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JOSEPH PASSER,

Appellant,

v.

Secretary, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES,

Respondent.

Case No. 90-0003-PC

* * * * *

FINAL
DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss for failure of subject matter jurisdiction. Both parties have filed briefs. The underlying facts necessary to a determination concerning jurisdiction do not appear to be in dispute. The following findings are taken from appellant's brief.

FINDINGS OF FACT

1. Appellant is employed by the the Department of Corrections (DOC) as a Food Service Administrator 2 at the Kettle Moraine Correctional Institution (KMCI).
2. Appellant is a nonrepresented employe.
3. By letter dated December 19, 1989, appellant was "suspended with pay" pending an investigation at KMCI.
4. On January 5, 1990, appellant filed this appeal with the Commission.
5. On February 6, 1990, appellant was returned to work at KMCI...¹

¹ Appellant alleges that he was returned to work without any explanation as to whether or not he was still being investigated. Respondent does not deny this directly but alleges that he was "specifically advised during one of our several status conferences that the investigation was inconclusive." This aspect of the case is not material to the question of subject matter jurisdiction.

CONCLUSIONS OF LAW

1. A suspension with pay is not a cognizable transaction under §230.44(1)(c), stats.
2. This Commission lacks jurisdiction over the subject matter of this appeal.

DISCUSSION

Section 230.44(1)(c), stats., provides:

(c) Demotion, layoff, suspension or discharge. If an employe has permanent status in class, the employe may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause. (emphasis added)

The statutes do not provide a definition of "suspension" so it is ambiguous whether "suspension" as used in §230.44(1)(c), stats., refers to suspensions with pay such as occurred here, or only suspensions without pay. Section 230.34(1)(a), stats., provides as follows:

230.34 Demotion, suspension, discharge and layoff. (1)(a)
An employe with permanent status in class may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause. (emphasis added)

The Commission agrees with respondent's contention in its brief as follows:

Statutes must be construed in light of related statutes. Marzurek v. Miller, 100 Wis. 2d 426, 303 N.W. 2d 122, 125, cert. den. 102 S. Ct. 395, 454 U.S. 896, 70 L. Ed. 2d 212. When ss. 230.44(1)(c) and 230.34(1)(a) are read in conjunction, it is clear that a 'suspension' for purposes of s. 230.44(1)(c) is a suspension without pay as referenced in s. 230.34(1)(a).

Also see State ex rel Wendling v. Board of P&F Commissioners, 159 Wis. 295, 297, 150 N.W. 493, 494 (1915): "Suspension is an ad interim stoppage or arrest of official power and pay."

Appellant's brief contains the following: "It is arguable, however he did not get paid overtime or an increase in pay." Appellant has not alleged that his suspension caused him to lose any overtime pay or any pay increase to which he otherwise would have been entitled. In the absence of such an allegation, there is no basis upon which to treat what on its face is a suspension with pay as a suspension without pay.

Appellant also argues that this transaction should be considered a demotion for purposes of appeal, because:

The suspension has put a strain on his employment record, has tarnished his esteem and affected how others view him, thereby demoting him. It has a a chilling effect.

The civil service code contains an explicit definition of "demotion:"

'Demotion' means the permanent appointment of an employe with permanent status in one class to a position in a lower class than the highest position currently held in which the employe has permanent status in class. . . . §ER 1.02(8), Wis. Adm. Code.

Appellant was not demoted and the Commission lacks jurisdiction over this matter as an appeal of a demotion pursuant to §230.44(1)(c), stats.


Finally, appellant contends he is constitutionally entitled to a hearing and therefore the Commission should hear this appeal. Even if appellant were entitled to a hearing as a matter of due process, a question the Commission does not reach, it does not follow that this Commission is the body which is to conduct such a hearing. The Commission cannot conduct such a hearing in the absence of statutory authority to hear the appeal, see American Brass Co. v. Wisconsin State Board of Health, 245 Wis. 440, 15 N.W. 2d 27 (1944).

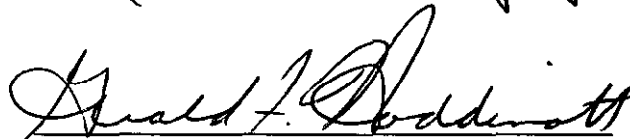
ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: May 16, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

AJT:gdt

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Parties:

Joseph Passer
1033 Fond du Lac Street
Mt. Calvary, WI 53057

Stephen Bablitch
Secretary, DOC*
P.O. Box 7925
Madison, WI 53707

*Pursuant to the provisions of 1989 Wis. Act 31 which created the Department of Corrections, effective January 1, 1990, the authority previously held by the Secretary of the Department of Health and Social Services with respect to the position(s) that is the subject of this proceeding is now held by the Secretary of the Department of Corrections.