

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCOTT BROWN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case ID: 39.0017

Case Type: PA

DECISION NO. 38482

Appearances:

Chad McCafferty, 461 Tower Road, Rio, Wisconsin, appearing on behalf of Scott Brown.

Anfin Jaw, Wisconsin Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Veterans Affairs.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On July 3, 2020, Scott Brown filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Veterans Affairs (DVA) had disciplined him without just cause. Thereafter, the case was set for hearing for September 9, 2020. On September 4, 2020, DVA filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. After that motion was filed, the hearing set for September 9, 2020 was cancelled. On September 12, 2020, Brown filed a response opposing the motion. On September 15, the Respondent filed a response. The matter is now ripe for Commission consideration.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is granted, and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 17th day of September, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

It is germane to this matter that Brown is an exempt employee (meaning he is exempt from federal and state overtime laws and regulations). On June 17, 2020, Brown received discipline for an attendance infraction which he subsequently grieved and appealed to the Commission. The exact nature of that discipline is addressed below.

Brown's disciplinary notice imposed a "written reprimand in lieu of a three-day suspension without pay." A review of that disciplinary notice makes it clear that Brown did not lose three days' pay as a result of this discipline. Instead, as previously noted, his discipline was described as a "written reprimand in lieu of a three-day suspension without pay."

The source for that unique discipline is found in Section 410.050 of the Wisconsin Human Resources Handbook wherein it provides:

There will be no letters in lieu of suspension issued with the exception of employees who are categorized as exempt employees under the federal and state overtime laws and regulations. *For exempt staff with attendance violations only, the first and second level of discipline (1-day suspension without pay and 3-day suspension without pay) will be a written reprimand in lieu of a 1-day suspension without pay and a written reprimand in lieu of a 3-day suspension without pay, respectively.* Written reprimands in lieu of a period of suspension will have the same weight and effect for progressive discipline purposes as if the employee had served the comparable period of suspension without pay.

Emphasis added.

There is an important distinction between a suspension (of any length) and a written reprimand (of any type). It is this: Wis. Stat. § 230.44(1)(c) gives the Commission jurisdiction to review the former (i.e. a suspension) but not the latter (i.e. a written reprimand). While prior to 2016 the Commission reviewed "written reprimands in lieu of suspension", that changed when the Commission issued its decision in *Shallock v. DOC*, Dec. No. 36326 (04/2016). Therein, the Commission announced that "Prospectively, we will no longer exercise jurisdiction over 'written reprimands in lieu of suspensions'". That, of course, is the type of discipline Brown received on June 17, 2020 and wants us to review.

Brown asks the Commission to review our decision in *Shallock* in light of the Civil Service Reform Act of 2016. After doing so, we conclude that nothing in that Act amended or changed Wis. Stat. § 230.45(1) which is the statute whereby the Legislature enumerated the specific appeals the Commission has authority to hear.

The Commission has decided to follow its holding in *Shallock* and apply it here. Accordingly, the Commission lacks jurisdiction under Wis. Stat. § 230.44(1)(c) to review Brown's letter of discipline.

Therefore, the motion to dismiss has been granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 17th day of September, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman