

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KYLE J. HOFF, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0211

Case Type: PA

DECISION NO. 36979

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**Appearances:**

Kyle J. Hoff, 1109 Charlene Avenue, Tomahawk, Wisconsin, appearing on his own behalf.

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

On June 12, 2017, Appellant Kyle Hoff received a notice from his employer, the Wisconsin Department of Corrections, that from June 22, 2017, through the end of the year they intended to deduct \$115.00 per biweekly pay period through the end of December, 2017. Hoff appealed that decision to the Wisconsin Employment Relations Commission. DOC has moved to dismiss the appeal asserting we lack jurisdiction. It has submitted a brief in support of its position and Hoff has responded.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

Hoff is employed as a corrections officer at DOC's Lincoln Hills / Copper Lake juvenile facility in northern Wisconsin. In April of 2017, he received a lump sum \$2,500.00 Discretionary Merit Compensation award made pursuant to the 2015–2017 state compensation plan.

According to Hoff, sometime after he received the award, the *Milwaukee Journal Sentinel* made inquiries as to which members of the Lincoln Hills / Copper Lake staff received the discretionary merit increases.<sup>1</sup> Following the inquiry from the newspaper, Hoff alleged that

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<sup>1</sup> The Lincoln Hills / Copper Lake juvenile facility has been the subject of a series of newspaper articles suggesting that various staff members engaged in inappropriate behavior directed at inmates.

he was advised by Department Secretary Jon Litscher that the discretionary bonus he received would have to be rescinded because Hoff had been the subject of prior discipline and that this would reflect poorly on DOC and the facility.

On June 12, 2017, Hoff was advised by letter that the merit award he received “was granted in error” and therefore “must be rescinded.” Hoff was advised that the \$2,500.00 would be recouped by deductions of \$115.00 from his biweekly pay for the balance of the year effective June 22. It is Hoff’s contention that the rescission occurred because the newspaper was about to or did raise concerns that, because Hoff had been disciplined for work-related misconduct, he should not have been given the merit increase.

DOC notes that decisions to grant or deny merit increases are not subject to review by the Commission as specifically directed in § 230.12(5)(e), Stats. They also observe that § 230.44(1)(e), Stats., also provides that the appeal process:

... does not apply to decisions of an appointing authority relating to discretionary performance awards under s. 230.12(5) or under the discretionary merit award program established under s. 230.04(19), including the evaluation methodology and results used to determine the award or the amount awarded.

The problem with the argument is that Hoff is not disputing the decision to award him discretionary pay but rather he contends that the decision to make him pay it back is disciplinary in nature. If this were simply an eligibility or arithmetic mistake, clearly we would have no jurisdiction. Hoff, however, alleges that the award was taken away because he had engaged in misbehavior and that this “taking” is in effect a disciplinary action. Whether we characterize that loss as a reduction in base pay or a *de facto* demotion is not particularly significant. In either case, our jurisdiction and § 230.44(1)(c), Stats., is appropriate in light of Hoff’s claim that action was disciplinary in nature.

Certainly if Hoff had received a three-day disciplinary layoff and had his pay reduced by \$2,500.00, DOC would be required to establish just cause for such action. Hoff is simply alleging that the discipline came in two stages rather than in one fell swoop.

At this state of the proceedings, Hoff should be entitled to the opportunity to prove that the decision was punitive. If he is unable to do so, his claim will fail. Reading his claim on a light most favorable to him, we believe an evidentiary hearing is warranted and, accordingly, deny the motion.

### **ORDER**

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 10th day of August, 2017.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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James J. Daley, Commissioner