

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SUSAN RAKOWSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT, Respondent.

Case ID: 303.0004

Case Type: PA

DECISION NO. 36912

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**Appearances:**

Susan Rakowski, W204 N7623 Lannon Road, Menomonee Falls, Wisconsin, appearing on her own behalf.

Cara J. Larson, Department of Administration, 101 E. Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Workforce Development.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

Appellant Susan Rakowski was employed by the State of Wisconsin Department of Workforce Development for twenty-one years. She worked in the Milwaukee Benefit Center. Rakowski was transferred to an Unemployment Benefit Specialist position on October 5, 2015, and was advised that she would be required to serve a “permissive twelve month probationary period.” She had previously acquired permanent status in class. On September 29, 2016, during the probationary period, Rakowski was discharged from the position she had transferred to. Rakowski also apparently was discharged completely from state service.

The State of Wisconsin Department of Workforce Development has moved to dismiss Rakowski’s appeal based on the lack of subject matter jurisdiction. Rakowski has responded in writing.

**DECISION**

The Department of Workforce Development is correct that an employee serving a probationary period for the position held at the time of the discharge has no right to appeal that removal. *Kriska v. WERC*, 2008 WI App ¶ 13, 307 Wis.2d 312, 745 N.W.2d 688. However, from the limited record before us, it appears that Rakowski was discharged not just from the position she had transferred to but from all state service.

The administrative rules of the Division of Personnel Management provide that if an employee with previously acquired permanent status in class is discharged during the new probationary period, “[a]n employee so removed shall be restored to the employee’s previous position or transferred to a position for which the employee is qualified ... .” Wis. Admin. Code § ER-MRS 15.055. The code provision is consistent with § 230.28(1)(d), Stats., which provides that employees who are promoted or have “other change[s] in job status within an agency” that action will not “affect the permanent status in class and rights[] previously acquired.”

When Rakowski was removed from her probationary position, she had a clear right to return to the position she previously held. To the extent that her appeal challenges a failure to reinstate, it clearly is viable.

The motion raises an additional issue. It is unclear from this record what type of permissive transfer Rakowski was involved in. An ER-MRS § 15.04 transfer between employing units allows the appointing authority to establish a probationary period for non-trainee positions (and requires it for training positions). For an ER-MRS § 15.04 transfer within the same employing unit a probationary period is only permitted for trainee positions.

We are unable to determine on this record what Rakowski’s status was at the time of her transfer. As noted above, it is possible that Rakowski should not have been on probation following the transfer. This issue is best resolved with a full fact finding. Accordingly, we will deny the motion and allow this matter to proceed to hearing.

### **ORDER**

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 6th day of March 2017.

### **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