

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JULIA MCLAUGHLIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0611

Case Type: PA

DECISION NO. 40266

Appearances:

Ben Hitchcock Cross, Attorney, Cross Law Firm LLC, 845 N. 11th Street, Milwaukee, Wisconsin, appearing on behalf of Julia McLaughlin.

Nicole M. Porter, Attorney, 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 December 12, 2023, Julia McLaughlin filed an appeal with the Wisconsin Employment Relations Commission disputing her involuntary termination and demotion. On January 2, 2024, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. On January 24, 2024, McLaughlin filed a response to DOC's motion. Later, on January 24, 2024, the Commission requested that the parties submit additional argument in support of their respective positions. On February 9, 2024, the parties filed supplemental argument regarding the Commission's jurisdiction over the appeal. On February 19, 2024, the parties filed additional responses to the opposing supplemental arguments. On February 20, 2024, McLaughlin submitted additional exhibits.

Having reviewed the matter, the Commission concludes that it does not have jurisdiction over the appeal.

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 21st day of March 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Section 230.24, Stats., authorizes creation of a Career Executive program.

Wisconsin Admin. Code § ER-MRS 30 establishes the terms of the Career Executive program and provides in pertinent part at Wis. Admin. Code § ER-MRS 30.06:

- (1) Upon initial appointment to the career executive program, a career executive employee, prior to attaining permanent status, shall serve a 2 year continuous service trial period.

McLaughlin was promoted to Corrections Security Director in the Department of Corrections, Division of Adult Institutions at Racine Correctional Institution (RCI), effective February 13, 2022. The Corrections Security Director position was in the Career Executive Program and McLaughlin was required to serve a two-year probationary or continuous service trial period, ending on January 24, 2024.

Wisconsin Admin. Code § 14.03(1) provides that during a promotional probationary period required under Wis. Stat. § 230.28(1)(a), “the appointing authority may remove the employee from the position to which the employee was promoted without the right of appeal and shall restore the employee to the employee's former position or a similar position and former rate of pay.”

On October 20, 2023, McLaughlin was formally notified that her two-year trial period as a Career Executive in the classification of Corrections Security Director for RCI was being terminated for failure to meet the expectations of the position, effective October 22, 2023.

The administrative rules of the Division of Personnel Management provide that “[i]f the career executive appointment is terminated prior to the completion of a trial period, the employee shall have the same reemployment rights and eligibility as an employee in a non-career executive position who is terminated prior to completing a probationary period.” Wis. Admin. Code § ER-MRS 30.11(1). Furthermore, “an employee with permanent status in a non-career executive position who is appointed to a career executive position in an agency... shall be re-employed in a position at or closest to the same or counterpart pay range level in which the employee last achieved permanent status in class.” *Id.* Accordingly, McLaughlin was restored, effective October 22, 2023, to a Corrections Plan & Operations Specialist position, pay range 81-03, at a rate of pay of \$35.48 per hour, within the Division of Adult Institutions at Robert E. Ellsworth Correctional Center in Union Grove, Wisconsin.

McLaughlin last achieved permanent status in class as a Supervising Officer 2, pay range 81-03, at a rate of pay of \$34.10 per hour, in the Division of Adult Institutions in the DOC on October 17, 2016, when she successfully completed her 12-month probationary period. Because McLaughlin did not have permanent status in class in her Career Executive position when the trial period was terminated, she did not have a § 230.44(1)(c) right to file a “just cause” appeal with the Commission. *See* § 230.44(1)(c), Stats.

In her appeal, McLaughlin argues that the personnel action by the DOC constitutes an involuntary termination and demotion, which violated DOC policy, the statutes, and her due process rights. The appeal does not specify what statute might give the Commission jurisdiction over the matters. However, in her initial response to DOC's motion to dismiss, McLaughlin clarified that she is not challenging the just cause of her demotion, but rather that the action was contrary to Wis. Stat. § 230.06(1)(b). She further asserts that the Commission has jurisdiction under Wis. Stat. § 230.44(1)(d).

Wisconsin Stat. § 230.44(1)(d), gives the Commission jurisdiction to hear appeals of personnel actions after certification related to the hiring process in the classified service which are alleged to be illegal or an abuse of discretion. This provision does not grant the Commission comprehensive authority over all personnel actions, but only over those actions that are specified or fairly implied by this paragraph. *See State v. DILHR*, 77 Wis. 2d 126, 136, 252 N.W.2d 353 (1977) (powers of an administrative agency are limited to those expressly authorized or fairly implied by the statute under which it operates). For Wis. Stat. § 230.44(1)(d) to grant jurisdiction to the Commission, the personnel transaction must be related to the hiring process. Here, McLaughlin's removal from her career executive position was not related to the hiring process. The Commission has explicitly held that the decision to end someone's Career Executive trial period is not "related to the *hiring* process" so as to fall within the scope of Wis. Stat. § 230.44(1)(d). *See Shigur v. DOJ*, Dec. No. 32627 (WERC, 12/08). *See also Genske v. DOC*, Decision No. 37316 (WERC, 02/18). Therefore, Wis. Stat. § 230.44(1)(d) does not grant the Commission jurisdiction to hear the appeal.

Given all of the foregoing, the Commission concludes that it does not have jurisdiction to review the merits of the claims McLaughlin has raised in her appeal. Therefore, the motion to dismiss has been granted and the appeal dismissed.¹

Issued at the City of Madison, Wisconsin, this 21st day of March 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹DOC also asserted that the Commission lacks competence to proceed as the appeal is untimely filed by Ms. McLaughlin. Because the Commission concluded that it does not have jurisdiction to review the merits of Ms. McLaughlin's claim, it is not necessary to address the issue of competence.