

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARY ANN STUHLIK, Appellant,

vs.

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

Case 38
No. 64621
PA(adv)-60

Decision No. 31353

Appearances:

Mary An Stuchlik, 701 Milwaukee Street, Mauston, Wisconsin 53948, appearing on her own behalf.

Gloria J. Thomas, Assistant Legal Counsel, Department of Corrections, P.O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of Respondent.

ORDER DISMISSING APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION

This matter arises from the Respondent's decision to terminate Ms. Struchlik's employment while she was employed on a probationary basis. Respondent filed a motion to dismiss the matter for lack of subject matter jurisdiction. The Commission established a briefing schedule and the last date for submitting a brief was May 24, 2005.

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 Program Assistant 2 at the New Lisbon office of Respondent's Division of Corrections on August 23, 2004. She was required to successfully complete a six-month probationary period.
2. Respondent terminated Appellant's employment on February 14, 2005, effective February 15, 2005, before the end of her probationary period.
3. On March 11, 2005, Appellant filed a letter of appeal with the Commission, asking to have her termination "reconsidered."

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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

Respondent's motion is granted and this matter is dismissed for lack of subject matter jurisdiction as an appeal filed under Sec. 230.44 or .45, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of June, 2005.

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:

Mary Ann Stuchlik
701 Milwaukee Street
Mauston, WI 53948

Matthew Frank
Secretary, DOC
P.O. Box 7925
Madison, WI 53707-7925

Department of Corrections (Stuchlik)

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., even arguably relevant to the review of a probationary termination or discharge filed with this agency. DEPARTMENT OF CORRECTIONS (GOINS), DEC. NO. 30766 (WERC, 1/04).

Because the Commission lacks the authority to hear this matter as an appeal under Sec. 230.44 or .45, it must be dismissed.

In her written response to Respondent’s motion, the Appellant submitted materials relating to such topics as the quality of her training and her level of performance in the position. While the Commission recognizes the Appellant’s desire to have the Commission take up the question of whether the Respondent’s termination decision was justified, the laws that have been adopted by the State of Wisconsin do not permit the Commission to do so.

Dated at Madison, Wisconsin, this 6th day of June, 2005.

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