

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERICA HORTMAN, Appellant

v.

Secretary, DEPARTMENT OF CORRECTIONS, Respondent

Case 24

No. 63534

PA(adv)-36

Decision No. 31037

Appearances:

Erica Hortman, 7004 North 58th Street, Milwaukee, WI 53223, appearing on her own behalf.

Terri Rees, Paralegal, Department of Corrections, PO Box 7925, Madison, WI 53707-7925, appearing on behalf of Respondent.

**ORDER DISMISSING APPEAL FOR LACK
OF SUBJECT MATTER JURISDICTION**

This matter is before the Wisconsin Employment Relations Commission (the Commission). The Commission informed the Appellant that her appeal raised a jurisdictional issue and invited the Appellant to provide information as to why the case should not be dismissed. The last date for Appellant's submission was April 21, 2004.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Appellant commenced employment as a Correctional Officer at the Milwaukee, Secure Detention Facility, Division of Adult Institutions, Department of Corrections, on June 29, 2003. She was required to serve a probationary period.
2. Respondent extended her probationary period.
3. Respondent terminated Appellant's employment on January 8, 2004, two days before her probationary period was scheduled to end.

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4. On April 1, 2004, Appellant filed a letter of appeal with the Commission, seeking reinstatement.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this matter as an appeal filed under sec. 230.44 or .45, Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, 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 11th day of August, 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

Department of Corrections (Hortman)

MEMORANDUM ACCOMPANYING ORDER DISMISSING APPEAL

This matter, arising from a probationary termination decision, was presumably filed as an appeal pursuant to sec. 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), this agency, as the successor agency to the Personnel Commission for appeals filed under Sec. 230.44, Stats., lacks subject matter jurisdiction over appeals of probationary termination decision where the employee is serving an initial probationary period and, therefore, lacks the “permanent status in class” required in Sec. 230.44(1)(c), Stats.

The Commission has held that BOARD OF REGENTS remains applicable and that there is no other jurisdictional basis in Sec. 230.44 and .45, Stats., that is even arguably relevant to the review of a probationary termination or discharge filed with this agency. DEPARTMENT OF CORRECTIONS (GOINS), DEC. NO. 30766 (1/04); DEPARTMENT OF WORKFORCE DEVELOPMENT (STERN), DEC. NO. 30912 (6/04).

Because the Commission lacks the authority to hear this matter, it must be dismissed.

Dated at Madison, Wisconsin, this 11th day of August, 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:

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Matthew Frank, Secretary
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