

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAMUEL BROOKS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0042

Case Type: PA

DECISION NO. 37298

Appearances:

William Leanderts, Representative, 1401 Loftsgordon Avenue, Madison, Wisconsin, appearing on behalf of Samuel Brooks.

Cara Larson, Attorney, Department of Administration, 201 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

ORDER GRANTING MOTION TO DISMISS

On August 23, 2017, Samuel Brooks filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Health Services (DHS) was not allowing him to file grievances “per HR430.” On September 27, 2017, DHS filed a motion to dismiss the appeal for lack of subject matter jurisdiction. The parties thereafter made written argument—the last of which was received on December 19, 2017.

Having considered the matter, the Commission concludes that it does not have jurisdiction over the appeal.

NOW, THEREFORE, it is

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 19th day of January, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

Section 230.45(1)(c), Stats. provides that the Wisconsin Employment Relations Commission shall:

c) Serve as final step arbiter in the state employee grievance procedure established under s. 230.04 (14).

Section 230.04(14) states:

(14) Except as provided in s. 230.445, the administrator shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to **conditions of employment**.

(Emphasis added).

Wisconsin Admin. Code ch. ER 46 is the State employee grievance procedure referenced in § 230.04(14), Stats. Consistent with § 230.04(14), Stats., Wis. Admin. Code § ER 46.02(4) defines a grievance as:

... a written complaint by an employee requesting relief in a matter which is of concern or dissatisfaction relating to **conditions of employment** ...

(Emphasis added).

Where, as here, a motion to dismiss asserts the Commission lacks subject matter jurisdiction, the Appellant has the burden of establishing that subject matter jurisdiction exists. *Renfrow v. DOC*, Dec. No. 33984-A (WERC, 4/13). The Appellant asserts that DHS refused to allow him to file a grievance. However, the grievance in question does not identify the alleged “condition of employment” that is of “concern or dissatisfaction.” Because our § 230.45(1)(c), Stats., jurisdiction to serve as the final step of the State employee grievance procedure is limited to grievances relating to “conditions of employment” and no condition of employment has been identified, the Commission concludes that the Appellant has not met his burden of establishing subject matter jurisdiction. Therefore, the appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 19th day of January, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman