

STATE OF WISCONSIN

PERSONNEL COMMISSION

CHESTER KANITZ

Appellant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM,**

Respondent.

RULING ON MOTION
TO DISMISS

Case No. 97-0019-PC

On March 6, 1997, appellant filed an appeal of two personnel transactions: a five-day suspension without pay and an unexcused absence. On April 21, 1997, respondent filed a motion to dismiss the appeal of the unexcused absence for lack of subject matter jurisdiction. Appellant was given an opportunity to respond to the motion and the deadline for his response was May 12, 1997.

The following findings of fact are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion:

1. Appellant was scheduled to work on February 9, 1997.
2. Appellant did not work his scheduled shift on February 9, 1997, and requested that he be allowed to use accrued sick leave to cover this absence. Respondent denied this request based on information they had acquired that led them to believe that appellant was not sick on February 9, 1997. Appellant's absence of February 9, 1997, was concluded by respondent to be an unexcused absence, and was treated for payroll and related purposes as eight hours of leave without pay.
3. This unexcused absence was one of the bases cited by respondent for appellant's five-day suspension without pay. The other two bases cited by respondent were: (1) appellant sleeping during his scheduled shift and permitting such actions on the part of his subordinates; and (2) appellant's lack of personal hygiene.

The question presented by this motion is whether the Commission has subject matter jurisdiction over an appeal of the decision by respondent to deny appellant the use of accrued sick leave for his absence of February 9, 1997, and the resulting treatment of the absence as unexcused. It should be noted that the available information does not indicate whether appellant attempted to use accrued vacation or other leave to cover this absence.

Generally speaking, actions of an appointing authority are appealable to the Commission pursuant to §§230.44(1)(c) and (1)(d), and 230.45(1)(c), Stats.

Section 230.44(1)(d), Stats., relates to hiring decisions by an appointing authority and, as a result, would not be applicable here.

Section 230.44(1)(c), Stats., states as follows:

(1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a): . . .

(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.

Here, the denial of the use of sick leave benefits does not qualify as a demotion, layoff, suspension, discharge or reduction in base pay within the meaning of this statutory section, and it must be concluded that the Commission does not have jurisdiction over this issue pursuant to 230.44(1)(c), Stats.

Section 230.45(1)(c), Stats., states the Commission's authority in regard to the noncontractual grievance process. Although it is arguable that the denial of an employe's use of sick leave benefits is grievable (*See, e.g., Maher v. DHSS*, 85-0215-PC, 7/24/86; *Schmaltz v. DHSS & DER*, 85-0067-PC, 2/6/86; *Wing v. UW*, 85-0122, 0173-PC, 2/6/86) through the noncontractual grievance process, appellant has not asserted, nor does it appear from the information provided by the parties, that appellant ever filed a noncontractual grievance relating to the subject unexcused absence. As a

result, it is concluded that the Commission does not have jurisdiction over the matter of appellant's unexcused absence pursuant to §230.45(1)(c), Stats.

Based on the above, the Commission concludes that it does not have jurisdiction over appellant's appeal of the unexcused absence. As a result, the sole issue in this appeal is as follows:

Whether there was just cause for the five-day suspension of appellant without pay which was effected March 9 - 13, 1997.

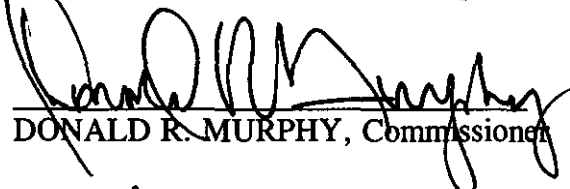
It should be noted that, even though the Commission has concluded that the appellant does not have a separate cause of action in regard to the unexcused absence, since it is one of the bases for the subject suspension, evidence relating to the unexcused absence would continue to be relevant here.

Dated: May 21, 1997

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STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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