

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RANDY DOUGLAS, Appellant,

vs.

DEPARTMENT OF NATURAL RESOURCES, Respondent.

Case 22
No. 71664
PA(dmrs)-44

DECISION NO. 33913-A

Appearances:

Randy Douglas, W5998 County Road J, Princeton, Wisconsin 54968, appearing on behalf of himself.

Nicole M. Denow, Department of Natural Resources, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921, appearing on behalf of Respondent Department of Natural Resources.

ORDER GRANTING MOTION TO DISMISS

On June 27, 2012, Randy Douglas filed an appeal with the Wisconsin Employment Relations Commission asserting that his civil service examination for a position with the Wisconsin Department of Natural Resources had not been properly graded. On April 29, 2013, Respondents Department of Natural Resources and the Division of Merit Recruitment and Selection filed a motion to dismiss the appeal as moot. The parties thereafter filed written argument.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The appeal is dismissed as moot.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

If there is no effective relief available to a potentially successful appellant, the appeal is moot. *Burns v. UW*, 96-0038-PC-ER 4/8/98. In an appeal such as that filed by Douglas, absent a showing of obstruction or falsification, the only appropriate remedy is to order Respondents to cease and desist from utilizing the subject exam or an employment register created by using the results of the exam. § 230.44(4)(d), Stats.; *Doyle v. DNR and DMRS*, 86-0192-PC-ER, 11/3/88.

Respondents have submitted an uncontested affidavit that neither the examination at issue nor the employment register created from said exam will ever be used again. Thus, Respondents correctly contend that, even assuming Douglas could prove the exam in question was improperly scored, his appeal is now moot and should be dismissed.

Douglas responds to the motion by asserting that, if permitted to continue with his appeal, he might broaden the scope of his appeal (and thus broaden the available remedies) to allege obstruction or falsification. However, Respondents counter by noting that Douglas does not want to remove the successful candidate – a remedy available for a successful obstruction/falsification appeal. Thus, Respondents are correct that the appeal remains moot even if expanded in scope.

Douglas also asserts an interest in exposing issues with the Department of Natural Resources' human resource practices. However, Douglas' standing to pursue an appeal is limited to the facts surrounding the exam he took – an exam as to which no effective remedy is now available.

Given the foregoing, Douglas' appeal is moot and, therefore, we have granted Respondents' motion to dismiss.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner