

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ANDREW W. BASINAS,

Appellant,

v.

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES,

Respondent.

Case No. 78-135-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to § Pers. 30.10(2), WAC, of a career executive reassignment. The appellant has filed a motion for immediate reinstatement. The respondent has opposed this motion and moved to dismiss for failure of subject matter jurisdiction.

FINDINGS OF FACT

1. This appeal was filed with the Commission on August 10, 1978.
2. The appeal letter, dated August 10, 1978, contains, in part, the following:

"This letter constitutes my formal appeal and challenge to the actions taken by Allyn Sielaff, Administrator of the Division of Corrections, Department of Health and Social Services, as described in his letter of July 12, 1978 (see attachment). His decision to reinstate me to my former position of Director of the Bureau of Institutions, and simultaneously re-effectuate my reassignment to the position of Superintendent 2 at Oakhill Correctional Institution, I believe, is in violation of and contrary to the recent order of the State Personnel Board and is an unreasonable and improper exercise of the appointing authority's discretion and, in fact, was taken for disciplinary reasons rather than to utilize my abilities in the best interests of the Division. In addition, this action is illegal for a host of other reasons.

* * *

This appeal is taken pursuant to Section Pers. 30.10 Wisconsin Administrative Code.

3. The Commission takes official notice of the decision of the Personnel Board in Basinas v. DHSS, 77-121 (6/16/78).

OPINION

The respondent's motion to dismiss for failure of subject matter jurisdiction is grounded on the fact that the Personnel Board in Case No. 77-121 overruled an objection to subject matter jurisdiction by relying on its investigatory authority under §16.05(4), Stats. (1975). Subsequently the Personnel Board was abolished and its functions split between two agencies, the new Personnel Board and this Personnel Commission. See Chapter 196, Laws of 1977. The investigatory authority which had been vested in the old Board was given to the new Board and not the Personnel Commission. See Chapter 196, §29, §230.07(4), Stats. (1977). The Commission can ascertain no provision in §§230.44 or 230.45, Stats. or elsewhere that would authorize the Commission to hear appeals of this nature. Accordingly it must be concluded that jurisdiction under § Pers. 30.10(2), W.A.C., lies with the new Personnel Board under § Pers. 230.07(1), Stats. (1977), rather than with this Commission.

The appellant in his argument that the Commission does have jurisdiction cites § Pers. 30.10(5):

"Career executive status grants an employee the same redress rights granted employees with permanent status in class under Subsection 16.05(1)(e), Wis. Stats., for suspension without pay, discharge, layoff or reassignment for disciplinary purposes to a position within the career executive program allocated to a classification assigned to a lower pay range."

The problem with this argument is that the director cannot by rule confer jurisdiction on an agency where none exists by statute. Appeal

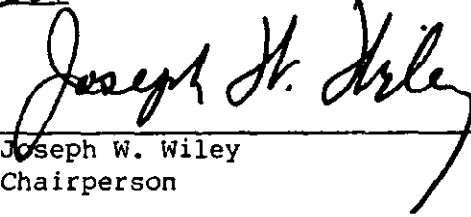
rights under §16.05(1)(e), Stats. (1975) are limited to certain specific transactions which do not include career executive disciplinary reassignments. The authority to hear career executive reassignments under the umbrella of the investigatory authority of §16.05(4), Stats. (1975), which was cited by the Personnel Board in Case No. 77-121 is now part of the authority of the new Personnel Board as set forth in §230.07(4), Stats. (1977).

Inasmuch as the Commission lacks jurisdiction over the subject matter of this appeal it cannot rule on appellant's motion for immediate reinstatement.

ORDER

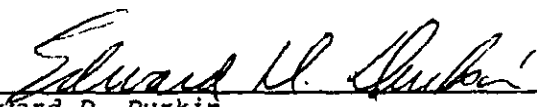
This appeal is dismissed for failure of subject matter jurisdiction.

Dated: Nov 22, 1978.



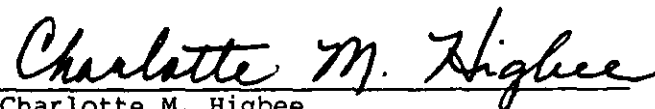
Joseph W. Wiley
Chairperson

Dated: Nov 22, 1978.



Edward D. Durkin
Commissioner

Dated: Nov. 22, 1978.



Charlotte M. Higbee
Commissioner