

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOHN T. OAKLEY,

Appellant,

v.

JEFFREY B. BARTELL, Commissioner
of Securities,

Respondent.

Case No. 78-66-PC

* * * * *

INTERIM
DECISION

NATURE OF THE CASE

This case involves an appeal of an involuntary demotion in lieu of layoff pursuant to §230.44(1)(c), Wis. Stats. The respondent filed a "motion to dismiss on jurisdictional grounds" on September 9, 1978, on the grounds that the appellant did not allege in his appeal letter that the respondent's decision was not based on "just grounds." The parties have filed briefs on this motion. The following findings are based on matter which appears to be undisputed.

FINDINGS OF FACT

1. The appellant's appeal letter to the Commission dated April 25, 1978, received April 25, 1978, states in pertinent part:

"This is to advise you that I am appealing the decision of the Commissioner of Securities, Jeffrey B. Bartell, dated April 20, 1978, and effective May 3, 1978, in which I was involuntarily demoted from Securities Examiner 4 in the Office of the Commissioner of Securities to Securities Examiner 3".

2. On September 18, 1978, the appellant filed an "amended notice of appeal, "dated September 15, 1978, which contained in part the following:

"The basis for this appeal is that the act of the Commissioner of Securities was done without just cause and was an abuse of his discretion.

I respectfully request that this amended notice of appeal be merged with my original notice of April 25, 1978, and that it relate back to that date."

CONCLUSIONS OF LAW

1. The appellant should be permitted to amend his original appeal letter.
2. The appellant's "amended notice of appeal" relates back in time to the filing of the original appeal and cures any jurisdictional defect which may have been present.

OPINION

In light of the filing by appellant of an amended notice of appeal, the Commission does not need to resolve the question of whether the initial appeal letter or document is required by §230.44(1)(c), Wis. Stats., to contain an explicit statement that the transaction appealed was not based on just cause. In the Commission's view, parties to personnel appeals should be permitted a good deal of liberality in amending pleadings. It is a general rule of administrative law that pleadings are liberally construed and are not required to meet the standards applicable to pleadings in a court proceeding. See 73 C.J.S. Public Administrative Bodies and Procedures §120., General Electric Co. v. Wis. Empl. Relations Board, 3 Wis. 2d 227,245 (1958), National Realty & Constr. Co. v. Occupational Safety & Health Review Commission, 489 F.2d 1257, 1264 (D.C. Cir. 1973). Amendments to pleadings are committed to the sound discretion of the agency, see 2 Am.

Jur. 2d Administrative Law §374.

In judicial proceedings in this state the new code of civil procedure permits great liberality in amending pleadings. Pleadings may be amended without leave of court at any time "prior to the entry of the scheduling order," §802.09(1) Stats., and the amendment relates back to the date of the filing of the original pleading "if the claim asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, §802.09(3), Stats. While these provisions do not apply to administrative proceedings, this Commission does not believe any sticter rule is called for in the regulation of proceedings before it.

ORDER

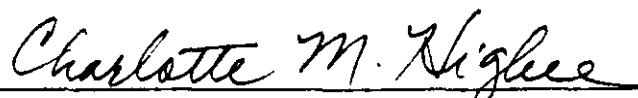
This appeal is deemed amended by the amended notice of appeal filed September 18, 1978. The respondent's motion to dismiss filed September 9, 1978, is denied. Pursuant to the conference report dated September 8, 1978, the parties will have until November 13, 1978, to attempt to reach agreement on a stipulation of facts.

Dated: Oct 10, 1978



Joseph W. Wiley, Chairperson

Dated: Oct. 10, 1978



Charlotte M. Higbee, Commissioner