

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROSANN WEBER, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case ID: 3.0031

Case Type: PA

DECISION NO. 37806

Appearances:

Rosann Weber, 10008 Burlington Road, Kenosha Wisconsin, appearing on her own behalf.

Mathew J. Lind, System Legal Counsel, Office of General Counsel, 1852 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin, appearing on behalf of the University of Wisconsin System.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On December 20, 2018, the Wisconsin Employment Relations Commission received an appeal from Rosann Weber asserting she had been discharged without just cause by the University of Wisconsin System (UWS) on November 7, 2018. On January 11, 2019, UWS filed a motion to dismiss the appeal asserting the Commission lacked jurisdiction because Weber had voluntarily resigned in lieu of discharge. Weber opposed the motion and the matter became ripe for Commission action on February 1, 2019.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 13th day of February, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

The issue in this matter is whether Weber voluntarily resigned or whether her resignation was coerced. Discharges, including constructive discharges or coerced resignations, are subject to the Commission's review pursuant to § 230.44(1)(c), Stats. Voluntary (rather than coerced) resignations are not. *Wachtel v. DOC*, Case No. 99-0037-PC (Pers. Comm. 11/19/1999).

In *Peterson v. DNR*, Dec. No. 32605 (WERC, 11/08), the Commission quoted with approval the following observation.

It is not uncommon for an administrative officer who finds it necessary to remove an employee to give the employee an opportunity to resign rather than be discharged This is indulging a kindness to the employee in protecting him and his work record. It would be a dangerous doctrine to hold that to offer an employee his choice of resigning or accepting a discharge would amount to such compulsion that the employee would avoid his resignation for duress. If such were the law, then anytime an employer mentioned the subject of discharge to this employee, he would have to go ahead and discharge him and could not give the latter the choice of resigning because the resignation would be voidable.

Thus, it is clear that giving an employee a choice between discharge and resignation is not on its face a constructive discharge or coerced resignation. More is needed. By way of example as to additional facts that would provide jurisdiction, in *Peterson v. DNR*, the Commission cited to *Evrard v. DNR*, Case No. 79-251-PC (Pers. Comm. 2/19/1980), where the employee was called into a meeting with his supervisors at 8:30 a.m., and was told that if he did not sign a letter of resignation which had been prepared for him, his employment would be terminated. Evrard broke into a cold sweat, was incapable of speaking, had to lower his head between his knees to avoid fainting, and was told he had to make a decision immediately. The charges that served as the basis for the discharge letter could have also served as the basis for the imposition of criminal penalties.

Here, Weber does not assert any facts that would meet the "coerced" standard. She simply changed her mind regarding the wisdom of the resignation choice she made the previous day.

The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Balele v. Wis. Pers. Comm.*, 223 Wis.2d 739, 745-748, 589 N.W.2d 418 (Ct. App. 1998). The Commission is persuaded there is no genuine issue of material fact here and has granted the motion to dismiss the appeal.¹

¹ To the extent Weber asserts due process concerns as to how the UWS grievance procedure proceeded, the Commission lacks jurisdiction to consider those issues.

Signed at the City of Madison, Wisconsin, this 13th day of February, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman