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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

KELLY SANCHEZ,)	
)	
Appellant,)	
)	IPC NO. 96-17
)	
vs.)	
)	DECISION AND ORDER ON
DEPARTMENT OF CORRECTION,)	PETITION FOR REVIEW
)	
Respondent.)	
_____)	

THIS MATTER CAME ON FOR HEARING ON THE PETITION FOR REVIEW on Friday, January 16, 1998. Appellant Kelly Sanchez (Sanchez) was represented by John Lynn, Esq; Respondent Department of Correction (Department) was represented by Michaelina Murphy, Deputy Attorney General. By stipulation of the parties, the matter was submitted for decision on the briefs. Neither party appeared before the Commission. The petition for review involves the hearing officer's decision dated October 10, 1997, dismissing the appeal for lack of jurisdiction.

WE AFFIRM.

I.

BACKGROUND AND PRIOR PROCEEDINGS

A. Facts.

In March of 1996, a female inmate from the Pocatello Women's Correctional Center (P.W.C.C.) filed a complaint against Appellant Sanchez alleging sexual misconduct during the time that Sanchez was her supervisor in the property room at P.W.C.C. At the time of the inmate's complaint, Sanchez was a correctional officer with permanent classified status assigned to P.W.C.C.

Sanchez was notified of the inmate complaint, and was reassigned to a post at P.W.C.C. with no inmate contact. He was advised that the matter had been referred to the Bannock County Prosecutor for investigation, as the allegations, if substantiated, could result in the filing of felony charges.

On April 8, 1996, the Bannock County Prosecutor advised the Department of Corrections (Department) that there was insufficient evidence to support the filing of criminal charges. On April 10, 1998, P.W.C.C. Warden Bona Miller met with Sanchez and advised him that the Bannock County Prosecutor had elected not to file charges, but that the Department would initiate an internal investigation of the inmate charges. Sanchez was told that he had three options regarding the internal investigation: 1) Cooperate with the investigation and submit to a polygraph examination; 2) Refuse to cooperate with the investigation and not take a polygraph examination; or 3) Resign without prejudice. Sanchez was also advised that if he refused to cooperate and submit to a polygraph, he would be ordered to do so, and failure to comply with the order would result in termination. Sanchez refused to submit to the polygraph examination.

On April 15, 1996, Sanchez was notified of his dismissal from the Department for violating departmental administrative policies regarding refusal to cooperate in an investigation

and failing to obey a lawful order, as well as violation of Idaho Personnel Commission Rule 190.01 (a) and (b).

Sanchez filed a timely grievance requesting a complete review of the circumstances surrounding his dismissal and the consideration of other alternatives to the decision to terminate his employment. An impartial review panel determined that Sanchez had violated the Department policies. The panel was concerned, however, that Sanchez had not been given a "Garrity warning" advising him that any polygraph results obtained as a result of the internal investigation *could not* be made available to the prosecutor. Because of this concern, the panel recommended that Sanchez be given one more opportunity to submit to the polygraph exam. The Department accepted the panel's recommendation on June 19, 1996, and Sanchez ultimately did take a polygraph examination. The results were "inconclusive."

On August 19, 1996, James Spaulding, Department director, notified Sanchez that the initial disciplinary decision was being modified. In lieu of termination, the Department imposed a thirty-day suspension and transferred Sanchez to South Idaho Correctional Facility (S.I.C.I.) in Boise. Essentially, the Department granted Sanchez everything he sought in his initial grievance: a review of the entire matter and the consideration of alternatives other than termination.

Sanchez did not appeal this final outcome, and served his thirty-day suspension which ended September 21, 1996. Sometime during the suspension period, Sanchez notified staff at S.I.C.I. that he would not be transferring to the Boise facility.

On September 27, 1996, the Department notified Sanchez that since he apparently was refusing the transfer to S.I.C.I., he was being dismissed.

B. Appeal to Personnel Commission.

Sanchez filed a timely notice of appeal before the IPC. On appeal, Sanchez raised the following issues:

1. The Appellant's dismissal was disciplinary and without a showing of cause;
2. The Appellant's dismissal was in retaliation for his earlier grievance;
3. The Department's decision to transfer Sanchez from P.W.C.C. to S.I.C.I. was not in compliance with Department policies regarding transfer and was arbitrary and capricious.

The Department responded that the matter was not appealable to the Commission because transfers, whether voluntary or involuntary, are not appealable under Idaho Code § 67-5316.

The parties submitted the matter to the hearing officer for decision on the briefs and exhibits. No oral argument was held. On October 10, 1997, the hearing officer filed his Findings of Fact, Conclusions of Law and Order dismissing the appeal for lack of jurisdiction. The rationale supporting the Hearing Officer's decision can be summarized as follows:

1. The director of DOC had the authority to transfer Sanchez;
2. The transfer was not dependent upon acceptance by Sanchez;
3. Sanchez refused the transfer, necessitating his dismissal;
3. Involuntary transfers are not appealable to the Commission;
4. Idaho Code § 67-5316(1)(b) does not confer jurisdiction on the Commission to hear appeals alleging arbitrary, capricious, or retaliatory action by the Department.

On October 28, 1997, Sanchez filed a petition for review of the hearing officer's decision, alleging that the hearing officer erred in Conclusions of Law Nos. I, III, IV, V, and VI. In his briefing, Appellant discussed alleged errors in Conclusions of Law Nos. IV, and VI, abandoning the remaining claims.

II.

ISSUE ON APPEAL

A. Was the Director's decision to terminate Sanchez an appealable matter under Idaho Code § 67-5316(1)(a)?

III.

STANDARD AND SCOPE OF REVIEW

The standard and scope of review on disciplinary appeals to the IPC is as follows:

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong v. Idaho Dep't of Health and Welfare, IPC No. 94-03 (February 21, 1996), *aff'd* Case No.

CV 96-00106 (Dist. Ct. 2nd Dec. 6, 1996) (footnote omitted).

IV.

ANALYSIS

A. Relevant Statutory Provision.

In order to resolve this appeal, the Commission must apply the following statutory provision:

(1) Appeals shall be limited to the following:

(a) Any classified employee who has successfully completed the entrance probationary period may, after completing the departmental grievance procedure, appeal a disciplinary dismissal, demotion or suspension, or classification.

I.C. §6705316(1)(a), (1986).¹

B. Application of Statutory Provision.

This petition does not present any questions of fact. Both parties generally agree on what transpired. The parties disagree on the legal outcome that flows from the facts. The question before the Commission is a question of law involving the application of the statute to the undisputed facts.

1. The Personnel Commission is a Tribunal of Limited Jurisdiction.

It is well settled law that:

As a general rule, administrative authorities are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes reposing power in them . . .

Washington Water Power Co., v. Kootenai Environmental Alliance, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979) cited in *Sheets v. Idaho Department of Health and Welfare*, 114 Idaho 111, 113, 753 P.2d 1257, 1259 (1988). Idaho Code § 67-5316(1)(a) clearly limits appeals to "disciplinary dismissal, demotion or suspension, or classification." The appealability of involuntary transfers was discussed with particularity in *Stroud v. Department of Labor and Industrial Services*, 112 Idaho 891, 736 P.2d 1345 (Ct.App. 1987). In *Stroud*, the court pointed out that while involuntary transfers were *grievable* they were not appealable to the Commission. The Court noted that the relevant statutes had been the subject of numerous legislative changes over the years, but the

distinction between the ability to grieve but not appeal involuntary transfers had been maintained throughout. While the relevant statutes have been amended and renumbered since the decision in *Stroud*, the distinction remains and the Court's ruling remains intact. Even counsel for Sanchez acknowledged in his brief that:

[i]f the Commission agrees that this case is an involuntary dismissal, then there is clearly no jurisdiction under Idaho Code § 67-5316(1)(a) over involuntary transfers even though the same is grievable under Idaho Code § 67-5315.

Appellant's Brief in Support of Petition for Review at Page 2.

2. Appellant's Dismissal Was Result of Involuntary Transfer.

We believe that this case does involves an involuntary transfer. Department directors have broad authority under Idaho Code § 67-2405(2)(b) to transfer employees. Transfers may occur for any number of reasons, including as a way to resolve personnel matters. The staffing of an agency is a policy matter left to the discretion of the department's management and, so long as personnel decisions are in compliance with applicable laws, they will not be second-guessed.. It is precisely for this reason that involuntary transfers are not appealable to the Commission. If every department decision regarding staffing that involved a transfer were subject to Commission review, department directors would be unable to effectively manage their departments.

The Appellant's attempt to convert a refusal to accept a transfer into a disciplinary termination is an attempt to confer jurisdiction where none would otherwise exist. Had Sanchez taken the transfer and appealed the Director's final decision to suspend and transfer, only the portion of the decision regarding the suspension could come before the Commission. Clearly, if

¹ Idaho Code §67-5316 was amended in 1997. 1997 Idaho Session Laws, ch. 364, p. 1073. The amendments were not effective until July 1, 1997. This appeal arose under the statute prior to the 1997 amendments. The older version, in effect at the time this appeal arose, is quoted above.

Sanchez could not appeal the transfer had he accepted it, he shouldn't be able to do so because he refused it knowing that the consequence would be termination.

V.

CONCLUSION

The parties do not dispute the hearing officer's Findings of Fact. Appellant's assertions that the hearing officer's Conclusions of Law IV and VI were in error is without merit. Appellant's dismissal was a direct result of his refusal to accept a transfer. This Commission has no jurisdiction to review the involuntary transfer or the reasons behind it. The hearing officer's findings of fact and conclusions of law are affirmed.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 23rd day of February, 1998.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Sherry Dyer, Chair

/s/ _____
Peter Boyd, Vice-Chair

/s/ _____
Ken Wieneke

/s/ _____
Don Miller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this 23rd day of February, 1998.

FIRST CLASS MAIL

John C. Lynn
Attorney at Law
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STATEHOUSE MAIL

Mia Murphy
Deputy Attorney General
Department of Correction
Statehouse Mail

/s/ _____
Secretary to Executive Secretary