

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 19, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0687

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

PASTORI M. BALELE,

PETITIONER-APPELLANT,

v.

WISCONSIN PERSONNEL COMMISSION,
DEPARTMENT OF HEALTH AND FAMILY SERVICES,
DEPARTMENT OF JUSTICE,
DEPARTMENT OF ADMINISTRATION,

RESPONDENTS-RESPONDENTS.

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PERSONNEL COMMISSION

APPEAL from an order of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. Pastori M. Balele appeals from an order affirming the Wisconsin Personnel Commission's dismissal of his Wisconsin Fair

Employment Act complaint. We affirm the order because we agree that the commission lacked jurisdiction to hear the complaint.

On November 25, 1996, Balele filed a complaint with the commission alleging that the Department of Justice (DOJ), the Department of Administration (DOA), and the Department of Health and Family Services (DHFS) had discriminated against him by arranging to withhold and refusing to refund a portion of his DOA wages. The wages were withheld pursuant to a garnishment order which allowed the DOJ to recover the costs of defending a lawsuit which Balele had previously brought against the DHFS. Balele claimed that the DOJ had obtained the garnishment order in retaliation for a number of lawsuits which he had filed against various agencies, in order to prevent him from exposing assorted allegedly racial practices.

The defendants moved to dismiss the complaint on the grounds that: (1) the commission lacked subject matter jurisdiction over the DOJ and the DHFS; (2) the complaint failed to state a claim against the DOA; and (3) the issues raised were all bared by the doctrines of claim and issue preclusion.¹ The commission granted the defendants' motion and denied Balele's motion for reconsideration, and the circuit court affirmed the commission's decision.

On an appeal from a circuit court order in an administrative review proceeding, we review the agency's decision rather than the order of the circuit court. *Barnes v. DNR*, 178 Wis.2d 290, 302, 506 N.W.2d 155, 160 (Ct. App. 1993). Whether an agency has authority to act presents a legal issue which we

¹ We do not recite the extensive procedural history relevant to the claim preclusion issue because we are deciding this case on other grounds.

review *de novo*. *Loomis v. Wisconsin Personnel Comm'n*, 179 Wis.2d 25, 30, 505 N.W.2d 462, 464 (Ct. App. 1993). We will give great deference to the commission's legal analysis, however, because it has been charged with administering the relevant statutory classification scheme and has been interpreting and applying the applicable statutes for a substantial period of time. See *UFE Inc. v. LIRC*, 201 Wis.2d 274, 284, 548 N.W.2d 57, 61 (1996).

Section 111.375(2), STATS., provides the commission with jurisdiction over a state agency in its capacity "as an employer." Because neither the DOJ nor the DHFS employed Balele, the commission properly concluded that it lacked jurisdiction to hear a Fair Employment Act claim against either agency. The DOJ's garnishment of Balele's wages could not be considered an action taken in the capacity of an employer. Further, the complaint against DOA fails to allege that it took an employment action against Balele. Therefore, the commission could reasonably conclude that Balele had failed to state a claim against the DOA.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.