

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LACEY COYLE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0095

Case Type: PA

DECISION NO. 38818

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**Appearances:**

Lacey Coyle, 403 Pinehurst Drive, Waunakee, Wisconsin, appearing on her own behalf.

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 Health Services.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On February 16, 2021, Lacey Coyle filed an appeal with the Wisconsin Employment Relations Commission challenging the State of Wisconsin Department of Health Services' (DHS) decision to not grant Coyle a discretionary performance award. On February 19, 2021, DHS filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. Coyle was thereafter given the opportunity to file a response to the motion, but did not do so by a March 1, 2021 deadline.

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 16<sup>th</sup> day of March, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

In response to COVID, the State created hazard duty merit pay awards. These discretionary pay awards were specifically authorized by DOA under the Discretionary Merit Compensation (DMC) program which is governed by the State Compensation Plan. Coyle did not receive a DMC pay award. She challenges that decision. The Commission finds that it lacks subject matter jurisdiction to review the merits of her claim.

Wisconsin Stat. § 230.44(1)(e) specifically excludes a decision regarding a discretionary performance award from the Commission's jurisdiction. That section states: "This subsection 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."

Further, Wis. Stat. § 230.12(5)(e) provides:

*Appeal of discretionary performance award.* An employee who is dissatisfied with the evaluation methodology and results used by an agency to determine any discretionary performance award, or the amount of such award, may grieve the decision to the appointing authority under the agency's grievance procedure. **The decision of the appointing authority is final and may not be appealed to the commission under s. 230.44 or 230.45(1)(c).** (*Emphasis added*).

Finally, Wis. Stat. § 230.45(2) provides:

Subsection (1)(c) does not apply to an employee who, using the agency grievance procedure, grieves his or her dissatisfaction with the evaluation methodology and results used to determine any discretionary performance award or the amount of such an award. **Any such employee grievance shall be settled on the basis of the appointing authority's decision.** (*Emphasis added*).

These provisions make it clear that the Commission lacks jurisdiction to review the merits of the instant appeal. We have therefore granted the motion to dismiss and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 16<sup>th</sup> day of March, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman