

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

CARL L. CIHLAR,

 Appellant,

v.

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES,

 Respondent.

Case No. 79-106-PC

* * * * *

*

*

*

*

*

*

*

*

*

*

*

*

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a denial of a permissive reinstatement. The respondent has objected to subject-matter jurisdiction and the parties have filed written arguments. The facts relating to jurisdiction do not appear to be in dispute.

FINDINGS OF FACT

1. On April 19, 1979, the appellant was terminated from his position in the classified service as Disability Claims Adjudicator 1 while serving a six months permissive probationary period.
2. By memo of April 25, 1979, appellant requested reinstatement to a former position classified as Vocational Rehabilitation Counselor II.
3. A letter dated April 27, 1979, from Kenneth T. Golden to the appellant contained in part, the following:

"In recognition of your permissive reinstatement eligibility, I will add your name to the certified register for the vacant Vocational Rehabilitation Counselor 2 position ... I will let you know when interviews are being conducted"
4. Mr. Golden subsequently denied the appellant's request for permissive reinstatement.

CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over this appeal pursuant to §230.44(1)(b), Stats.

2. The Commission does have jurisdiction over this appeal pursuant to §230.44(1)(d), Stats.

OPINION

The respondent argues that there is no basis for jurisdiction over the denial of permissive reinstatement. The appellant argues that jurisdiction is present pursuant to §§230.44(1)(b) and (d), Stats.

Section 230.44(1)(b) provides:

"Except as provided under par. (b), the administrator may delegate, in writing, any of his or her functions set forth in this subchapter to an appointing authority ..."

There is nothing in Subchapter II of Chapter 230 which assigns the function of permissive reinstatement to the administrator. This case does not involve a delegated function under §230.44(1)(b).

Section 230.44(1)(d) provides:

"A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission."

In the opinion of the Commission the grant or denial of permissive reinstatement falls within the purview of this subsection.

ORDER

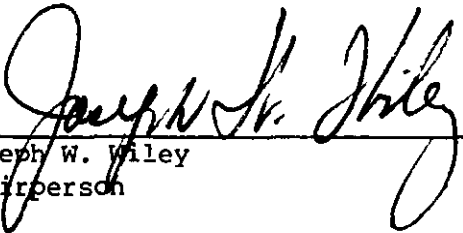
The respondent's objection to subject-matter jurisdiction is overruled. This appeal will proceed to hearing as previously noticed, as a class 3 proceeding pursuant to §230.44(1)(d), Stats. The issue for hearing will be whether the respondent's refusal to reinstate appellant

Cihlar v. DHSS
Case No. 79-106-PC
Page 3

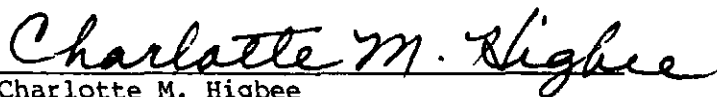
was illegal or an abuse of discretion.

Dated: August 30, 1979.

STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

AJT:jmg
8/28/79