

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEPHANIE BUCK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0108

Case Type: PA

DECISION NO. 39310

Appearances:

Stephanie Buck, 209 E. Woody Street, Tomah, Wisconsin, appearing on her own behalf.

Anfin Jaw, Attorney, 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 December 28, 2021, Stephanie Buck filed an appeal with the Wisconsin Employment Relations Commission disputing a Letter of Expectation she received from the State of Wisconsin Department of Health Services (DHS). On February 3, 2022, DHS filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Buck filed a reply on February 8, 2022.

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

NOW, THEREFORE, it is:

ORDERED

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

Issued at the City of Madison, Wisconsin, this 22nd day of February, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Buck is a Supervising Officer at the DHS Sand Ridge Secure Treatment Center. She received a Letter of Expectation (LOE) citing certain alleged job performance issues. Among other matters, her appeal contends that: (1) she should not have received an LOE; (2) the LOE was issued in retaliation for her having complained about her treatment under the Family and Medical Leave Act; and (3) the LOE constitutes discrimination based on age, sex and disability. The appeal does not specify what statute might give the Commission jurisdiction over the matters.

As to the retaliation/discrimination portion of the appeal, DHS correctly notes that other State agencies such as the Department of Workforce Development may have jurisdiction to address those issues. The Commission does not.

As to the issue of whether the LOE should have been issued based on alleged job performance issues, Buck no doubt correctly asserts that an LOE can have future negative personnel consequences in the workplace. However, an LOE cannot be appealed as a just cause disciplinary matter under specific personnel actions listed under Wis. Stats. § 230.44 (1)(c).¹

Wisconsin Stat. § 230.45(1)(c) does give the Commission the power to “[s]erve as final step arbiter in the state employee grievance procedure established under s. 230.04(14).” However, the grievance procedure referenced in Wis. Stat. § 230.04(14) and found in Wis. Admin. Code Ch. ER 46 specifically excludes an LOE from matters that can be pursued before the Commission.²

Given all of the foregoing, the Commission concludes that it does not have jurisdiction to review the merits of the claims Buck has raised in her appeal. Therefore, the motion to dismiss has been granted and the appeal dismissed.

¹ “. . . a demotion, layoff, suspension, discharge or reduction in base pay”

² ER 46.03 Scope.

(1) Under this chapter, an employee may grieve issues which affect his or her conditions of employment, including any matter on which the employee alleges that coercion or retaliation has been practiced against the employee except as provided in sub. (2).

(2) An employee may not use this chapter to grieve:

...

(hg) A written instruction related to job performance or work conduct.

Issued at the City of Madison, Wisconsin, this 22nd day of February 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman