

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MICHAEL WAGNER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF REVENUE, Respondent.

Case ID: 254.0005

Case Type: PA

DECISION NO. 39903

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**Appearances:**

Michael Wagner, 1225 Huron Court, Oshkosh, Wisconsin, appearing on his own behalf.

Nicole M. Porter, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Workforce Development.

**ORDER DISMISSING PART OF APPEAL**

On January 25, 2023, Michael Wagner filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Revenue (DOR) had violated his civil service restoration rights and demoted him.

On February 22, 2023, DOR filed a motion to dismiss the restoration portion of the appeal as untimely filed. Wagner filed a response in opposition to the motion on March 7, 2023.

Having considered the matter, the Commission is persuaded that restoration portion of the appeal is untimely and thus that it lacks jurisdiction to consider that portion of the appeal.

NOW, THEREFORE, it is:

**ORDERED**

The restoration portion of the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 13<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER**  
**DISMISSING PART OF THE APPEAL**

On January 4, 2019, Wagner received notice from DOR that he was being restored to the civil service on January 8, 2019. On January 8, 2019, he was placed on a temporary assignment. Wagner claims the temporary assignment in effect meant his was not properly restored in a manner consistent with civil service law. Effective January 1, 2023, Wagner was permanently assigned a new position. His January 25, 2023, appeal asserts he was never properly restored and that his new position constitutes a demotion. DOR claims the restoration issue has been raised in an untimely manner.

The Commission has held that it does have jurisdiction over restoration issues under Wis. Stat. § 230.44(1)(d). *See Dusso v. DER & DRL*, Case No. 94-0490-B (Personnel Comm., 12/1994). However, in accordance with Wis. Stat. § 230.44(3), an appeal under Wis. Stat. § 230.44(1)(d), may not be heard "unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later." Wagner was notified of the restoration via letter dated January 4, 2019, and DOR asserts the restoration was effective January 8, 2019. It is apparent that Wagner's January 25, 2023 appeal was not filed within 30 days of January 8, 2019.

Wagner nonetheless asserts this portion of his appeal is timely filed because it was filed within 30 days of the date he received a permanent reassignment – which he apparently views as the date he was actually restored. However, the Commission has previously held that the date the 30-day timeline begins is the date of notice or effective date of the personnel action, not when an appellant makes their own determination that the action was improper. *See Clark-Dyett v. DHS*, Dec. No. 33234-A (WERC, 5/2011), citing *Boyea v. DOC*, Dec. No. 32647 (WERC, 1/2009). Further, it is apparent that Wagner has in fact been claiming he was not restored in a manner consistent with civil service law for some time.

Given all of the foregoing, the Commission concludes the restoration portion of the appeal is untimely. Therefore, that portion has been dismissed.

Issued at the City of Madison, Wisconsin, this 13<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman