

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ELIZABETH ERICKSON, Appellant,

vs.

DEPARTMENT OF WORKFORCE DEVELOPMENT, Respondent.

Case 25  
No. 72141  
PA(adv)-320

DECISION NO. 35089

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**Appearances:**

Sean Heiser, Field Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, appearing on behalf of Appellant Elizabeth Erickson.

Paegge Heckel, Labor Relations Specialist, Office of State Employment Relations, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Workforce Development.

On May 31, 2013, Appellant Elizabeth Erickson was advised that her grievance was denied. She subsequently appealed to the Wisconsin Employment Relations Commission on June 19, 2013. In May 2014, the Respondent Department of Workforce Development (hereinafter "DWD") filed a motion to dismiss based upon a lack of subject matter jurisdiction. The matter has been fully briefed by the parties and is now ready for decision.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

Appellant Elizabeth Erickson began her employment with the State of Wisconsin on August 15, 2011. Her position required a one-year probation period. Several weeks before the expiration of the one-year probation, Erickson met with her supervisors and was advised of her performance deficiencies. Not surprisingly, Erickson disputed some of the deficiencies and suggested the problem was her immediate supervisor. She also asserted a disability and raised the question of extending her probation because of the disability.

A second meeting was held on August 7, 2012, and Erickson was advised that her probation was extended for 215 hours per Wis. Admin. Code ch. ER-MRS 13.05(2). That provision allows for the extension of probation based upon an employee's accumulated "absences" if the absences exceed 174 work hours.

On September 17, 2012, a second probation extension was granted based upon Erickson's assertion of a "disability" pursuant to § 230.28(1)(bm), Stats.

On December 13, 2012, a third extension of probation was granted again based upon the cited statute which extended the probation until February 15, 2013. Erickson was terminated on February 14, 2013 during her probationary period.

DWD has moved to dismiss for want of subject matter jurisdiction. They argue that Erickson was on probation and probationers have no recourse to the appeal process because that remedy is limited to those with "permanent" status in class" as set forth in § 230.44(1)(c), Stats.

Erickson counters arguing that her probation should not have been extended the first time because she could not have accumulated more than 174 hours of leave time. Aside from the fact that there is nothing in the record to support such analysis, Erickson also overlooks the fact that had the extension (which Erickson requested) not been granted she would have been discharged in August of 2012.

Erickson received more than eighteen months of opportunity to demonstrate that she was a capable employee worth retaining. The probationary period is an extension of the hiring process designed to determine an employee's fitness for permanent status in class. *See gen City of Madison v. Wisconsin Employment Relations Commission*, 2003 WI 52 ¶17, 261 Wis.2d 423, 662 N.W.2d 318. Here, the parties agreed to a stipulation of the facts pertinent to this matter and it clearly supports the conclusion that Erickson was a probationer at the time of her discharge. Even if the DWD miscalculated the hours of "absence" at the time of her initial extension, Erickson is estopped from reliance on the error in light of her two additional requests for extension.

We clearly lack subject matter jurisdiction over claims surrounding the discharge of employees during the probation period. *Board of Regents v. Personnel Commission*, 103 Wis.2d 545, 309 N.W.2d 366 (Ct. App. 1981). Accordingly, we dismiss this matter.

### **ORDER**

The appeal in this matter is dismissed.

Dated at Madison, Wisconsin, this 3rd day of September 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner