

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JOHN REUTER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION and  
STATE OF WISCONSIN DEPARTMENT OF MILITARY AFFAIRS, Respondents.

Case ID: 265.0009

DECISION NO. 39948

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**Appearances:**

John Reuter, 3232 Pierstorff Street, Madison, Wisconsin, appearing on his own behalf.

Meg Vergeront, Chief Legal Counsel, Department of Military Affairs, 2400 Wright Street, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Administration and the State of Wisconsin Department of Military Affairs.

**ORDER DENYING MOTION TO DISMISS**

On June 20, 2023, John Reuter filed an appeal with the Wisconsin Employment Relations Commission disputing a denial of benefits and continuation of pay under Wis. Stat. § 321.68. On July 13, 2023, DOA/DMA filed a motion to dismiss the appeal on the grounds that (1) Reuter is not entitled to continuation of pay under § 321.68, and that (2) Reuter never applied for continuation of pay pursuant to § 321.68, or that any application was denied, and therefore there is no agency decision to appeal. Reuter filed a response opposing the motion on July 25, 2023. DOA/DMA filed a reply on August 3, 2023. Reuter submitted an additional response on August 7, 2023. DOA/DMA filed an additional reply on August 8, 2023, whereupon the matter became ripe for Commission consideration.

Having reviewed the matter, the Commission concludes the motion should be denied pending a hearing on relevant factual matters.

NOW, THEREFORE, it is:

**ORDERED**

The motion to dismiss is denied.

Issued at the City of Madison, Wisconsin, this 21<sup>st</sup> day of August 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER**  
**DENYING MOTION TO DISMISS**

Reuter is a Technical Sergeant (TSgt) in the Wisconsin Air National Guard (WI ANG), enlisting in 2006. Wisconsin Stat. § 321.68(3) provides that if a member of the national guard or state defense force suffers injury in the performance of his or her duties while on state active duty, the member shall continue to be fully paid under Wis. Stat. §§ 321.35 or 321.51 upon the same basis as paid prior to the injury. Wisconsin Stat. § 321.68(4) provides that a member denied benefits under this section may appeal to the Commission under Wis. Stat. § 230.45(1)(d).

DOA/DMA argues that Reuter is not entitled to continuation of pay under § 321.68 because that statute only applies when a Wisconsin National Guard (WING) servicemember is injured on state active duty and Reuter has never been on state active duty. DOA/DMA further contends that Reuter never applied for benefits under § 321.68, there was no denial decision, and therefore no agency decision to appeal.

Reuter asserts that he is entitled to benefits under § 321.68, and that he made a request for benefits on May 9, 2023, through his chain of command, which was subsequently denied.

Here, the Commission is unable to resolve the factual disputes raised by the parties. Therefore, pending a hearing on the facts, the motion to dismiss is denied.

Issued at the City of Madison, Wisconsin, this 21<sup>st</sup> day of August 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman