

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JESSICA MCCLOUD, Appellant,

vs.

DEPARTMENT OF HEALTH SERVICES, Respondent.

Case 73
No. 72102
PA(adv)-318

DECISION NO. 34127-A

Appearances:

Mr. Mike Stahl, Field Representative, Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO, 8033 Excelsior Drive, Madison, Wisconsin 53717, appearing on behalf of Complainant Jessica McCloud.

Wilhelmina Mickelson, Labor Relations Specialist, Wisconsin Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of Respondent Department of Health Services.

ORDER GRANTING MOTION TO DISMISS

On May 8, 2013, Jessica McCloud filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that her employment with the Respondent Department of Health Services had been terminated without just cause. On August 30, 2013, Respondent filed a motion to dismiss the appeal asserting that McCloud was a probationary employee and that the Commission lacks jurisdiction over this appeal. The parties thereafter filed written argument and the motion is now ripe for Commission action.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The appeal is dismissed.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

Section 230.44(1)(c), Stats., provides:

If an employee has permanent status in class ... the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

However, the Commission lacks subject matter jurisdiction over appeals of terminations that occur while the employee is serving a probationary period because the employee lacks the “permanent status in class” that is required under § 230.44(1)(c), Stats. *Board of Regents v. Wisconsin Personnel Commission*, 103 Wis.2d 545 (Ct. App., 1981).

It is undisputed that when McCloud was terminated, she was serving a probationary period. Therefore, she did not have permanent status in class and we do not have jurisdiction to review her appeal. Therefore, the appeal is dismissed.

We have considered McCloud’s arguments that under pre-Act 10 bargaining agreements, McCloud had rights to return to another position. However, those agreements are no longer in effect and, in any event, would be irrelevant to the issue of our jurisdiction under § 230.44(1)(c), Stats.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner