

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JOHN T. WALSH, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 255  
No. 72886  
PA(adv)-393

DECISION NO. 35041

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**Appearances:**

Michael J. Kuborn, Curtis Law Office, 491 South Washburn Street, Suite 100, P.O. Box 2845, Oshkosh, Wisconsin 54903-2845, appearing on behalf of Appellant John T. Walsh.

Laura Amundson, Labor Relations Specialist, Wisconsin Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, 53707-7855, appearing on behalf of the Respondent Department of Corrections.

On February 6, 2014, a representative of the Office of State Employment Relations (OSER) advised Appellant John T. Walsh that his grievance was denied and advised him of his appeal rights to the Wisconsin Employment Relations Commission. Walsh filed a timely appeal to the Commission and the State has moved to dismiss same. The parties submitted written argument in support of their positions and the matter is ripe for decision.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

The Respondent Department of Corrections (DOC) placed Walsh on a paid medical leave of absence on July 1, 2013, pending an evaluation of his fitness for duty. On October 28, 2013, that leave was converted to an unpaid medical leave of absence with no indication that Walsh would ever be returned to work. Walsh filed a timely grievance and, after exhausting the process, was advised that the DOC viewed his grievance as “non-grievable” and untimely. The DOC now moves to dismiss asserting we lack jurisdiction.<sup>1</sup>

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<sup>1</sup>The DOC has withdrawn its objections based upon purported failure to exhaust remedies and timeliness.

The DOC argues that an open-ended, unpaid medical leave is not a “layoff” within the meaning of § 230.44(1)(c), Stats. The DOC relies on the definition of “layoff” contained in Wis. Admin. Code § ER 1.02(15). We find that argument unpersuasive.

One purpose of the civil service system is to provide meaningful review of adverse employment actions as enumerated in § 230.44(1)(c), Stats. When an employee is laid off from his position, the result is that he has no pay, no benefits, and no immediate prospects for re-employment. That is what happened to Walsh. The DOC will not escape review under the “just cause” standard simply because they choose to characterize Walsh’s departure as a medical leave as opposed to a layoff.

We recognize that the “just cause” standard in an economic layoff situation is entirely different than in a disciplinary suspension or discharge case. *Weaver v. Personnel Board*, 71 Wis.2d 46, 51, 237 N.W.2d 183 (1976). Similarly, the “just cause” burden in a medical leave/layoff situation must be adjusted from the normal disciplinary standard. *See Anderson v. DSPS*, Dec. No. 34656-A (WERC 2014).

Those issues will await the resolution of this matter pending a full hearing. Suffice it to say that labels attached to loss of employment do not control our jurisdiction. Accordingly, we enter the following:

**ORDER**

Respondent Department of Corrections’ motion to dismiss is denied.

Dated at the City of Madison, Wisconsin, this 19th day of June 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner