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 *
 LEONARD PFLUGRAD, *
 *
 Appellant, *
 *
 v. *
 *
 Director, BOARD OF VOCATIONAL,*
 TECHNICAL, & ADULT *
 EDUCATION, and Administrator, *
 DIVISION OF PERSONNEL, *
 *
 Respondents. *
 *
 Case No. 82-207-PC *
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on the motion of BVTAE to dismiss the appeal as to it on the ground that it fails to state a claim upon which relief can be granted.

This is an appeal pursuant to §230.44(1)(a), Stats., of the removal of the appellant's name from certification for employment as a Management Information Specialist 4. Section Pers. 6.10, Wis. Adm. Code, provides in part as follows:

... the administrator may refuse to examine or certify an applicant, or may remove an applicant from certification:

* * *

- (8) Whose work record or employment references are unsatisfactory.

It appears to be uncontested that the appellant's name was removed from a list of certified MIS-4 applicants by the administrator, pursuant to this rule, at the request of BVTAE.

Pursuant to the provisions of §Pers. 6.10(8), the authority to remove a name from a certification is that of the Administrator of the Division of Personnel. Pursuant to §230.44(1)(a), Stats., a person may appeal decisions of the administrator to the Commission. Section 230.44(1)(b), Stats., "action delegated by administrator," does not apply because there is no indication that in requesting the removal of the appellant's name from the certification, BVTAE was exercising a delegated function of the administrator set forth in subchapter II of Chapter 230. See §§230.44(1)(b), 230.05(2), Stats. There are no other provisions of §230.44 or §230.45 which would provide a basis for jurisdiction.

The appellant argues in a letter filed December 16, 1982, that the action taken "... in essence is an unmitigated disciplinary or punitive action from an agency for which I had non-probationary status and as such should be protected from this under the just cause provisions of the laws."

A post-employment action such as this is not a "demotion, layoff, suspension, discharge or reduction in pay..." see §230.44(1)(c), Stats. It cannot be characterized as a constructive disciplinary action as it lacks the attributes of the enumerated transactions, in part because there was no employer-employee relationship between the appellant and BVTAE at the time his name was removed from the certification.

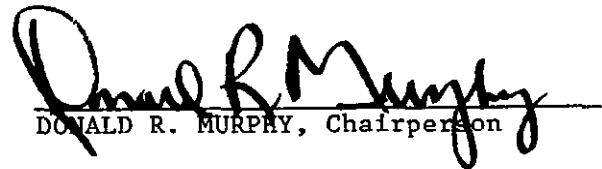
The appellant also contends that the removal of his name from the certification is part of a pattern of harassment against him by BVTAE. However, this allegation is of no significance with respect to the legal question of whether there is any claim stated against BVTAE. The Commission's jurisdiction is limited strictly to those matters set forth in the statutes. If there is no statutory provision which gives the

Commission the authority to hear an appeal of BVTAE's action in this case,
it is not material whether it is alleged to be part of a pattern of
harassment.

ORDER

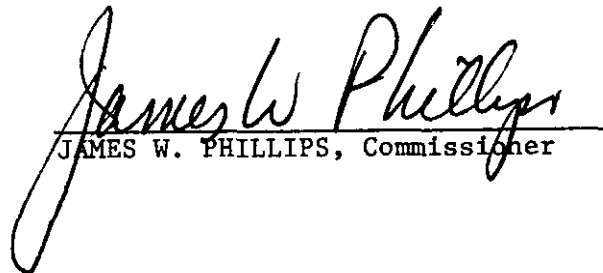
This appeal is dismissed as to BVTAE for failure to state a claim upon
which relief can be granted.

Dated: December 29, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

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