

STATE OF WISCONSIN

PERSONNEL COMMISSION

DENNIS J. SHESKEY,
Complainant,

PAUL FITZSIMMONS, Bankruptcy Trustee,
Intervenor,

v.

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

DECISION AND ORDER

Case No. 98-0063-PC-ER

This case is before the Commission to resolve the Intervenor's request for dismissal. The facts recited below appear to be undisputed by the parties.

FINDINGS OF FACT

1. The Commission received Mr. Sheskey's discrimination complaint on March 6, 1998, and an amendment on May 1, 1998.
2. A Notice of Intervention was filed by Attorney Paul Fitzsimmons, by cover letter dated December 20, 1999, stating as follows:

COMES NOW Paul Fitzsimmons, as attorney for Paul Fitzsimmons, Trustee for the Bankruptcy Estate of Dennis Sheskey, BK No. 99-01697, filed June 25, 1999, in the United States Bankruptcy Court for the Northern District of Iowa, and hereby provides notice of his intervention in the above matter.¹

The Trustee of the bankruptcy estate further states that based on his investigation in to the subject matter of the claim, it appears that the above claim is the property of the bankruptcy estate.

¹ "The above matter" is a reference to case #98-0063-PC-ER. The Notice of Intervention contained a typographical error listing the case number incorrectly as 99-0063-PC-ER.

3. On January 27, 2000, Attorney Fitzsimmons filed with the bankruptcy court a document entitled "Report of and Motion for Compromise or Settlement of Controversy." Attorney Fitzsimmons thereby moved the court to approve a settlement agreement the terms of which would result in dismissal of this case (and other cases) in exchange for the payment of a monetary sum. Judge Kilburg granted the motion by order dated March 3, 2000. The bankruptcy judge stated in the order that this case was the property of the estate and that the Trustee was authorized to take "such steps as are necessary" to have this case dismissed.

4. Attorney Fitzsimmons, by letter dated April 5, 2000, advised the Commission that Mr. Sheskey filed an appeal of the ruling to the Bankruptcy Appellate Panel for the Eighth Circuit Court of Appeals. Attorney Fitzsimmons requested that the Commission hold this case in abeyance pending resolution of the bankruptcy appeal. The Commission granted the request by letter dated April 10, 2000.

5. The US Bankruptcy Appellate Panel for the 8th Circuit dismissed Mr. Sheskey's appeal on April 6, 2000 (case #00-00627NICR). Attorney Fitzsimmons provided the Commission with a copy of the dismissal notice by cover letter dated April 11, 2000, in which he requested dismissal of this case.

6. The Commission, by letter dated April 20, 2000, provided an opportunity for the parties to file written arguments in opposition to the Intervenor's request for dismissal. Mr. Sheskey filed such arguments. The Department of Employment Relations (DER) filed arguments by cover letter dated April 27, 2000, joining in the request for dismissal and questioning whether Mr. Sheskey has standing to object to dismissal of this case.

OPINION

Upon commencement of a bankruptcy action and the creation of an estate, the debtor loses all control over the property of the estate. Rather, such control rests with the bankruptcy trustee (9A Am Jur 2d *Bankruptcy* §1087 (1999)). The property of the estate includes lawsuits against third parties which existed when the bankruptcy action was filed (9A Am Jur 2d *Bankruptcy* 1107). The debtor under these circumstances lacks standing to pursue third-party lawsuits, which are the property of the bankruptcy estate (9A Am Jur 2d *Bankruptcy* §1108).

In Mr. Sheskey's bankruptcy proceeding, the bankruptcy court has determined that this case is part of the estate's property. Accordingly the trustee, Attorney Fitzsimmons, is the only person with standing to pursue this case. He petitioned the bankruptcy court to approve a settlement agreement, which would result in dismissal of this case, and the bankruptcy court approved such petition. Under these circumstances, Mr. Sheskey lacks standing to oppose Attorney Fitzsimmons' request for the Commission to dismiss this case. His request is granted.

CONCLUSIONS OF LAW

1. The Intervenor has the burden to establish entitlement to dismissal. The Intervenor has met this burden.
2. Mr. Sheskey had the burden to establish that he had standing to object to dismissal of this case. He failed to meet this burden.

ORDER

This case is dismissed.

Dated: May 31, 2000.

STATE PERSONNEL COMMISSION

Laurie R. McCallum, Chairperson
LAURIE R. McCALLUM, Chairperson

Donald R. Murphy, Commissioner
DONALD R. MURPHY, Commissioner

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Judy M. Rogers, Commissioner
JUDY M. ROGERS, Commissioner

Parties:

Dennis J Sheskey
707 Ries St.
Dubuque, IA 52001

Paul Fitzsimmons
Bankruptcy Trustee
Steele Center
790 Town Clock Plaza
Dubuque, IA 52001

Peter Fox
Secretary, DER
345 W. Washington Avenue
PO Box 7855
Madison, WI 53707-7855

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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