

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA MEYER, Appellant,

v.

Secretary, DEPARTMENT OF HEALTH AND FAMILY SERVICES, Respondent.

Case 14
No. 65093
PA(adv)-82

Decision No. 31509

Appearances:

Lisa Meyer, 1213 Meadow Lane, Neenah, Wisconsin 54956, appearing on her own behalf.

Paul Harris, Attorney, Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, Madison, Wisconsin 53707-7850, 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) as the result of a letter of appeal received on August 16, 2005. 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 September 28, 2005. In circumstances such as this, where the letter of appeal provides an unambiguous basis for concluding that the Commission lacks subject matter jurisdiction, the Commission may exercise its authority to raise a jurisdictional question *sua sponte*. SEE *ACHTOR V. PEWAUKEE LAKE SANITARY DIST.* 88 WIS.2D 658, 664, 277 N.W.2D 778 (1979).

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 in the Winnebago Mental Health Institute, Department of Health and Family Services (DHFS), on January 10, 2005. She was required to serve a probationary period before she would attain permanent status in class.

2. On Monday, July 25, 2005, while Ms. Meyer was still serving her probationary period, she was informed that she had been terminated from a permanent position and she was moved to a Limited Term Employee (LTE) position.¹

¹ As provided in Sec. 230.26(1), Stats., limited term appointments "are provisional appointments or appointments for less than 1,044 hours per year."

3. On August 16, 2005, Appellant filed a letter of appeal with the Commission, seeking review of the termination decision.

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 as an appeal filed under Sec. 230.44 or .45, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of October, 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:

Lisa Meyer
1213 Meadow Lane
Neenah, WI 54956

Helene Nelson, Secretary
Department of Health and Family Services
PO Box 7850
Madison, WI 53707-7850

Department of Health and Family Services (Meyer)

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 decisions 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).

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

Dated at Madison, Wisconsin, this 25th day of October, 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

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