

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KANDI WENDEL, Appellant,

v.

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

Case 101
No. 68822
PA(adv)-159

Decision No. 32782

Appearances:

Kandi Wendel, appearing on his own behalf.

Terri A. 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 on an issue of subject matter jurisdiction that was raised *sua sponte* by the Commission. The final submission was received on May 29, 2009.

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 with the Department of Corrections on October 27, 2008. She was required to serve a six-month plus seven week original probationary period.

2. Respondent concluded that Wendel failed to meet probationary standards and terminated her probationary period effective March 24, 2009.

3. On April 23, 2009, Appellant filed a letter of appeal with the Commission and contended that the termination was not justified.

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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

ORDER¹

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 29th day of June, 2009.

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.

Department of Corrections (Wendel)

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 29th day of June, 2009.

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