

**JEFFREY G. STELLINGS,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS,**  
*Respondent.*

RULING  
ON  
MOTION  
TO DISMISS

Case No. 99-0031-PC

This matter is before the Commission on the respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have filed briefs and the following findings of fact appear to be undisputed.

#### FINDINGS OF FACT

1. At all times relevant to this appeal, the appellant was employed by respondent Department of Corrections (DOC).

2. By letter dated March 27, 1999, and received by the Personnel Commission on April 1, 1999, appellant wrote:

This letter is to inform the Commission of my desire to appeal the method of imposition of a 5 day suspension that was given me by Taycheedah Correctional Institution.

I was given a five day suspension, however, the institution violated the directive from the Department of Employee Relations by not imposing this suspension in five consecutive days as directed by DER. The institution, however, suspended me on July 30 and 31, and then again on August 6, and then again on August 13 and 14. This, in effect, resulted in three (3) suspensions over a three week period of less than the five consecutive days as required by the DER for non-represented employees of the State.

### CONCLUSIONS OF LAW

1. The appellant has the burden of establishing the Commission has subject matter jurisdiction over this matter.
2. Appellant has failed to meet this burden.
3. The Commission lacks subject matter jurisdiction over this appeal.

### OPINION

The appellant contends the action of respondent to schedule his five days of suspension on non-consecutive days violated a written policy issued by the Department of Employment Relations (DER) dated July 6, 1995, entitled "Policies on Disciplinary Suspensions for Employees who are 'Exempt' from the Overtime Provisions of the FLSA." Appellant cites the DER policy as requiring agencies to impose suspensions on consecutive days.

The Commission only has the authority to review appeals from certain personnel actions. The Commission's authority to hear appeals is described in §230.44(1), Stats.<sup>1</sup> Of the various provisions in that subsection, the only one relevant to the present appeal is §230.44(1)(c), which provides:

[T]he 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.

The issues in such an appeal are typically whether the greater weight of the credible evidence shows that appellant committed the conduct alleged by respondent in the letter of discipline, whether the greater weight of the credible evidence showed that such chargeable conduct, if true, constituted just cause for the imposition of some discipline,

and whether the imposed discipline was excessive. *Mitchell v. DNR*, 83-0228-PC, 8/30/84.

Appellant's contention that, for whatever reason, respondent should have imposed consecutive days of suspension, instead of five days over a period of several weeks, does not fall within the scope of the Commission's just cause analysis, nor does he allege a violation of the Wisconsin civil service code. Appellant's contention is that respondent violated federal law, not state law, when he was suspended for non-consecutive days. The Personnel Commission does not have the authority to enforce federal law.

Appellant cites *Jelinek v. DOC*, 96-0161-PC, 7/2/97, in support of his appeal. However, the question in that case was "whether what otherwise would be a conclusion that there was an excessive penalty should be avoided because the basis for respondent's action involved the FLSA definition of exempt status employees." *Jelinek*, at page 8. That case related to the "excessiveness" aspect of the Commission's just cause analysis. It did not relate to whether the question of whether a suspension should be served on consecutive or non-consecutive days, and the Commission did not enforce the provisions of the federal Fair Labor Standards Act.

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<sup>1</sup> The Commission also serves as the fourth step in the non-contractual grievance procedure under §230.45(1)(c), Stats. However, there is no indication the present appeal is before the Commission as part of the grievance procedure.


ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: November 19, 1999 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

KMS:990031Arul1

  
DONALD R. MURPHY, Commissioner

Parties:

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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.

2/3/95