

STATE OF WISCONSIN

PERSONNEL COMMISSION

JULIE HALLIBURTON,
Complainant,

v.

**Attorney General, DEPARTMENT OF
JUSTICE,**
Respondent.

**RULING ON SUBJECT
MATTER
JURISDICTION**

Case No. 01-0132-PC-ER

The Commission raised the question of subject matter jurisdiction after reviewing the matters raised in the complaint. The complainant was provided an opportunity to submit additional pertinent information, which she did by letters dated August 10 and September 4, 2001. (The Commission received the September 4th letter on September 10, 2001.)

The following are made solely to resolve this motion and are undisputed.

FINDINGS OF FACT

1. In May or June 2001, complainant submitted an application for employment as a pharmaceutical driver for Dunham Express. She was not hired after respondent provided a copy of her arrest record to Dunham Express. The arrest record showed an arrest on August 4, 2000 and the related charges.

2. Dunham Express did not hire complainant for its driver position. Complainant contends the Equal Rights Office in the Department of Workforce Development (DWD) told her that Dunham Express could not hire her because of the report generated by respondent.

3. Complainant has never worked for respondent or applied for employment with respondent.

4. On June 25, 2001, the Commission received the present complaint, which alleged that respondent discriminated against her on the basis of arrest/conviction record and because of her national origin or ancestry. The narrative portion of her complaint is shown below:

Discriminated against for releasing information on charges that I have not been tried for or convicted. Not hired by Dunham Express Company delivered pharmaceuticals. Position was for a driver. Application was put in on or about May/June 2001.

FBI Report (sic) enclosed (2 pages)

CONCLUSION OF LAW

Complainant failed to establish that the Commission has jurisdiction over the subject matter raised in her complaint.

OPINION

Complainant alleged that respondent discriminated against her based on her arrest record and on her national origin or ancestry. Allegations of discrimination of the nature alleged here and filed in this forum arise under the Fair Employment Act (FEA) (Subch. II, Ch. 111, Stats.).

The Commission's authority under the FEA is to review discrimination and retaliation complaints filed against a state agency (§111.375(2), Stats.) acting as an employer (§111.31(6)(a), Stats.). Respondent is a state agency but was not acting an employer when it provided the criminal record check. Rather, it is one of respondent's statutory duties to provide criminal history searches (see, e.g., §165.85, Stats.) upon request. Respondent's role here is akin to a prospective private-sector employer asking the Department of Transportation (a state agency) for a report on a prospective employee's driving record. The fact that such a report may contain negative information affecting eligibility for a particular job does not transform the state agency charged with the duty of making the report to the status of the private-sector entity making the hiring decision. *In accord, Mosley v. DWD*, 97-0119-PC-ER, 9/24/97 (DWD was not acting as an employer when it exercised its regulatory duty to determine whether complainant was eligible for unemployment benefits based on employment with the University of Wisconsin) and *Mehler v. DHSS*, 94-0114-PC-ER, 12/22/94 (DHSS was not acting as an employer when it exercised its regulatory authority to report on whether complainant had the requisite qualifications required to be a mental health professional).

The prospective employer here was Dunham Express, a private-sector employer under the FEA over which DWD has jurisdiction (§111.375, Stats.) This was known to complainant as shown by the fact that she received information from DWD as to why Dunham Express did not hire her (see ¶2, Findings of Fact).

The Commission's jurisdiction is as noted in §230.45, Stats. There is no authority granted therein for the Commission to review respondent's issuance of a criminal record check to a private-sector employer.

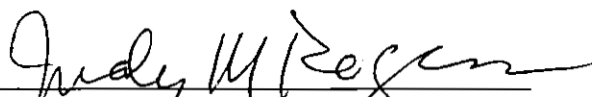
ORDER

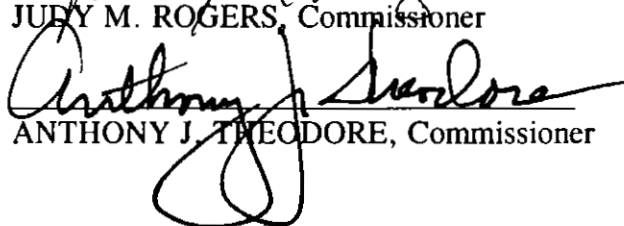
This case is dismissed for lack of subject matter jurisdiction.

Dated: November 14, 2001.

STATE PERSONNEL COMMISSION

JMR:010132Cru11


JUDY M. ROGERS, Commissioner


ANTHONY J. THEODORE, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

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