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 *
 DOROTHY ROBERTS, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF HEALTH *
 & SOCIAL SERVICES, and *
 Administrator, DIVISION OF *
 PERSONNEL, *
 *
 Respondent. *
 *
 Case No. 81-44-PC *
 *
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. The findings that follow are based on the face of documents filed to date.

FINDINGS OF FACT

1. In letters filed with the Commission on August 6, 1980, and August 22, 1980, which were assigned file numbers 80-264-PC and 80-282-PC, the appellant stated in relevant part as follows:

80-264-PC

"I wish to appeal the continuous erosion of my position by Luis Garza.

Mr. Garza is continually removing duties and responsibilities traditionally and historically to my civil service classification and to me.

The most recent of these many occasions occurred on August 1, 1980, when my cardex duties and responsibilities were removed.

In the event this should have been filed with the Administrator, I am simultaneously, by copy of this letter, appealing to him."

80-282-PC

"I wish to again appeal the continuous erosion of my position and duties by Luis Garza and Kathry Gherke.

Mr. Garza and Ms. Gherke continually remove duties and responsibilities traditionally and historically to my civil Service Classification and to me. The most recent being on 8/19/80 when more duties were eliminated from my position description.

In the event this appeal should have been filed with the Administrator, I am simultaneously, by copy of this letter, appealing to him."

2. Following the dismissal of these appeals for lack of subject matter jurisdiction on November 4, 1980, the appellant, through counsel by letter dated January 9, 1981, inquired of the administrator what steps, if any, he intended "to take with respect to hearing this matter."

3. By letter dated January 23, 1981, the administrator replied as follows:

"The Department of Health and Social Services has indicated that no changes in duties and responsibilities have been made which would affect the classification of the position occupied by Ms. Dorothy Roberts.

I plan to take no steps with respect to hearing this matter."

4. By letter to the Commission dated February 17, 1981, and filed February 19, 1981, the appellant through counsel stated in pertinent part as follows:

"...I herewith appeal the refusal of the Administrator to hold the hearing on my client's allegations that her job was and is being dismantled."

CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction over the subject matter of this appeal.

OPINION

This is an appeal of alleged reassignments of the duties and responsibilities of appellant's position. The review at this juncture essentially is that of a decision of the administrator that he lacked jurisdiction over this appeal. That is, once the administrator determined that there had been no changes in the duties and responsibilities of the position that would affect its classification, he determined that no further action would be taken. Although unstated, it is reasonable to infer that the administrator's approach was based on the theory that his authority extended only to the question of the correct classification of the position, and not to any questions raised regarding the assignment or reassignment of duties by the appointing authority. This is consonant with the Commission's understanding of the law. The appellant has cited no authority, and the Commission is aware of none, which gives the Commission or the administrator authority with respect to the assignment of duties by the appointing authority.

The appellant, through counsel, asserts that the substantive issues presented by this appeal include the following:

"1. Was the Administrator's decision that no changes in the duties and responsibilities of Roberts had occurred correct?

and

2. Regardless of the answer to the foregoing, were there in fact changes in Roberts' job duties and responsibilities which would affect its classification?

and

3. What was the motivation of those who reassigned and removed said job duties and responsibilities?" (Letter to Commission dated June 2, 1981)

As indicated above, the legal basis for the administrator's inquiry into whether there had been any changes in duties and responsibilities was solely in connection with the question of whether the position was correctly classified. The issues quoted above which the appellant seeks to raise are not independently cognizable by either the administrator or this Commission. If it were determined that there have been appreciable changes in the position, the administrator could reclassify the position but has no power to require changes in those duties and responsibilities. The appellant has not complained that her position has been reclassified or is improperly classified at its current level. While it is possible that the Commission could consider the appellant's proposed issues as sub-issues related to a larger issue concerning the classification of her position, the Commission can only conclude based on her arguments and the nature of her appeals to the administrator that she is not raising an issue as to the correct classification of her position, but rather is seeking to pursue the proposed issues independently.

The Commission wishes to note that there is precedent to the effect that in an appropriate case, such as one involving a wholesale reduction in duties for essentially disciplinary reasons, a transaction styled by management as a downward reallocation may be considered in legal effect a demotion, see Juech v. Weaver, Wis. Pers. Bd. 450 (1/13/72). Therefore, while under current law there appears to be no way that an employe can appeal to this Commission the sole matter of the divestiture of duties and responsibilities, the Juech decision is some indication that at least under some

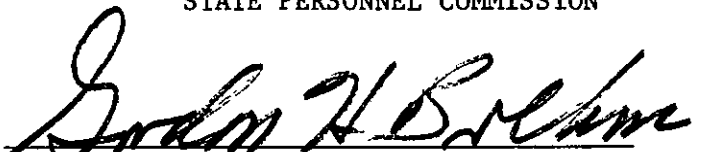
circumstances the Commission may be able to review actions of an appointing authority in removing duties and responsibilities from a position.

ORDER

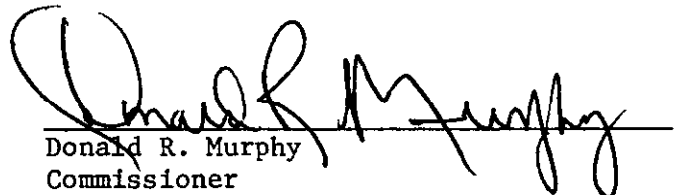
This appeal is dismissed for lack of subject matter jurisdiction.

Dated July 27, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Chairperson


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner

AJT:mew

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