

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JEANETTE GUSTAVUS, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 12
No. 62919
PA(gen) - 1

Decision No. 30817

Appearances:

Jeanette Gustavus, 118 Maple Street, Ripon, WI 54971-1424, appearing on her own behalf.

Kathryn R. Anderson, Assistant Legal Counsel, Department of Corrections, PO Box 7925, Madison, WI 53707-7255, appearing for the Department of Corrections.

ORDER GRANTING MOTION TO DISMISS

Respondent filed a motion to dismiss this matter for lack of jurisdiction. The parties have had an opportunity to file written arguments and the following findings are undisputed.

FINDINGS OF FACT

1. Respondent employed the Appellant as a Supervising Officer 2 (Captain) at the Taycheedah Correctional Institution (TCI). Appellant normally worked shifts ranging as long as 16.5 hours in length.
2. Appellant became ill with a viral infection on July 27, 2003, and was unable to work.
3. Appellant's physician released her to return to work on August 19, 2003, but restricted her to shifts of no more than 8.5 hours in length.
4. Appellant explained this restriction to her employer. However, Jodine Deppisch, Warden of TCI, refused to allow the Appellant to return to work with the 8.5 hour restriction.
5. As a consequence of the Respondent's decision, Appellant remained off work for approximately 2 more weeks and had to use an additional 12 days of leave.
6. Appellant filed a letter of appeal with the Commission on September 15, 2003, seeking to obtain review of the decision to deny her request to work not more than 8.5 hours per day.

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CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this appeal.

OPINION

Only certain State civil service personnel actions are reviewable by the Commission. The Commission's authority in this area arises from, and is restricted to, the provisions of §§230.44(1) and .45 (1), Stats.

The decision to deny Appellant's request to work no more than an 8.5 hour workday for 2 weeks was made by TCI Warden Jodine Deppisch. The decision was not attributable to the Administrator of the Division of Merit Recruitment and Selection or to the Secretary of the Office of State Employment Relations. As a consequence, §230.44(1)(a) and (b), Stats., cannot serve as jurisdictional bases for this appeal. Respondent's decision was not in the nature of a disciplinary action that is reviewable under §230.44(1)(c), Stats. The decision did not relate to the hiring process, so §230.44(1)(d), Stats., does not apply. None of the other provisions in §§230.44(1) and .45(2), encompass the action that Appellant wants reviewed.

Because the Respondent's decision does not fall within the scope of the Commission's authority, the Commission makes and issues the following

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of March, 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:

Jeannette Gustavus
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