

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN MILBURN, Appellant,

vs.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION, Respondent.

Case 5
No. 72740
PA(adv)-368

DECISION NO. 34987

Appearances:

John Milburn, 128½ West James Street, Columbus, Wisconsin 53925, appearing on behalf of himself.

Sharon Mollman Elliott, Constangy Brooks & Smith, LLP, 1 South Pinckney Street, Suite 930, Madison, Wisconsin 53703, appearing on behalf of the Respondent Wisconsin Economic Development Corporation.

OPINION AND ORDER GRANTING MOTION TO DISMISS

On November 6, 2013, John Milburn, an employee of the Wisconsin Economic Development Corporation, filed an appeal asserting that WEDC lacked just cause for its decision to lay him off. WEDC has filed a motion to dismiss asserting that the Commission lacks jurisdiction over the appeal as Milburn is not an employee of the State of Wisconsin and that WEDC is not a state agency. The matter has been briefed by both sides and is now ripe for decision. There are no material facts in dispute.

2011 Act 7 created the Wisconsin Economic Development Corporation (“WEDC”) as a non-profit corporation designed to provide economic development assistance to business in Wisconsin. As part of the creation, the Legislature eliminated the Department of Commerce which had performed some economic development functions as a state agency. Milburn and some other employees who formerly worked for the Department of Commerce were offered jobs with WEDC. WEDC has the statutory authority to employ personnel and to determine their “qualifications, duties and compensation.” § 238.04(8), Stats. While WEDC employees do participate in the Wisconsin Retirement System and do receive some fringe benefits available to state employees, they are not employees of the state. Legislature Audit Bureau Report 13-7, p.79 (May 2013).

The fact that Milburn formerly held a job covered by civil service protections under Ch. 230 is irrelevant. His status as a state employee ended when he accepted employment with WEDC. Accordingly, we grant WEDC's motion to dismiss and order the appeal dismissed.

Dated at the City of Madison, Wisconsin, this 29th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner