

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KIMBERLY ROBERTS, Complainant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 244  
No. 72771  
PA(adv)-377

DECISION NO. 34983

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**Appearances:**

Kimberly Roberts, 7772 County Road H, Fremont, Wisconsin 54940, on her own behalf.

Laura Amundson, Labor Relations Specialist – Senior, Office of State Employment Relations, 101 East Wilson Street, Madison, Wisconsin 53707, on behalf of Respondent.

**ORDER GRANTING RESPONDENT’S MOTION TO DISMISS**

On June 4, 2013, Redgranite Correctional Institution Warden Michael A. Dittman imposed a letter of reprimand in lieu of a one-day suspension on Kimberly Roberts, CSW, MS, a social worker employed at Redgranite Correctional Institution, for purportedly violating Department of Corrections Work Rule 6. Roberts filed a timely grievance, through which she sought the rescission of the discipline, one month’s paid leave (for stress) and to have the Department of Corrections pay all her therapy copays. The grievance was denied at the first, second and third steps, at which time Roberts filed a timely appeal with the Wisconsin Employment Relations Commission.

During December 2013 and January 2014, Appellant raised a series of concerns regarding the discovery process and the scope of hearing she anticipated. Appellant, Respondent and our hearing examiner engaged in extensive correspondence.

On January 17, 2014, Respondent’s counsel informed Appellant and our hearing examiner that Redgranite Correctional Institution had decided to reduce the written reprimand in lieu of a one-day suspension to a written reprimand.

On January 29, 2014, the DOC withdrew its original disciplinary letter and issued a written reprimand to Roberts. On February 4, 2014, Respondent filed a Motion to Dismiss for Lack of Jurisdiction, to which Appellant objected on February 8, 2014. Respondent filed a reply on February 12, 2014, after which Appellant waived her right to reply.

In support of its motion, Respondent cites sec. 230.44 (1)( c ), Stats, which provides that the following disciplinary actions are appealable to the Commission:

(c) Demotion, layoff, suspension or discharge. If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission as the final step in the state employee grievance procedure established under s. 230.04(14), if the appeal alleges that the decision was not based on just cause.

The statute and subsequent case law, Respondent asserts, clearly establishes that the Commission does not have jurisdiction over discipline other than demotion, layoff, suspension or discharge, such as a written reprimand, so that the appeal must be dismissed.

Opposing the motion, and insisting on her right to a hearing before the Commission, Roberts asserts that a WERC appeal is based on the Step 2 grievance review, such that Respondent has no authority to amend discipline after a grievance has been considered and denied at Step 2. Roberts also alleges that certain unnamed DOC personnel, along with our hearing examiner and general counsel, engaged in a variety of felonies, including perjury, misconduct in public office, and tampering with public records.

In its response, Respondent asserts its reduction in discipline was consistent with the provisions of the Wisconsin Human Resources Handbook and that Roberts does not have a right to a hearing concerning discipline that has been rescinded. Respondent also asserts that allegations of criminal activity by DOC personnel are not an appropriate subject for Commission consideration.

Being fully advised in the premises, the Commission now makes and issues the following

### **ORDER**

That the appeal filed hereunder be, and hereby is, dismissed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

The appeal in this matter was filed under § 230.44(1)(c), Stats., which provides as follows:

(c) Demotion, layoff, suspension or discharge. If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission as the final step in the state employee grievance procedure established under s. 230.04 (14), if the appeal alleges that the decision was not based on just cause.

It is well-established that our jurisdiction under this statute does not extend to any lesser level of discipline, such as a written reprimand. See Anand v. DHSS, Case No. 81-438 PC (Pers. Comm., 1/8/1982) (“The absence of ‘reprimand’ from the list of disciplinary actions expressly subject to the Commission’s jurisdiction indicates that the legislature intended appeals from such transactions to be excluded as to that provision.”), cited with approval in Hanson v. DOC, Dec. No. 34212 (WERC, 6/24/2013).

Roberts asserts that DOC cannot change the discipline outside of the grievance procedure, and that once the matter passed the second step consideration, the level of discipline could not be altered other than by order of the Commission.

Certainly, the employer cannot unilaterally increase the level of discipline during or after consideration of the grievance. But we find nothing in the statutes or administrative handbook that prevents DOC from subsequently reducing the discipline. Indeed, requiring the employer to proceed to hearing to affirm a level of discipline it believes excessive would be wasteful and contrary to good labor relations.

Roberts asserts it is our responsibility and obligation “to provide a fair and just hearing process....” We agree. However, as an administrative agency, we can only conduct those hearings for which we have statutory authority.

The Legislature has determined that we do not have jurisdiction to hear appeals of written reprimands. That is the level of discipline which DOC has imposed on Roberts. We thus lack jurisdiction to hear her appeal.

Nor do we have jurisdiction to consider the various allegations Roberts has raised about felonious activities by various DOC employees.

Accordingly, we have granted Respondent’s Motion to Dismiss for Lack of Jurisdiction.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner