

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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THOMAS CZYS, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF MILITARY AFFAIRS, Respondent.

Case ID: 265.0002

Case Type: PA

DECISION NO. 36729

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**Appearances:**

Jim Parrett, AFSCME Wisconsin Council 32, N14436 - 17th Avenue, Necedah, Wisconsin, appearing on behalf of Thomas Czys.

Mark A. Herman, Department of Administration, 101 East Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Military Affairs.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

Appellant Thomas Czys, a permanent state employee working in a position titled Security Officer Senior, submitted his resignation on May 11, 2016, with his last day of work being June 9, 2016. On May 24, 2016, Czys sent an email to his supervisor stating that he was “withdrawing” his “retirement notice/request.” The State of Wisconsin, Department of Military Affairs, Czys’ employer, refused to allow the withdrawal and his employment ended on schedule.

Czys filed a timely appeal challenging the decision pursuant to § 230.44(1)(d), Stats., which permits challenges to “personnel action[s] after certification which [are] related to the hiring process in the classified service and which [are] alleged to be illegal or an abuse of discretion.” DMA has moved to dismiss the matter asserting we lack subject matter jurisdiction. The matter has been briefed and is before us for decision.

The first problem we address is that the parties view this claim as arising under different provisions. Czys sees this as a hiring decision under § 230.44(1)(d), Stats. In his view, after voluntarily resigning he sought to rescind the decision and, in effect, he would be “rehired” to the position he held pre-resignation. To carry it one step further, Czys argues that the decision not to rehire him is illegal or an abuse of discretion because he was a very good employee and there would be no reason not to “rehire” him.

DMA, on the other hand, sees this as a case arising under § 230.44(1)(c), Stats., giving us jurisdiction over discharges, demotions, layoffs, or reductions in base pay but not voluntary resignations. As their argument goes, we simply have no ability to review this matter unless Czys can establish that he was coerced into resigning.

Czys is probably closer to the mark with his analysis. It is after all the decision not to re-employ him that he is challenging, not his decision to resign in the first place. The problem Czys faces is that Wis. Admin. Code § ER 21.02(2) provides that:

After an employee submits a resignation letter, neither the employee nor the appointing authority can withdraw, stop or change the resignation date or other terms of the resignation except by mutual written agreement

Unless DMA agrees Czys' attempt to withdraw his resignation is a nullity. The code provision places no restrictions on the employer and the decision is purely discretionary. It cannot be an abuse of discretion to refuse to take an action when there are no restrictions or limitations on the decision.

Once the voluntary resignation is submitted, the employment relationship is severed unless both parties agree otherwise. There is no "hiring decision" for us to review and we lack jurisdiction to review a purely voluntary resignation. Accordingly, lacking subject matter jurisdiction over this matter we enter the following

**ORDER**

The appeal of Thomas Czys is hereby dismissed.

Signed at the City of Madison, Wisconsin, this 17th day of October 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner