

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JASON SIMINOW, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0193

Case Type: PA

DECISION NO. 36919

Appearances:

Jason Siminow, 3328A South 11th Street, Sheboygan, Wisconsin, appearing on his own behalf.

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 Corrections.

DECISION AND ORDER DENYING MOTION TO DISMISS

The employee, Jason Siminow, is appealing a one-day disciplinary suspension, and there is no dispute with regard to our jurisdiction over the claim. There also is no dispute that Siminow satisfied the required conditions precedent to this claim. Sometime after receiving the one-day suspension, Siminow was permanently transferred from the Sheboygan office to the Saukville office. Accepting his version of events (as we must on a motion to dismiss), the permanent transfer was a punitive measure connected to the events which led to the one-day suspension. The State of Wisconsin Department of Corrections moves to dismiss arguing that Siminow has failed to allege facts sufficient to state a claim for constructive demotion.

DECISION

In *Wasmer v. DOJ*, Dec. No. 36176 (WERC, 2016), we held that a claim of constructive demotion may arise out of an employer's punitive decision to transfer an employee to a geographically distant work location. The punitive motivation may be proven by direct evidence or by evidence of a lack of legitimate business purpose for the transfer. While it is

true that Siminow's "amendment" lacks much in the way of specifics, we liberally construe pro se documents.

While we are allowing Siminow's "amendment," we recognize that he faces an uphill battle in his effort to establish that the move in office assignment is in fact punitive. The distance involved is not particularly onerous. Nevertheless, we will permit Siminow's effort to prove this claim.

ORDER

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 21st day of March 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner