

STATE OF WISCONSIN

PERSONNEL COMMISSION

GORDON LEHMAN,
Complainant,

v.

**Secretary, DEPARTMENT OF NATURAL
RESOURCES,**
Respondent.

RULING UPON
RECONSIDERATION OF
ORDER ENTERED
JANUARY 16, 1997

Case No. 95-0033-PC-ER

In a ruling dated January 16, 1997, on respondent's motion to dismiss, the commission dismissed that part of complainant's charge of discrimination alleging "that he was discriminated against in regard to his transfer to the PA 1 position on the basis of handicap resulting from his work-related injury." (Ruling, p.1) The basis for this dismissal was the familiar principle that "[t]he exclusive remedy available to an employe who suffers a work-related injury and who challenges the employer's failure to rehire him due to this injury is the Worker's Compensation Act. *Schachtner v. DILHR*, 144 Wis. 2d 1, 3, 422 N. W. 2d 906, 909 (Ct. App. 1988); *Norris v. DILHR*, 155 Wis. 2d 337, 339, 455 N. W. 2d 665, 667 (Ct. App. 1990)." *Id.* However, complainant had other claims as part of his charge of discrimination which were unaffected by this ruling, and over which the Commission has maintained jurisdiction.

On April 18, 1997, the Wisconsin Supreme Court issued a decision in *Byers v. LIRC*. In that decision the Court expressly overruled *Schachtner* and disavowed the reasoning of *Norris*, holding that "the WCA [Worker's Compensation Act] exclusive remedy provision does not bar a claimant whose claim is covered under the WCA from pursuing a claim under the WFEA [Wisconsin Fair Employment Act] for discrimination in employment." (Slip opinion, p. 2) The Commission on its own

motion raised the question of whether the Byers decision affected the Commission's prior ruling, and provided the parties a chance to comment on this point.¹

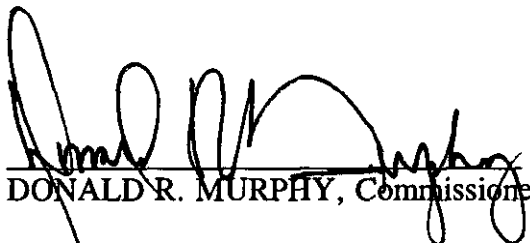
The Commission's prior ruling on WCA exclusivity is directly at odds with the Supreme Court's decision in *Byers*. Because of this, and because the Commission's ruling was non-final, since the Commission did not finally dismiss this case, the Commission will reverse its prior decision and reinstate that claim of complainant's.²

ORDER

So much of the Commission's order of January 16, 1997, which dismissed part of complainant's claim on the basis of WCA exclusivity is overruled and rescinded, and that part of complainant's claim is reinstated in this proceeding before this Commission.

Dated: July 16, 1997 STATE PERSONNEL COMMISSION

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DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

¹ Neither party has submitted anything on this question. Complainant currently is unrepresented by counsel.

² In *Byers*, the Court noted that " the possibility of double recovery may arise if claims are brought under both statutes. The parties have not addressed the double recovery issue, and we do not reach it." (Slip opinion, p. 18, n. 13) In the instant case, it appears complainant has already recovered some compensation under the WCA. The Commission also does not address at this time any issue that might be raised by the possibility of a double recovery. Presumably any such issue would be addressed in any remedial phase of this proceeding.