

STATE OF WISCONSIN

PERSONNEL COMMISSION

CAROLYN JONES,
Appellant,

v.

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

**RULING ON
MOTION TO
DISMISS**

Case No. 98-0069-PC

NATURE OF CASE

This case involves an appeal, pursuant to §230.45(1)(d), Stats., of a decision by respondent, denying §230.36(4), hazardous employment injury benefits to appellant. Respondent has filed a motion to dismiss on the grounds the Commission lacks jurisdiction. Both parties filed briefs.

The following factual findings are based on documents provided by the parties and do not appear to be in dispute.

FINDINGS OF FACT

1. Appellant, Carolyn Jones, is employed by the respondent Department of Corrections (DOC) at the Robert E. Ellsworth Correctional Center (REECC) as an Officer 3.
2. Appellant is a classified employe represented by AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO. There is a collective bargaining agreement between Council 24 and the state.
3. On May 11, 1998, appellant was injured at work when she attempted to obtain a license plate number of a suspicious vehicle parked on the REECC grounds.
4. Appellant reported the injury to her supervisor, filed an injury report and requested benefits under §230.36, Stats.

5. On June 17, 1998, respondent denied appellant's request for §230.36 benefits.

6. Appellant alleges AFSCME Council 24 union representatives refused to process her request to grieve the denial of §230.36 benefits on the grounds the union does not intercede in matters pertaining to job-related injuries.

7. On July 1, 1998, appellant appealed respondent's denial of her §230.36 benefits claim to the Commission.

OPINION

Respondent argues that appellant, being a represented employe, is not eligible to claim hazardous employment benefits under §230.36, Stats.; that her right to such benefits is determined by/subject to the collective bargaining agreement between the state and AFSCME Council 24. In support, respondent cites *Bell v. DOT*, 91-0098-PC, 10/17/91 and §111.93(3), Stats., which provides for the supersession of §230.36(4), Stats., by the provisions of the state and union collective bargaining agreement.

Appellant's response, opposing the motion, is as follows:

It is the position of Ms. Jones that under the circumstances—see the enclosed affidavit of Carolyn Jones—that the principles enunciated in *Bell v. DOT*, Case No. 97-0098-PC (10/17/91), which otherwise admittedly would be on point, should [not] be applied to the instant case.

The referenced affidavit, signed by appellant on September 21, 1998, provides:

Carolyn J. Jones, being first duly sworn on oath, states as follows:

1. Affiant is an adult resident of Racine County, Wisconsin and is employed as a prison guard by the State of Wisconsin, Department of Corrections at the Robert E. Ellsworth Correctional Center.

2. Affiant was injured during the course of her employment on May 11, 1998, while attempting to obtain the license number of a suspicious vehicle illegally parked at the Robert E. Ellsworth Correctional Center in Union Grove, Wisconsin.

3. Affiant immediately filed an injury report and thereafter filed a claim for benefits under sec. 230.36, Wis. Stats., pursuant to a memorandum dated June 2, 1998, from an agent of the Department of Corrections. A true and correct copy of said letter is appended hereto and incorporated herein as Exhibit A.
4. On or about June 17, 1998, the Department denied the claim. A copy of said denial is appended hereto and incorporated herein as Exhibit B and was attached to the Appeal on file as Attachment A.
5. Appellant herein requested AFSCME Council 24 union representatives Mike Kelvi and Jana Weaver to process a grievance regarding the wrongful denial of benefits, on or about the end of May, 1998.
6. Mike Kelvi and Jana Weaver refused to process said grievance on the grounds that the Union did not get involved in matters pertaining to injuries sustained on the job.
7. The affidavit is filed in opposition to respondent's Motion to Dismiss inasmuch as appellant has no other legal remedy or alternative.

Appellant acknowledges she is a represented employe and covered by a collective bargaining agreement that includes a hazardous employment injury benefits grievance procedure, but argues that since her union representatives refused to process her grievance, the Commission is her only recourse for redress. Appellant cites no authority in support of this argument for establishing jurisdiction in this matter.

The jurisdiction of the Commission is limited by the statutes under which it proceeds. *State ex rel. Farrell v. Schubert*, 52 Wis. 2d. 351, 190 N.W.2d. 529 (1971). Here, the collective bargaining agreement supersedes the Commission's authority to hear this matter, pursuant to 111.93(3), Stats., provides in relevant part:

[I]f a collective bargaining agreement exists between the employer and the labor organization and a labor organization representing employes in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of the civil service and other applicable statutes.

As concluded in *Bell v. DOT, Id.*, the Commission lacks jurisdiction over this matter.

CONCLUSIONS OF LAW

1. This appeal is barred by the effect of §111.93(3), Stats.
2. The Commission lacks subject matter jurisdiction over this appeal.

ORDER

This appeal is dismissed for subject matter jurisdiction.

Dated: November 18, 1998.

DRM:rjb:980069Arul1.2

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Carolyn Jones
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Kansasville WI 53139

Michael J Sullivan
Secretary, DOC
PO Box 7925
Madison WI 53707-7925

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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