

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHANNA NUANES, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0028

Case Type: PA

DECISION NO. 36358

Appearances:

Troy Bauch, AFSCME Wisconsin Council 32, 1190 Ruffedt Road, Cornell, Wisconsin, appearing on behalf of Johanna Nuanes.

Amesia N. Xiong, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin, Department of Health Services.

DECISION AND ORDER DENYING MOTION TO DISMISS

Appellant Johanna Nuanes appeals her discharge from employment at the Northern Wisconsin Center for the Developmentally Disabled which is operated by the State of Wisconsin, Department of Health Services.

DHS has moved to dismiss asserting that Nuanes did not have “permanent status in class” as that term is used in § 230.44(1)(c), Stats., and therefore we lack jurisdiction. DHS relies on Chapter 370 of the Wisconsin Resources Handbook as the basis for arguing that Nuanes is a probationary employee. Nuanes was hired on February 2, 2015, and required to serve a probationary period of twelve months. On September 20, 2015, she was terminated (as a matter of administrative convenience) and immediately rehired in a higher classification. The new position carried a six-month probationary period. On February 10, 2016, Nuanes was terminated from her new position. The termination occurred more than twelve months after Nuanes’ original hire date but less than six months from her rehire date.

All of this creates an issue as to whether Nuanes was in fact on probation at the time of her discharge. DHS’s argument is essentially that she is because they say she is. As authority

they cite generally to Chapter 370 of the Wisconsin Resources Handbook. Setting aside the issue of whether the handbook has any authoritative force at the Commission, we note that this densely worded tome does not answer the question.

We need more than what was provided to resolve this issue. Accordingly, we deny the motion subject to further review following a full hearing and presumably more complete argument.

ORDER

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 15th day of June 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner