

KIM DUBOIS,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

**RULING
ON
MOTIONS TO
DISMISS**

Case No. 00-0151-PC

This matter is before the Commission on a motion by respondent Department of Corrections (DOC) to dismiss appellant's reclassification appeal on the grounds it was untimely filed, and on a motion by respondent Department of Employment Relations (DER) to dismiss that portion of the appeal relating to the reallocation of appellant's position for lack of subject matter jurisdiction. The following findings appear to be undisputed:

FINDINGS OF FACT

1. Appellant began her employment at Lincoln Hills School (LHS) on August 16, 1999, as a Social Worker-Objective.
2. Appellant completed her probationary period on February 15, 2000.
3. By memo dated January 18, 2000, to the LHS superintendent, appellant requested reclassification of her position from Social Worker-Objective, in pay range 12-05, to Social Worker-Senior, in pay range 12-07
4. Respondent DER had delegated the authority to grant such a reclassification request to respondent DOC, pursuant to §230.04(1m), Stats.
5. By memo dated January 24, 2000, John Ourada, appellant's supervisor, responded to the request by stating he would meet with appellant upon the completion

of her probationary period to begin the process for reclassification. The memo stated, in part:

After reviewing your request, it is my intentions to meet with you in a supervisory conference upon completion of your probation period on 2-15-2000, to begin the process for higher classification. We will discuss the specific performance expectations in the PD and specify the new level of supervision to be implemented. This conference will identify a specific beginning and ending date of the six-month trial period and the target date, upon which I will recommend reclassification, provided all requirements are met. I will notify you with the date and time of the supervisory conference.

If you disagree with this determination, you may request a second review by the Bureau of Personnel and Human Resources. To request such a second review, you must send a letter . Such letter must be received by BPHR within 30 calendar days after receipt of the notification.

6. By memo dated February 18, 2000, appellant's supervisor, John Ourada, scheduled a meeting with appellant on February 22, 2000, "to begin the process of reclassification to Social Worker-Senior level." The memo listed various requirements for reclassification to the higher level and listed August 20, 2000, as the "target date for reclassification provided all requirements are met."

7 On June 21, 2000, appellant sent a memo to Mr Ourada and the LHS superintendent requesting reclassification to the Social Worker-Senior level "as of today's date."

8. By letter dated June 29, 2000, Mike Nichols, Human Resource Manager at LHS, responded to the June 21st request and informed appellant that new provisions in the collective bargaining agreement would take precedence over the reclassification considerations established by Mr. Ourada:

As you know the new provisions of the contract will be implemented effective July 2, 2000. Under the provisions of the contact, the new pay progression structure for Social Workers will be implemented and reclassification will be eliminated. With this new pay progression structure, a Social Worker with less than 18 months at the Objective level will be placed at the B pay range on July 2, 2000, and will be moved to the C pay range after a total of eighteen months in pay status as either a Social

Worker-Objective or Social Worker-Corrections (B) or a combination of both.

I have contacted Ms. Jean Nichols regarding your request, she indicated the new contract provisions and pay progression structure will take precedence over the reclassification considerations set by Mr. Ourada and you will move to the C pay range on 2-25-01.

If you have any questions, please contact Mr. Ourada or me.

The letter had the effect of denying appellant's request to reclassify her position as of June 21st. The letter does not set forth any procedures for appealing the decision.

9. Mr Nichols also met with appellant on June 29th and explained the information set forth in the previous finding.

10. Appellant received a notice dated July 27, 2000, from respondent DER, reallocating her position to the newly created classification of Social Worker - Corrections (B) effective July 2, 2000. The classification specification for Social Worker-Corrections (A, B, C) includes one definition statement under the heading of "Social Worker-Corrections (A, B, C)." The classification specifications also include the following language

This classification was created July 2, 2000, and announced in Bulletin CLR/SC-115, to accommodate the pay progression system that was negotiated for this select group of social worker positions in the 1999-2001 collective bargaining agreement between the State of Wisconsin and the Wisconsin State Employees Union.

11 Negotiating Note No. 64 to the collective bargaining agreement establishes the pay progression for positions classified as Social Worker-Corrections. The Note includes the following language:

Classification Structure. Effective July 2, 2000, the Employer will implement the following classification of Social Worker-Corrections:

Social Worker-Corrections (A)	PR 12-04
Social Worker-Corrections (B)	PR 12-05
Social Worker-Corrections (C)	PR 12-07

Concept: The change in class title creates a new classification of Social Worker - Corrections which combines the Social Worker-In Training, Social Worker-Objective and Social Worker-Senior (Department of Cor-

rections positions only) into the single classification of Social Worker-Corrections.

Pay structure. Effective July 2, 2000, pay progression structure for the Social Worker-Corrections will be as follows:

Upon appointment to a position allocated to the classification of Social Worker-Corrections, the employee will be paid on the PR 12-04 pay grid. After eighteen (18) months time in pay status in classification as a Social Worker-Corrections, the employee will be paid on the PR 12-05 pay grid. After an additional eighteen (18) months time in pay status as a Social Worker - Corrections the employee will be paid on the PR 12-07 pay grid.

Implementation of these provisions shall be as follows:

. . . Social Worker-Objective. If an employee has less than eighteen (18) months in pay status at the Social Worker-Objective, the employee will be placed at the (B) pay range assignment (PR 12-05). If placed at the (B) pay range assignment, the employee will be moved to the (C) pay range assignment after a total of eighteen (18) months in pay status as either a Social Worker-Objective or Social Worker-Corrections (B) or combination of both.

12. Appellant contends she should be compensated at the PR 12-07 level and that under the classification structure in place before July 2, 2000, she would have been in PR 12-07 on August 16, 2000.

13. Appellant filed a letter of appeal with the Personnel Commission on August 3, 2000.

CONCLUSIONS OF LAW

1. The appellant has the burden of establishing that the Commission has subject matter jurisdiction over her appeal and that it was timely filed.

2. The appellant has failed to sustain her burden.

OPINION

I. Reallocation

The Personnel Commission has authority under §230.44(1)(b), Stats., to review decisions made by or delegated by the Secretary of the Department of Employment Relations under §230.09(2)(a) and (d), Stats, including decisions to reclassify and reallocate positions as well as decisions to deny reclassification requests. However, the Commission's authority to review reallocation decisions does not extend to all aspects of the reallocation process. In *Kaminski et al. v. DER*, 84-0124-PC, 12/6/84, the Commission held that it lacked jurisdiction to consider contentions that the existing class specifications should be rewritten to better identify the appellants' positions and that the particular classifications should be assigned to higher pay ranges. The Commission noted that alleged errors in position standards and pay range assignments are not appealable to the Commission. In *Garr et al. v. DER*, 90-0163, etc.-PC, 1/11/91, the Commission held that it lacks statutory authority to hear an appeal arising from salary adjustments connected to a reallocation.

The Social Worker-Corrections class specification is a single classification that includes three different pay progression points. Movement from one pay point to the next is determined by the collective bargaining agreement entered into by the State of Wisconsin and the Wisconsin State Employees Union. The decision to place the appellant's position at one pay point rather than another is not a *classification* decision that is appealable to the Commission.¹ It is a pay point decision similar to any decision making salary adjustments connected to a reallocation. Therefore, the Commission lacks subject matter jurisdiction over the appellant's reallocation claim.

¹ See *Kuschel v. DER*, 90-0190-PC, 11/16/90, where the Commission held that it lacked the authority to review the decision to designate a position to be within one area of specialization rather than another, where both areas are included in the same classification level.

II. Reclassification

The time limit for filing an appeal of a reclassification decision under §230.44(l)(b), Stats., is established in §230.44(3), Stats.

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later

Pursuant to §ER 3.04, Wis. Adm. Code:

Approvals or denials of reallocations or reclassifications shall be made to the appointing authority in writing. The appointing authority shall immediately notify the incumbent in writing.

While respondent did provide written notice of its reclassification denial, it was not required to notify appellant of the procedures for filing an appeal with the Commission.²

Appellant seeks to appeal the June 29th decision³ effectively denying her June 21st request to reclassify her position. She filed her appeal with the Commission on August 3, 2000, more than 30 days thereafter. Because the appeal was not received within the 30-day statutory period, the Commission must dismiss the appeal of the reclass denial as untimely filed.

² In *Austin-Erickson v. DHFS & DER*, 97-0113-PC, 2/25/98, the Commission dismissed an appeal as untimely filed when it was received more than 30 days after the appellant was notified that her position had been reclassified, even though it was filed within 30 days of when she first learned that she could appeal the matter to the Commission:

Ms. Austin-Erickson contends that respondent DHFS withheld the information she needed to have filed a timely appeal with this Commission. However, decisions by the Commission and the courts make it clear that the agency (DHFS) has no legal requirement to advise an employe as to the proper route for appeal. Equitable estoppel only occurs when the agency provides *misinformation* that the employee relies on and thereby fails to file a timely appeal. . . . [A]ppellant's argument that her appeal should be considered timely filed because it was filed within 30 days of her having been told she had the right to appeal to this Commission must be rejected.

³ The Commission does not reach any conclusion as to whether the June 29th letter represents a final reclassification denial or whether additional, internal review was available within DOC.

ORDER

This matter is dismissed.

Dated: December 13, 2000 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:000151Arul1


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Kim DuBois	Jon Litscher	Peter Fox
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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.

2/3/95