

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ANDREW COLIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0558

Case Type: PA

DECISION NO. 39784

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**Appearances:**

Andrew Colin, 1108 N. 5<sup>th</sup> St., Muscoda, Wisconsin, appearing on his own behalf.

Nicole Porter, 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 Corrections.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On November 7, 2022, Andrew Colin filed an appeal with the Wisconsin Employment Relations Commission disputing a loss of wages and benefits imposed by the State of Wisconsin Department of Corrections (DOC). On December 28, 2022, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Colin filed a reply to the motion to dismiss on December 29, 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 2<sup>nd</sup> day of February, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Andrew Colin took leave without pay (LWOP) on March 13, 16, 17, and 21, 2022, while he was voluntarily transitioning from a Sergeant to an Officer. He was made aware of this one-time reduction in pay in his April 7, 2022, paycheck. The DOC initiated an investigation in April 2022, which concluded in July 2022 that Colin had taken unauthorized LWOP. Colin was notified on July 20, 2022, that he had been found to have taken unauthorized LWOP and that he had the right to appeal. The loss of accrued vacation time meant Colin was unable to take a scheduled vacation in the fall of 2022.

Colin filed a Grievance Commencement regarding his LWOP on August 4, 2022, which DOC Employee Relations Business Partner Kathryn Tabbutt denied as untimely filed on August 5, 2022. Colin then filed another Grievance Commencement on October 25, 2022, alleging that this loss of pay and accrued vacation time constituted a “reduction in base pay.” On November 1, 2022, Colin’s grievance was denied by Employment Relations Specialist Brenda Brewer because, as an issue related to “wages, hours of work and fringe benefits,” it was not grievable under Wis. Admin. Code § ER 46.03(2)(k). Brewer also determined that the grievance was untimely filed. On November 7, 2022, Colin filed an appeal with the Commission alleging that he had experienced a “reduction of income.”

Per Wis. Stat. § 230.44(1)(c), employees with permanent status in class may appeal “a demotion, layoff, suspension, discharge, or reduction in base pay” to the Commission. “Base pay” is defined as “the pay rate [emphasis added] excluding any overtime or supplementary compensation.” *See* Wis. Admin. Code § ER 1.02(5). Here, Colin is appealing a one-time reduction of his pay and vacation time. This was not a reduction in his “base pay” as defined by Wis. Admin. Code § ER 1.02(5). Since Colin’s appeal does not allege a “reduction in base pay,” the Commission does not have jurisdiction over his appeal under Wis. Stat. § 230.44(1)(c).

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 any matter related to wages, hours of work, and fringe benefits, from matters that can be pursued before the Commission.<sup>1</sup> Because Colin’s appeal raises an issue as to “wages” and “fringe benefits” which is specifically excluded from matters that can be grieved and

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<sup>1</sup> Wis. Admin. Code § 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:

...

(k) Any matter related to wages, hours of work, and fringe benefits.

subsequently appealed to the Commission, the Commission concludes that it does not have jurisdiction to review the merits of Colin's claim under Wis. Stats. § 230.45(1)(c).

Given all of the foregoing, the motion to dismiss has been granted and the appeal dismissed.

Issued at the City of Madison, Wisconsin, this 2<sup>nd</sup> day of February, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman