

MARGARET O'BRIEN,

Appellant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION,

Respondent.

Case No. 88-0059-PC

RULING ON
PETITION
FOR
REHEARING

On June 17, 1989, the Commission issued a decision and order in this matter which dismissed the appeal for lack of jurisdiction. On July 9th, the appellant filed a petition for rehearing. Appellant contends the Commission's decision included a material error of law and fact pursuant to §227.49(3), Stats.


In its decision, the Commission found that the appellant had alleged that remarks made by one of respondent's representatives at the third step of the grievance process "constituted an abuse of discretion, but the appellant has not indicated how she feels the identified conduct involved the application of civil service statutes or rules or written agency rules, policies or procedures, as is required by §ER 46.07(1), Wis. Adm. Code." In her petition for rehearing, the appellant contends that the remarks violate §230.18, Stats. That section provides, in relevant part:

No discriminations may be exercised in the recruitment, application, examination or hiring process against or in favor of any person because of the person's political or religious opinions or affiliations or because of age, sex, handicap, race, color, sexual orientation, national origin or ancestry except as otherwise provided.


The appellant contends that the third step grievance hearing, at which the respondent's representative allegedly "joked about age discrimination," was "part of the hiring process itself." The subject of the underlying grievance was the appellant's allegation that she had been discriminated against based on age with respect to a decision not to select her for a vacant Administrative Officer 1 position.

The Commission rejects the contention that the grievance hearing was somehow part of the hiring process. The appellant's mere statement to this effect is not enough to create jurisdiction on the part of the Commission. The appellant's allegation that the statute has been violated must be at least arguable. Wing v. UW, 78-137-PC, 4/19/79. Here, the appellant was notified on February 26, 1988, that she had not been selected for the vacancy. The third step grievance hearing took place on April 7th, more than one month later. The events which occurred at that hearing were part of the grievance process rather than part of a selection process. Therefore, the appellant is not in a position to invoke §230.18 as a basis for pursuing her grievance to the fourth step and her petition for rehearing is denied.¹

Dated: July 25, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Margaret O'Brien
231 W Tyler Ave
Eau Claire WI 54701

Ronald R. Fielder
Secretary DOT Rm 120B
4802 Sheboygan Ave
P O Box 7910
Madison WI 53707

¹Even if the Commission could be said to have subject matter jurisdiction over this case, her 4th step grievance would be subject to dismissal for failure to state a claim upon which relief can be granted.