

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALLEN BEDYNEK-STUMM, Appellant,

vs.

Secretary, **DEPARTMENT OF HEALTH AND FAMILY SERVICES**, Respondent.

Case 3
No. 62941
PA(sel)-6

Decision No. 31099-A

Appearances:

Allen Bedynek-Stumm, P.O. Box 44771, Madison, Wisconsin 53744, appearing on his own behalf.

Eric Wendorff, Assistant Legal Counsel, P.O. Box 7850, Madison, Wisconsin 53707-7850, appearing on behalf of the Department of Health and Family Services.

ORDER DISMISSING APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION

This matter, which arises from a decision not to select Allen Bedynek-Stumm (the Appellant) to fill a vacant position, is before the Wisconsin Employment Relations Commission (the Commission) on a question of subject matter jurisdiction. A contested case hearing was convened on the merits of the appeal on March 30, 2004. The final post-hearing brief was received on August 3, 2004 and the designated hearing examiner issued a proposed decision and order on October 4, 2004. On November 10th, Mr. Bedynek-Stumm filed a request for oral argument before the Commission and Respondent filed an objection to the request on November 18, 2004. By letter dated November 30th, the Commission identified a jurisdictional issue and provided the parties until December 15th to submit written arguments.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. On May 5, 2002, Mr. Bedynek-Stumm applied for a limited term employment (LTE) position as a SeniorCare Eligibility Specialist in the Bureau of Health Care Eligibility, Division of Health Care Financing, in the Department of Health and Family Services.
2. The Respondent uses less stringent procedures for hiring LTE staff than for hiring permanent staff.

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3. Mr. Bedynek-Stumm was not one of the 12 applicants hired for a LTE SeniorCare Eligibility Specialist position in 2002.

4. Respondent also considered Mr. Bedynek-Stumm as an applicant for additional LTE SeniorCare Eligibility Specialist positions that were vacant in 2003, but declined to interview or hire him.

5. Mr. Bedynek-Stumm filed an appeal of Respondent's decision not to select him for the 2003 vacancies.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Appellant has the burden of establishing that the Commission has the authority to review the selection decision for the LTE SeniorCare Eligibility Specialist positions in 2003.

2. The Appellant has failed to sustain that burden.

3. The Commission lacks subject matter jurisdiction over this appeal.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of January, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties:

Allen Bedynek-Stumm
P.O. Box 44771
Madison, WI 53744

Helene Nelson
Secretary, DHFS
PO Box 7850
Madison, WI 53707-7850

Department of Health and Family Services (Bedynek-Stumm)

MEMORANDUM ACCOMPANYING ORDER DISMISSING APPEAL

The issue in this matter is whether the Commission has the authority to review a selection decision where the position in question is for employment as an LTE. This issue has been addressed on several occasions by the Wisconsin Personnel Commission, the agency that, until the effective date of 2003 Wis. Act 33, held the authority to hear State civil service appeals filed under Sec. 230.44(1), Stats. The sole paragraph in that subsection that even arguably includes an LTE selection decision is Sec. 230.44(1)(d), Stats., which provides that “[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.” In *STARCK V. DHFS*, 98-0053, PC (PC, 6/99), the Personnel Commission noted:

The Commission has previously ruled that it lacks subject matter jurisdiction over limited term employee hiring decisions. In *BARKER V. UW*, 88-0031-PC, 4/20/88, the Commission held:

As noted in Sec. ER-Pers 10.04, Wis. Adm. Code, [1988] the procedures used for recruitment and selection of limited term employees may be a modification of the recruitment and selection process used for permanent positions. In *KAWCZYNSKI V. DOT*, 80-181-PC, 11/4/80, the Commission held that Sec. 230.44(1)(d), Stats., does not apply to a selection of a limited term employee because there is no certification for a limited term vacancy. Even though subsequent decisions have concluded that the phrase “after certification” in Sec. 230.44(1)(d), Stats., refers to a certain segment of the appointment process and does not require an actual certification, the limited term appointment process does not include a segment that is comparable to a certification of eligibles.

This analysis is still viable and it applies to the factual premise of the present case: appellant unsuccessfully sought appointment to a[n] LTE position at WMHI. Certification was not part of the process used to fill the position in question, nor was any process similar or comparable to certification used to fill this position. Therefore, the Commission lacks the authority to hear this matter under Sec. 230.44(1)(d), Stats.

The Appellant has not advanced, nor is the Commission aware of any argument as to why this line of cases should not continue to apply.

In his written argument, Mr. Bedynek-Stumm contends that an employee of the Department of Health and Family Services committed perjury during the hearing that was held in this matter on March 30th. The Commission has no reason to believe that the testimony was in any way inaccurate. In any event, the testimony of that witness was not material to the findings that serve as the basis for ruling on the jurisdictional issue.

The appeal must be dismissed due to a lack of subject matter jurisdiction.

Dated at Madison, Wisconsin, this 11th day of January, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner