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TED W. SEEFELDT,

Appellant,

v.

Secretary, DEPARTMENT OF
REVENUE, and Secretary,
DEPARTMENT OF EMPLOYMENT
RELATIONS,

Respondents.

Case No. 87-0143-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on respondent's motion to dismiss. The parties have filed briefs and the findings set out below appear to be undisputed.

FINDINGS OF FACT

1. On July 28, 1986, appellant submitted a written request to respondent DOR's Bureau of Personnel for reclassification of his position from Excise Tax Investigator 3 to Excise Tax Agent.
2. On August 21, 1987, after not receiving a decision on his reclassification request, appellant filed a letter of appeal to the Commission requesting a hearing date and stating that one year was "adequate time to make a decision."
3. By letter dated September 3, 1987, DOR's Bureau of Personnel informed the appellant that it had determined his position was properly classified at the Excise Tax Investigator 3 level:

Thus, based on our classification review and analysis of the current duties and responsibilities of your position, changes in the duties and responsibilities, and comparison with appropriate job

specifications at both your present and requested level, we are processing your reclassification request with no change in classification.

This action may be referred to the Administrator of the State Division of Classification and Compensation for further review by submitting a written request to Michael D. Kaphingst, Acting Director, Bureau of Personnel and Employment Relations, Department of Revenue, within 30 days of receipt of this letter. Such a request must include the reasons you feel the action taken by the agency is inappropriate. We will forward your request and pertinent materials from our files to the Department of Employment Relations.

4. Appellant sought further review by submitting a written request to DER. That review is pending before DER.

5. On September 14, 1987, appellant requested an indefinite postponement of the prehearing conference that had been scheduled in this matter by the Commission.

6. On September 22, 1987, respondent DOR filed a motion to dismiss.

OPINION

The respondent's motion to dismiss is based on the following grounds:

1) the Commission lacks jurisdiction to review the issue of the appropriate amount of time to be expended by an agency in reviewing and making a determination on a reclassification request; 2) the petitioner's application to the Commission is moot since a determination on his reclassification request has subsequently been made and provided to him; 3) the petitioner has raised no other issues of law or fact, therefore no cause remains for Commission investigation or review; and 4) review of the determination itself is premature since petitioner has not exhausted his administrative remedies.

The Commission's jurisdiction over reclassification matters is premised on s. 230.44(1)(b), Stats., which provides:

[T]he following are actions appealable to the commission under s. 230.45(1)(a):

* * *

(b) Decision made or delegated by secretary [of DER]. Appeal of a personnel decision under s. 230.09(2)(a) or (d) or 230.13 made by the secretary or by an appointing authority delegated by the secretary under s. 230.04(1m).

Pursuant to s. 230.09(2)(a), Stats.:

After consultation with appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

The instant appeal arose out of what might be construed as a constructive denial by respondent DOR of appellant's request to have his position reclassified. Before the Commission could determine whether a constructive denial has occurred, DOR formally denied the appellant's request and advised the appellant that the next level of review was before the Department of Employment of Relations.

The issue of the appropriate classification of the appellant's position, as between an Excise Tax Investigator 3 or an Excise Tax Agent, is now before the Department of Employment Relations. If the Secretary determines that the appellant's position is more appropriately classified at the Excise Tax Agent level, that decision will include a determination of the effective date of the action. S. ER-Pers 3.03(4), Wis. Admin. Code. If the appellant is dissatisfied with the Secretary's decision as to classification and/or effective date, the appellant will be able to appeal that decision to the Commission under s. 230.44(1)(b), Stats.

Because there has been no final decision by the Secretary as to the appropriate date for appellant's reclassification request, the Commission lacks jurisdiction over the instant appeal.

ORDER

This matter is dismissed due to lack of jurisdiction.

Dated: December 17, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

KMS:rcr
RCR03/2


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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