

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**DONNA HANKO**, Appellant,

v.

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

Case 156  
No. 71731  
PA(adv)-237

**Decision No. 33933-A**

---

**Appearances:**

**Donna Hanko**, 11449 Hanko Drive, Cazenovia, Wisconsin 53924, appearing on her own behalf.

**Michael Soehner**, Labor Relations Specialist – Chief, Office of State Employment Relations, P. O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Department of Corrections.

**ORDER GRANTING MOTION TO DISMISS**

This matter, which arises from the Appellant's effort to rescind her resignation, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal for lack of subject matter jurisdiction. The matter was assigned to Hearing Examiner Steve Morrison, of the Commission's staff, who conducted a hearing on February 12, 2013. The issue for hearing was whether the Commission had subject matter jurisdiction over the appeal. The final written argument was submitted on April 23, 2013.

On May 24, 2013, Examiner Morrison issued a Proposed Order Granting Motion to Dismiss. No objections to said Proposed Order were filed by the June 24, 2013, deadline for submission.

The Commission hereby makes and issues the following

No. 33933-A

### FINDINGS OF FACT

1. Prior to May 2012, Appellant Donna Hanko was employed as a Corrections Food Service Leader 2 at the New Lisbon Correctional Institution (New Lisbon) operated by the Department of Corrections (DOC).

2. By letter dated Friday, May 18, 2012, DOC informed Hanko that she was “being reassigned from Production 1<sup>st</sup> shift to PM Relief (Sanitation), for continued performance issues” effective the same date. (Emphasis in original.) The letter also provided: “If you believe this action was not taken for just cause, you may appeal through the grievance procedure, according to ch. ER 46, Wis. Admin. Code and s. 230.44, Wis. Stats.”

3. Hanko voluntarily submitted a written resignation to the New Lisbon warden on Monday, May 21, to be effective June 8, 2012 “due to the fact that I am being singled out.” The warden accepted the resignation.

4. Hanko later regretted the resignation and, in writing on May 30, sought to rescind it. The New Lisbon warden declined Hanko’s request.

5. Hanko filed a letter of appeal with the Commission on August 24, 2012 because, in part, she believed DOC had previously allowed other employees to return to work after being disciplined.

6. By letter dated September 7, 2012, the Commission informed the Appellant:

The Commission assumes that this matter is an appeal under Sec. 230.44(1)(c), Stats., rather than under Sec. 230.45(1)(c), Stats. If it is Appellant’s intent to pursue this matter under the latter provision, a filing fee is required as explained in Sec. PC 3.02, Wis. Adm. Code, a copy of which is enclosed.

7. Appellant never submitted a filing fee.

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 State civil service appeal.

**ORDER**<sup>1</sup>

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

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

---

James R. Scott, Chairman

Rodney G. Pasch /s/

---

Rodney G. Pasch, Commissioner

---

<sup>1</sup> 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.

Hanko v. DOC

**MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS**

This matter is before the Commission on the question of whether it has authority under Sec. 230.44(1)(c), Stats., to review an employer's decision to decline to rescind an employee's resignation. Appellant Hanko testified that she voluntarily resigned on May 21, 2012 and after regretting her "hasty" decision, she unsuccessfully sought to rescind it on May 30.

"[T]he subject matter jurisdiction of administrative agencies – that is, their authority to hear certain subject matters in general – is conferred and specified by statute." Stern v. Wisconsin Employment Relations Com'n, 2006 WI App 193, 24, 296 Wis. 2d 306, 324-325, 722 N.W.2d 594, 603. For State civil service employees who file an appeal pursuant to Sec. 230.44(1)(c), Stats., "[d]ischarge decisions, including constructive discharges or coerced resignations, are subject to the Commission's review pursuant to Sec. 230.44(1)(c), Stats. Voluntary (rather than coerced) resignations are not." Peterson v. DNR, Dec. No. 32605 (WERC, 11/2008); citing Wachtel v. DOC, Case No. 99-0037-PC (Pers. Comm. 11/19/1990).

Because the Commission lacks any legal authority to review the personnel action that is the subject of this matter, Hanko's appeal must be dismissed.

Dated at Madison, Wisconsin, this 11th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

---

James R. Scott, Chairman

Rodney G. Pasch /s/

---

Rodney G. Pasch, Commissioner