

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JUNE E. ROUNDS-RHEAUME, Appellant,

v.

President, UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 13
No. 66368
PA(adv)-106

Decision No. 31995

Appearances:

June E. Rounds-Rheaume, appearing on her own behalf.

John C. Dowling, Senior University Legal Counsel, Office of Administrative Legal Services, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 63706-1380, appearing on behalf of the University of Wisconsin.

ORDER GRANTING MOTION TO DISMISS

This matter is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal for a lack of subject matter jurisdiction and as untimely filed. The final argument on the motion was submitted on December 18, 2006.

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

FINDINGS OF FACT

1. June Rounds-Rheaume (Appellant) began working for the Wisconsin State Laboratory of Hygiene (Laboratory), a program of the University of Wisconsin-Madison, in 1978.
2. Her employer issued her two reprimands and a suspension between March and May of 2004.
3. She voluntarily resigned from her position at the Laboratory effective June 4, 2004. At the time of her resignation, she was employed as a Laboratory Sample Control and Receiving Technician – Senior.

Dec. No. 31995

4. Since no later than September 2006, the Appellant has resided in Florida.

5. In correspondence addressed to the Equal Rights Division of the Department of Workforce Development “or” to the Commission that was received by the Commission on September 25, 2006, the Appellant made a “statement regarding harassment and discrimination I endured working for the State. . . . If I decide to re-instate I would like my complaints taken into consideration.” The “harassment and discrimination” referred to a variety of actions and statements by Appellant’s co-workers and supervisor that allegedly occurred over the course of her employment at the Laboratory of Hygiene.

6. By letter and other materials dated October 3, 2006 that the Commission received on October 6, 2006, the Appellant provided some clarification of her allegations by writing:

I would like to be reinstated and also to be paid for lost wages. Some [employment] applications ask for my former [supervisor’s] name and also do extensive background checks which include [employee] records. Because of the actions [my former supervisor] Barb Woehrl took against me I feel my employee conduct is not being fairly represented to these potential employers and is interfering with finding gainful employment. I consider this to be continued harassment or discrimination against me, and would like to proceed with my complaint.

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

CONCLUSIONS OF LAW

1. The Appellant has the burden of establishing that the Commission has subject matter jurisdiction over her appeal and that it was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.

2. The Appellant has failed to sustain that burden.

3. The appeal is dismissed for lack of subject matter jurisdiction and as untimely filed.

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

ORDER¹

Respondent's motion is granted and this matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of January, 2007.

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

¹ Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

University of Wisconsin (Rounds-Rheaume)

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

Subject matter jurisdiction

The initial issue before the Commission is whether we have the authority to review the allegations raised in the appeal. Those allegations may be divided into two categories: 1) various comments and actions taken by Appellant's supervisor and her co-workers during the course of Appellant's employment at the Laboratory of Hygiene that ended in June 2004; and 2) Appellant's concern that her current efforts to obtain employment in Florida are being adversely affected by the work history generated by her tenure at the Laboratory. We will begin by addressing the latter topic.

The Commission's authority to review certain State civil service actions is found in Sec. 230.44(1) and .45(1), Stats. Under certain circumstances, the Commission has jurisdiction to review whether an employing State agency has either acted illegally or abused its discretion when providing references to someone's prospective employer. SEAY V. DER & UW-MADISON, CASE No. 89-0082-PC-ER (PERS. COMM. 11/19/92); AFFIRMED BY DANE COUNTY CIRCUIT COURT, SEAY V. WIS. PERS. COMM., 93-CV-1247, 3/3/95; AFFIRMED BY COURT OF APPEALS, 95-0747, 2/19/96. This authority is derived from Sec. 230.44(1)(d), Stats., which provides:

A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

More specifically, the Commission may review an alleged adverse employment reference from an employee's supervisor that was provided for a position within the same agency. SEAY, ID. The authority under paragraph (1)(d) extends only to decisions made by the hiring authority. MORVAK V. DOT & DMRS, CASE No. 97-0020-PC (PERS. COMM. 6/19/97).

While Respondent was the hiring authority for the decision to employ the Appellant in 1978, there is no indication in the current appeal materials that the Appellant has recently been a candidate for another position at the Laboratory.² Appellant's allegation relates to the effect of her work history on her efforts to obtain employment in Florida. Because the allegation

² There also has been no suggestion that the Appellant recently sought employment in some other unit within the University of Wisconsin.

does not relate to a selection decision for a vacancy within the Wisconsin civil service, the Commission lacks the authority to review a work reference that might have been provided by Respondent.

There are no other provisions within either 230.44 or .45 that even arguably relate to Ms. Round-Rheaume's second category of allegations.

Appellant's initial category of allegations that are described in her appeal materials relate to either statements or actions taken during the period of her employment at the Laboratory that ended in 2004. Within this category are two written reprimands and a suspension imposed between March and May of that year. With the exception of 230.44(1)(c) which is discussed below, the Commission is unaware of any statutory provision that would even conceivably serve as basis for allowing the Commission to review any of the other conduct described in the appeal materials.³

Timeliness

The time limit that is generally applicable to State civil service appeals filed with the Commission is found in Sec. 230.44(3), Stats., which reads, in part:

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later.

To the extent that the Appellant is seeking to have the Commission review any of the disciplinary actions imposed by the Laboratory during her employment, the Commission has the authority to review a State civil employee's "demotion, layoff, suspension, discharge or reduction in base pay" where the employee has permanent status in class. Sec. 230.44(1)(c), Stats. This authority does not extend to written reprimands. ANAND V. DHSS, CASE NO. 81-438-PC (PERS. COMM. 1/8/82). However, even if the Appellant's position at the Laboratory was not covered by a collective bargaining agreement,⁴ a 2006 appeal of a 2004 suspension would be untimely because it was filed more than 30 days after the date the suspension was imposed.

³ Use of abusive language by co-workers does not constitute a personnel action that is appealable to the Commission under Sec. 230.44, Stats. SCHMIT V. DHSS, CASE NO. 82-49-PC (PERS. COMM. 4/2/82).

⁴ As provided in Sec. 230.34(1)(ar), Stats., "all aspects of the appeal procedure" relating to a suspension "shall be governed by the provisions of the collective bargaining agreement." The contractual grievance procedure supersedes the Commission's authority under Sec. 230.44(1)(c), Stats. Sec. 111.93(3), Stats.

Appellant appears to believe that the applicable time limit for filing an appeal is 300 days rather than 30 days and that the filing period commences whenever she encounters a negative consequence of an action that had been taken on an earlier date. While a 300 day filing period applies to complaints of discrimination that are filed with the Equal Rights Division pursuant to the Division's authority under 230.45(1e), a 300-day period has no application to a State civil service appeal filed with the Commission pursuant to 230.44 or .45(1). Furthermore, the 30-day filing period begins when notice of the disciplinary action is received or on the effective date of the discipline, rather than on the date an affected employee realizes what the consequences of this action are.⁵ *MEISENHEIMER V. DILHR & DER*, CASE No. 94-0829-PC (PERS. COMM. 4/28/95).

For all the above reasons, this appeal must be dismissed.

Dated at Madison, Wisconsin, this 22nd day of January, 2007.

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

⁵ To the extent the Appellant is alleging that Respondent violated Sec. 111.84, Stats., by retaliating against her for engaging in conduct protected by the State Employment Labor Relations Act, she did not file the matter with the Commission within the one-year period specified in Sec. 111.07(14), Stats.