrimination complaint against the Personnel Commission concerning their decisions, I request that the Personnel Commission be disqualified from any proceedings concerning my complaints.

3. Complainant filed his first case against the Commission on April 5, 1999. The Commission issued a ruling in that case, *Sheskey v. PC*, 99-0075-PC-ER, 5/19/99, which denied complainant's disqualification motion and which dismissed the case for lack of jurisdiction.
4. Complainant filed his second case against the Commission on May 10, 1999. The Commission issued a ruling in that case, *Sheskey v. PC*, 99-0085-PC-ER, 5/19/99, which denied complainant's disqualification motion and which dismissed the case for lack of jurisdiction.

CONCLUSIONS OF LAW

1. It is complainant's burden to establish sufficient facts to support a disqualification request under §PC 5.01(3) and (4), Wis. Adm. Code.
2. Complainant has failed to meet his burden.

OPINION

Complainant filed a disqualification motion under §PC 5.01(4), Wis. Adm. Code. The code provisions pertinent to this motion are noted below:

PC 5.01 HEARING EXAMINERS. . . .

PC 5.01 (3): DISQUALIFICATION. If a presiding authority is unqualified to preside for reasons of conflict of interest or personal bias, the presiding authority shall withdraw and notify the commission and the parties of the disqualification.

PC 5.01 (4): MOTIONS FOR SUBSTITUTION OR DISQUALIFICATION OF PERSONS CONDUCTING HEARINGS. If any party deems the presiding authority to be unqualified for reasons of conflict of interest or bias, the party may move in a timely manner for substitution of a different examiner or disqualification of the commissioner. The motion shall be accompanied by a written statement setting forth the basis for the motion. If a hearing examiner does not grant a motion for substitution, it shall be referred to the commission, which shall determine the sufficiency of the ground alleged.

The basis for complainant's request is that he has filed two cases (99-0075-PC-ER and 99-0085-PC-ER) against the Personnel Commission. The claim here is that the Commission has a conflict of interest in resolving the present case against DER because the Commission was named as a party in the previously mentioned cases. The Commission disagrees.

The Commission's rationale in dismissing the cases against the Commission is reflected by the following excerpt from *Sheskey v. PC*, 99-0085-PC-ER, 5/19/99:

The legal principles regarding the jurisdictional issue posed here (as discussed later in this ruling) are clear-cut and of long standing. Complainant's arguments on the jurisdictional issue could be viewed as a sham or as frivolous if filed by an attorney on complainant's behalf.¹ The complainant is not represented by counsel which may explain why the complaint was filed in the first instance, but does not change the fact that the suit is without merit. All Commissioners feel

they are able to preside over complainant's cases in a neutral manner. There is no room for bias to enter the legal analysis under these circumstances. Furthermore, complainant's right to a decision based on correct legal principles and not on bias is protected due to the fact that he may request review of the Commission's decision to the court system. Accordingly, complainant's disqualification motion is denied.

¹ The Commission as an administrative body is not held to the same standard as exists for disqualification of a judge under 757.19, Stats. It is instructive to note, however, that under §757.19(2)(b), Stats., a judge who is a party to a case need not disqualify himself if the judge determines that any pleading purporting to make him or her a party is false, sham or frivolous.

Complainant's disqualification motion is denied in this case against DER because the cases he filed against the Commission were dismissed for lack of jurisdiction.

The investigation of this case against DER by a Commission Equal Rights Officer will continue.

ORDER

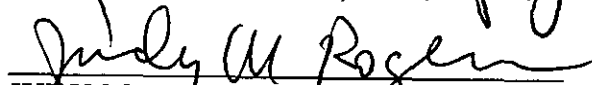
Complainant's disqualification motion is denied.

Dated: May 24, 1999.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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