

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER HEIDEL, Appellant,

vs.

UNIVERSITY OF WISCONSIN-MADISON, Respondent.

Case ID: 460.0013

Case Type: PA

DECISION NO. 39266

Appearances:

Paul Secunda, Attorney, Walcheske & Luzi, LLC, 235 N. Executive Drive, Suite 240, Brookfield, Wisconsin, appearing on behalf of Christopher Heidel.

Craig B. Fischer, Associate University Legal Counsel, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin, appearing on behalf of the University of Wisconsin-Madison.

**DECISION AND ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS**

On November 12, 2020, Christopher Heidel filed an appeal with the Wisconsin Employment Relations Commission asserting he had been improperly furloughed by the University of Wisconsin-Madison (UW). On December 14, 2020, UW filed a motion to dismiss the appeal asserting that the Commission lacked jurisdiction over any allegedly improper application of the furlough policy. On January 15, 2021, Heidel responded to the motion to dismiss and also supplemented his appeal to contend that UW's action constituted discipline against him. The parties thereafter filed written argument, the last of which was received August 13, 2021.

Having considered the matter, the Commission is persuaded that the UW motion to dismiss should be granted in part and denied in part.

NOW, THEREFORE, it is

ORDERED

The motion to dismiss is granted in part and denied in part.

Issued at the City of Madison, Wisconsin, this 26th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

In his November 12, 2020 appeal, Heidel asserts the UW improperly selected him to be furloughed when it retained a less senior employee. UW contends that the Commission lacks jurisdiction over the application of its furlough policy.

Pursuant to Wis. Stat. § 36.115(3), the UW was given authority by the Legislature to:

develop a personnel system that is separate and distinct from the personnel system under ch. 230 for all system employees assigned to the University of Wisconsin-Madison.

Under that “separate and distinct” personnel system, UW issued Heidl a “furlough” as that term is defined in the new system.¹

As reflected in Wis. Stat. § 36.115(6), because he had permanent status in class on June 30, 2015, Heidl retained:

those protections afforded employees in the classified service under ss. 230.34 (1)(a) and 230.44(1)(c) relating to demotion, suspension, discharge, layoff, or reduction in base pay.

A “furlough” is not among the above listed personnel actions as to which Heidl retained protection. Thus, the Commission does not have jurisdiction over the alleged violation of the UW furlough policy. That portion of the appeal has been dismissed.

However, on January 15, 2021, Heidel also asserted that the action taken by UW was actually disciplinary in nature. UW contends that this allegation was not timely raised and thus should be dismissed.

Wisconsin Admin. Code ERC § 92.03 provides:

(2) AMENDMENT. An appeal may be amended, subject to approval by the commission, to clarify or amplify allegations or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date of the appeal.

Given the content of this administrative rule, it is apparent that the disciplinary allegation is not time barred if the Commission grants approval as to the amendment. The Commission

¹ “Furlough” is defined as:

The involuntary, temporary placement of a university faculty or staff member on a partial or full unpaid leave of absence because of reduction of work, reduction of funding, or other non-disciplinary reasons.

concludes it is appropriate to do so. Thus, as to this allegation of a “constructive suspension”, the Commission does have Wis. Stat. § 230.44(1)(c) jurisdiction and that portion of the appeal can proceed to hearing.²

Issued at the City of Madison, Wisconsin, this 26th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

² Heidl claims in the alternative that he also suffered a “reduction in base pay.” This claim is rejected. The loss of pay incurred while off work does not result in a “reduction in base pay.”