

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BRANDIE SEEHAVER, Appellant,

vs.

DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case 28  
No. 72156  
PA(adv)-337

DECISION NO. 34976

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**Appearances:**

Troy Bauch, Field Representative, Wisconsin State Employees Union, 1190 Ruffedt Road, Cornell, Wisconsin 54732, appearing on behalf of Complainant Brandie Seehaver.

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 Veterans Affairs.

**ORDER GRANTING MOTION TO DISMISS**

On July 1, 2013, Brandie Seehaver 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 Veterans Affairs had been terminated without just cause. On August 13, 2013, Respondent filed a motion to dismiss the appeal asserting that Seehaver 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

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James R. Scott, Chairman

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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 Seehaver 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 Appellant’s arguments that she was denied due process when terminated. However, as Respondent correctly argues, if we do not have jurisdiction over the termination decision itself, related process arguments are also outside of our jurisdiction. *Kriska v. DOC*, Dec. No. 31957 (WERC, 12/06).

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner