

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MICHAEL CAPOZZIELLO, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION, Respondent.

Case ID: 315.0011

Case Type: PA

DECISION NO. 37764

Appearances:

Michael Capozziello, 234 Colby Boulevard, Poynette, Wisconsin, appearing on his own behalf.

Cara J. Larson, 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 Administration.

DECISION AND ORDER

On June 18, 2018, Michael Capozziello filed an appeal with the Wisconsin Employment Relations Commission asserting he had been improperly medically separated from employment by the State of Wisconsin Department of Administration. The appeal was assigned to Examiner Peter G. Davis. A hearing was held on September 18, 2018, in Madison, Wisconsin, and the State made oral argument at the conclusion thereof. A transcript of the hearing was received on September 24, 2018, and Capozziello filed written argument that same day.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. Michael Capozziello was employed as an Inventory Control Coordinator-Advanced by the State of Wisconsin Department of Administration (DOA) and had permanent status in class at the time he was medically separated from employment effective April 20, 2018.
2. Capozziello's DOA position required that he perform certain physical activities that his doctor had advised DOA he should not perform.
3. Before medically separating Capozziello's employment, DOA engaged in a good faith search for full-time or part-time positions within State service with duties Capozziello could physically perform by virtue of transfer, demotion, or placement into any such position.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Administration complied with § 230.37(2), Stats., before it dismissed Michael Capozziello.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

The appeal is dismissed.

Dated at Madison, Wisconsin, this 16th day of October, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

The Commission's jurisdiction over this appeal is limited to the issue of State compliance with § 230.37(2), Stats. That statute provides:

When an employee becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his or her position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer the employee to a position which requires less arduous duties, if necessary demote the employee, place the employee on a part-time service basis and at a part-time rate of pay or as a last resort, dismiss the employee from the service. The appointing authority may require the employee to submit to a medical or physical examination to determine fitness to continue in service. The cost of such examination shall be paid by the employing agency. In no event shall these provisions affect pensions or other retirement benefits for which the employee may otherwise be eligible

When evaluating State compliance with this statutory provision, the Commission held in *Bainbridge v. DOC*, Dec. No. 33901-B (WERC, 4/16) that the State has the burden to prove:

1. That the employee suffered from an infirmity;
2. That the infirmity caused the employee to be incapable or unfit for the efficient and effective performance of the duties of the position held by the employee; and
3. That the employer could not transfer, demote, or place the employee in a part-time position and that as a last resort, the employer had no alternative but to separate the employee.

Here, it is undisputed that Capozziello suffered from an infirmity. He has a medical condition that restricts his ability to perform certain physical activities.

The Commission also concludes that Capozziello's physical restrictions made him incapable of "the efficient and effective performance of the duties of the position" he held. While Capozziello asserts that it was possible to restructure his duties to avoid his physical restrictions, § 230.37(2), Stats., does not require such an attempt but rather measures the employee's infirmity against the duties of the position held.

Lastly, the record establishes that DOA made a good faith but unsuccessful search for an alternative full or part-time position which Capozziello could perform by virtue of transfer, demotion, or placement. While Capozziello contends that promotional opportunities should have been included with the scope of the search, DOA correctly points out the language of the statute limits the search to transfers, demotions, or placement in a part-time position.

Given the foregoing, the Commission concludes that DOA has proven that it met its obligations under § 230.37(2), Stats. Therefore, Capozziello's appeal has been dismissed. To the extent Capozziello makes arguments regarding "accommodation" and "the interactive process" he is free to pursue whatever other legal recourse he might have in any other forum that may have jurisdiction to review such matters. However, given the narrow scope of the Commission's jurisdiction under § 230.37(2), Stats., such arguments have not been addressed.

Dated at the City of Madison, Wisconsin, this 16th day of October, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman