

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**TERRY GOINS, Appellant,**

vs.

**DEPARTMENT OF CORRECTIONS, Respondent.**

Case 14  
No. 62931  
PA(adv)-19

(Previously Case 02-0021-PC)

**Decision No. 30766**

---

**Appearances:**

**Terry Goins**, 731 West Land Place, Milwaukee, WI 53205-2358, appearing on his own behalf.

**Robert G. Pultz**, Attorney at Law, P.O. Box 7925, Madison, WI 53707-7925, appearing on behalf of the Department of Corrections.

**RULING ON MOTION TO DISMISS AND ORDER**

This matter was initially filed with the Wisconsin Personnel Commission. The Personnel Commission was abolished, effective July 26, 2003, pursuant to 2003 Wis. Act 33, and the authority over this matter was transferred to the Wisconsin Employment Relations Commission.

Respondent filed a Motion to Dismiss this matter for lack of subject matter jurisdiction. The motion was supported by an affidavit and copies of various documents. The appellant filed a written response to the motion and the following findings are not in dispute.

**FINDINGS OF FACT**

1. Beginning in August of 2001, Appellant was employed as a Correctional Sergeant at Respondent's Milwaukee Secure Detention Facility. Appellant was required to serve an initial probationary period.

Dec. No. 30766

2. Appellant's position was covered by a collective bargaining agreement with the Wisconsin State Employees Union.

3. On April 2, 2002, Appellant was critically injured in an automobile accident and he commenced a medical leave without pay on April 12, 2002.

4. In a letter dated March 27, 2003, Respondent directed Appellant to report to the facility at 8:00 a.m. on Tuesday, April 1, 2003, and noted: "If you fail to appear on this date and time we will begin with termination proceedings."

5. Appellant or his representative filed a 2<sup>nd</sup> step contractual grievance with Respondent on April 1, 2003, alleging violation of specific provisions of the applicable labor agreement and stating, in part: "[T]ermination unjust."

6. By letter dated May 7, 2003, the Warden of the facility notified the Appellant:

. . . of your termination from State Employment as a Correctional Sergeant with the Department of Corrections, Division of Adult Institutions, Milwaukee Secure Detention Facility effective April 1, 2002, [sic] which was your last day in paid status. This termination is due to position abandonment and comes during your original probationary period in accordance with Wis. Admin. Code ER-MRS 13.08(1) that addresses dismissal during an original probationary period. This action is without the right of appeal.

7. On May 14, 2003, Appellant received a certified letter directing him to meet with the shift commanders on May 5<sup>th</sup> to discuss his intention with regard to returning to work. The letter also informed the Appellant that the failure to appear at the meeting would result in the termination of his employment.

8. Appellant filed a letter of appeal with the Personnel Commission on June 3, 2003, stating, in part:

This letter is to serve as an appeal to my wrongful termination. . . .

I was terminated on May 7, 2003 for "position abandonment." On May 14, 2003 I received a certified letter to have a meeting with the shift commanders on May 5, 2003. . . . A review of the dates shows an illegitimate cause of action.

9. Appellant's 2<sup>nd</sup> step grievance was denied on or about September 23, 2003.

### CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this matter as an appeal filed under §§230.44(1) or .45, Stats.

### OPINION

This matter, arising from a probationary termination decision, was presumably filed as an appeal pursuant to §230.44(1)(c), Stats. That paragraph provides:

If an employee has permanent status in class . . . the employee 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.

Pursuant to the decision of the Court of Appeals in *BOARD OF REGENTS V. WISCONSIN PERSONNEL COMMISSION*, 103 WIS. 2D 545, 309 N.W.2D 366 (1981), the Commission lacks subject matter jurisdiction over appeals of probationary termination decisions where the employee is serving an initial probationary period and, therefore, lacks the “permanent status in class” required in §230.44(1)(c), Stats. That decision was consistently applied by the Personnel Commission, as noted in *MILLER V. DOC & DATCP*, 02-0055-PC, 6/6/03.

Even if the Appellant had permanent status in class, there would be no jurisdiction over this matter as an appeal under §230.44(1)(c), Stats., because the review of discipline imposed on State civil service employees covered by a collective bargaining agreement is through the grievance procedure established by the agreement. Pursuant to §230.34(1)(ar), Stats:

[F]or employees specified in s. 111.81(7)(a) in a collective bargaining unit for which a representative is recognized or certified . . . the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement.

The Commission has also reviewed the other provisions of §230.44 and .45, Stats., as possible sources of jurisdiction for this matter.

In *BOARD OF REGENTS*, 103 WIS. 2D 545, 558-60, the court concluded that discharge decisions do not fall within the scope of §230.44(1)(d), Stats., which is restricted to appeals from a personnel action “related to the hiring process.”

Sec. 230.44(1)(f), Stats., provides jurisdiction to review decisions to discharge certain Department of Corrections employees, but the discharge must be from certain unclassified positions and the employee must have transferred into the position from the Department of Health and Family Services on January 1, 1990. The Appellant does not meet these requirements.

No other jurisdictional basis in §§230.44 and .45 is even arguably relevant to the review of a probationary termination or discharge.

**ORDER**

This matter is dismissed for lack of subject matter jurisdiction.

Dated at Madison, Wisconsin, this 16<sup>th</sup> day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

Parties:

Terry T. Goins  
731 West Land Place  
Milwaukee, WI 53205-2358

Matthew Frank  
Secretary, Department of Corrections  
PO Box 7925  
Madison, WI 53707-7925