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MICHAEL KEMP,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,

Respondent.

Case No. 81-370-PC

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DECISION
AND
ORDER

This appeal was filed with the Commission on September 11, 1981. In his appeal letter, the appellant indicated that he entered the state service in 1972 but resigned in September of 1979 in order to obtain a college degree. He apparently rejoined state service in May of 1980 and received his college degree one year later. The letter goes on to state:

"It has just been brought to my attention that I could have had an educational LOA (leave-of-absence) to complete school - however, I was not even aware that such a request could be made. I would like to see about having my original seniority date of January 31, 1972 restored to me, less the 9 months that I was out of state service, of course."

Although advised by letter from the Commission that it might lack jurisdiction over his appeal, the appellant did not offer any arguments or information beyond that found in his appeal letter.

An analysis of the relevant provisions of s.230, Wis. Stats., indicates that the Commission is without jurisdiction in this matter. The resignation took effect in 1979. Section 230.44(3), Wis. Stats., establishes a jurisdictional requirement that appeals to the Commission be filed:

"within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later ..."

Clearly, the 30 day requirement has not been met here.

Even if the appellant could show that he met the 30 day requirement, the Commission would lack subject matter jurisdiction over his appeal. The appellant apparently wishes for Commission to review the circumstances of his 1979 resignation and then to grant a leave of absence for the subsequent nine-month period.

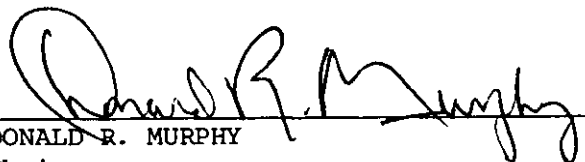
However, the Commission lacks the authority to hear appeals from resignations unless the appellant is able to show that he or she has been constructively discharged. Evrard v. DNR, 79-251-PC (2/19/80). Constructive discharge has not been alleged in the instant appeal. In addition, there is no suggestion that the appellant even requested a leave of absence in 1979, formal denial of which might have been appealable via s.230.45(1)(c), Wis. Stats., as the final step in a grievance procedure.

Therefore, the Commission must also conclude that it lacks subject matter jurisdiction over this appeal

ORDER

This appeal is dismissed for lack of jurisdiction.

Dated: Nov. 19, 1981 STATE PERSONNEL COMMISSION


DONALD R. MURPHY
Chairperson

KMS:ers

Parties

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