

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JENNIFER HAFFELY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0323

Case Type: PA

DECISION NO. 38284

Appearances:

Jennifer Haffely, W10343 US Hwy 8, Tripoli, Wisconsin, appearing on her own behalf, and Rita Lokemoen, 115 Lucille Street, Wausau, Wisconsin, appearing on behalf of Jennifer Haffely.

Anfin Jaw, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On September 4, 2018, Jennifer Haffely was hired as a nurse clinician 2 at Copper Lake/Lincoln Hills Schools. While she was still on probation, Haffely was termination from that position. On October 30, 2019, Haffely filed an appeal with the Wisconsin Employment Relations Commission seeking review of her discharge by the Commission. On November 6, 2019, the State of Wisconsin Department of Corrections filed a motion to dismiss based upon an asserted lack of jurisdiction. Haffely did not respond to the motion and the matter became ripe for Commission consideration on November 25, 2019.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 4th day of December, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

Our jurisdiction over personnel matters is limited and set forth in part in § 230.44, Stats. Appeals by terminated employees are limited to those made by individuals with “permanent status in class” at the time of discharge pursuant to § 230.44(1)(c), Stats. That section specifically provides that only employees with “permanent status in class ... may appeal a ... discharge ... to the commission as the final step in the state employee grievance process established under § 230.445, if the appeal alleges that the decision was not based on just cause.” This means that an employee serving a period of initial probation does not qualify as an “employee with permanent status in class,” so there is no provision limiting the termination of the employment to circumstances of “just cause” pursuant to § 230.34(1)(a), Stats. Furthermore, Wis. Admin. Code § ER 1.02 sets forth that an employee dismissed during this period never acquires “the rights and privileges attained upon successful completion of a probationary period,” and § 230.28(1), Stats., outlines that a State employee on probation may be “dismissed at any time.”

When Haffely was discharged, she was a probationary employee who did not yet have “permanent status in class.” Haffely was hired as a nurse clinician 2 at Copper Lake/Lincoln Hills Schools effective September 4, 2018, and was required to serve a 12-month probationary period originally set to end on September 3, 2019. During her probationary period, Haffely used 365.09 hours of leave. On August 22, 2019, DOC notified Haffely that her original probationary period had been extended pursuant to Wis. Admin. Code § ER-MRS 13.05, due to her utilizing 365.09 hours of leave during her original probationary period. After Haffely’s original probationary period was extended by 365.09 hours, her new probationary end date was October 24, 2019. Haffely was terminated effective September 10, 2019.

While Haffely contends her probationary period could not be extended, Wis. Admin. Code § ER-MRS 13.05(2) provides:

(2) ... If an employee has such absence from employment totaling more than 348 work hours or the prorated portion for part-time employees, during a probationary period identified in s. ER-MRS 13.03, the probationary period shall be extended by the length of the time absent

As already noted, Haffely’s leave time during her probationary period exceeded the 348 hours specified in this provision, so DOC was within its rights to extend her probationary period by the amount of time she was absent.

Since Haffely was still a probationary employee, and not an employee with permanent status in class, the Commission has no subject matter jurisdiction to hear her appeal. Therefore, the appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 4th day of December, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman