

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TYLER NOLL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0031

Case Type: PA

DECISION NO. 36744

Appearances:

Tyler Noll, 327A West 16th Avenue, Oshkosh, Wisconsin, appearing on his own behalf.

Cara J. Larson, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

Appellant Tyler Noll was hired May 31, 2016 and placed on a probationary period running until November 30, 2016. On July 5, 2016, Noll was discharged by the Director of the Winnebago Mental Health Institute. Noll was a Food Service Assistant employed at the Institute. The State filed a motion to dismiss asserting that we lack jurisdiction over the discharge of probationary employees. Noll has not submitted a response.

Clearly, we lack jurisdiction over the discipline of probationary employees. One must have “permanent status in class” in order to appeal a discharge to the Wisconsin Employment Relations Commission. § 230.44(1)(c), Stats.

Under § 230.445, Stats., the State’s grievance procedure is not available to employees who lack permanent status in class. While Noll’s grievance was processed, we do not believe that constitutes a waiver of the defense asserted herein. Accordingly, the motion to dismiss is granted and we issue the following

ORDER

The appeal of Tyler Noll is dismissed.

Signed at the City of Madison, Wisconsin, this 8th day of November 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner