

In regard to the substantive issue raised in your letter, i.e. whether the Commission lacks authority to hear an appeal under §230.44 in this matter, it is my position that the Thorn complaint on its face suggests a pattern and practice of discriminatory acts. The reference to the September 17, 1981 pay slip was indicated as one instance of the result of a discriminatory practice.

Complainant's appeal under Sec. 230.44, Wis. Stats., is more specifically subsumed under Sec. 230.44(1)(a) in that actions and decisions of the administrator under Sec. 230.09, Wis. Stats were improper, illegal and discriminatory. Complainant also alleges that actions and decisions of the administrator pursuant to Sec. 230.37(1), Wis. Stats. were improper, illegal and discriminatory. It is Complainant's position that some of the actions complained of were actions delegated by the Administrator to an appointing authority and therefore the Commission assumes jurisdiction pursuant to Sec. 230.44(1)(b), Wis. Stats.

Nowhere in the letter did the appellant suggest that the Commission was incorrect in characterizing her appeal as one of a denial of a merit increase.

The Commission is expressly barred from hearing appeals from decisions relating to discretionary performance awards, as provided in §230.44, Wis. Stats:

- (1) Appealable actions and steps. Except as provided in par. (e), the following are actions appealable to the Commission under §230.45(1)(a):

* * *

- (e) Discretionary performance awards. This subsection does not apply to decisions of an appointing authority relating to discretionary performance awards under §230.12(5), including the evaluation methodology and results used to determine the award or the amount rewarded.

Based upon this language, the Commission must conclude that it lacks subject-matter jurisdiction over the instant appeal. This conclusion,

Thorn v. DHSS
Case No. 81-401-PC
Page Three

however, has no effect on the appellant's discrimination complaint which is an entirely separate proceeding.

Appellant has also indicated that she would prefer that the discrimination complaint and instant appeal not be separated:

To have two separate cases acted upon in parallel by the Commission would be duplicative. It would also constitute ineffective utilization of Commission resources.

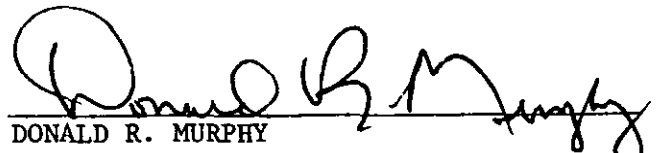
It is the Commission's standard practice to keep appeals separate from companion discrimination complaints unless and until a consolidated hearing becomes appropriate. By keeping the cases separate, the Commission can more readily deal with any jurisdictional problems that arise. Separation is also consistent with the fact that different statutory standards must be applied. Despite appellant's argument to the contrary, separating an appeal from its complaint does not necessarily result in any duplication of effort. The Commission is, therefore, unaware of any reason justifying a change in its practice of treating these matters separately.

ORDER

This appeal is dismissed for lack of subject-matter jurisdiction.

Dated: Dec. 18, 1981

STATE PERSONNEL COMMISSION


DONALD R. MURPHY
Chairperson

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