

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SUZANNE M. WEBER, Appellant,

vs.

DEPARTMENT OF WORKFORCE DEVELOPMENT, Respondent.

Case 29
No. 72710
PA(gen)-16

Decision No. 34657

DECISION ON MOTION TO DISMISS

The Respondent, Department of Workforce Development (DWD), has moved to dismiss the appeal in this matter, based upon an asserted lack of subject matter jurisdiction. The DWD raises three issues:

1. That the appeal is essentially a state or federal Family and Medical Leave Act claim outside of our jurisdiction;
2. That the appeal does not challenge a disciplinary action; and
3. That the grievance / appeal was not processed appropriately.

None of the arguments are developed and, on that basis alone, could be summarily dismissed. We will engage in an analysis of each with the understanding that in the future underdeveloped arguments will not receive such treatment.

Subject Matter Jurisdiction

While the pro se appeal filed in this matter is hardly an example of precision, to the extent it raises claims otherwise cognizable under either the state FMLA § 103.10, Stats., or the federal law, 29 U.S.C. § 2601, we clearly do not have jurisdiction. The question of whether or not Weber is entitled to leave under either act will not be adjudicated in this proceeding. We, however, read Weber's appeal broadly and in a light most favorable to her on a motion to dismiss.

Here, the appeal letter does not assert that Weber was and is being denied the opportunity to utilize such leave benefits and that, to the extent she is being permitted to use personal leave, limits on its use are being prematurely applied.

The definition of “disciplinary action” contained in § 230.80(2), Stats., is broad and includes “any action taken with respect to an employee which has the effect in whole or part of a penalty” The provision goes on to describe some, but not all, of the types of action which may constitute a penalty.

At the motion to dismiss stage, Weber’s appeal letter sufficiently describes conduct which could be considered disciplinary action.

Timeliness Issue

Weber received the letter which is the subject of this appeal on September 6, 2013. She had until October 6, 2013 to file her appeal. October 6, 2013 was a Sunday and, accordingly, the time deadline is extended to October 7, 2013. *See* § 990.001(4)(b), Stats. Weber filed her appeal by facsimile on October 7, 2013, and it is therefore timely.

DWD also apparently attempts to raise an exhaustion argument, but it is underdeveloped and at best cryptic. Accordingly, we deny it.

ORDER

The motion is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of November 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman