

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

ROBERT A. SHEAR, Appellant,

vs.

DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case 32  
No. 72781  
PA(adv)-378

DECISION NO. 35433

---

**Appearances:**

Troy Bauch, Field Representative, Wisconsin State Employees Union, 1190 Ruffedt Road, Cornell, Wisconsin, appearing on behalf of Appellant Robert A. Shear.

Wilhelmina Mickelson, Labor Relations Specialist, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Veterans Affairs.

**ORDER GRANTING MOTION TO DISMISS**

This matter is before the Wisconsin Employment Relations Commission on Respondent's motion to dismiss for lack of jurisdiction.

On September 10, 2013, Respondent Department of Veterans Affairs (hereinafter "DVA") issued Appellant Robert Shear (hereinafter "Shear") a letter in lieu of a 3-day suspension for purported misconduct. Shear filed a timely grievance. In its Step 2 grievance response, the DVA reduced the letter in lieu of a 3-day suspension to a letter in lieu of a 1-day suspension. Shear thereafter filed a timely appeal with the Commission and hearing in the matter was set for April 8, 2014. On March 20, 2014, the DVA withdrew the letter in lieu of a 1-day suspension and issued in its stead a written reprimand.

The DVA has now moved for the Commission to dismiss the appeal, asserting the Commission has no jurisdiction to hear the matter. The DVA and Shear have both filed written arguments on the motion.

The DVA is correct as to the law. Our authority to review various civil service personnel actions arises from §§ 230.44 and 230.45, Stats. Section 230.45(1)(a), Stats., provides in

relevant part that the Commission shall “[c]onduct hearings on appeals under 230.44.” Section 230.44(1), Stats., expressly identifies the kinds of “actions appealable to the commission under 230.45(1)(a) as “a demotion, layoff, suspension, discharge or reduction in base pay ... if the appeal alleges that the decision was not based on just cause.” Because a written reprimand is not expressly identified as an appealable action under § 230.44(1), Stats., the Commission cannot hear the appeal of such action.

Pursuant to statute, the Commission is without jurisdiction to hear an appeal from the imposition of a written reprimand. The motion to dismiss is therefore granted.

**ORDER**

The motion of the Wisconsin Department of Veterans to dismiss the appeal is granted and the appeal is dismissed.

Dated at Madison, Wisconsin, this 27th day of October 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner