

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JONAS TROCHINSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0336

Case Type: PA

DECISION NO. 38424

Appearances:

Paul J. Mertz, Representative, P.O. Box 181, Redgranite, Wisconsin, appearing on behalf of Jonas Trochinski.

Anfin Jaw, 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 Corrections.

**DECISION AND ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS**

On January 17, 2020, Jonas Trochinski filed an appeal with the Wisconsin Employment Relations Commission challenging his involuntary transfer pursuant to §§ 230.44(1)(a) and (1)(c), Stats. On January 30, 2020, the State of Wisconsin Department of Corrections filed a motion to dismiss the appeal for lack of subject matter jurisdiction. Trochinski filed a response on February 5, 2020.

On March 6, 2020, Trochinski amended his appeal to include the Director of the Bureau of Merit Recruitment and Selection, Division of Personnel Management, Department of Administration as a Respondent and on March 9, 2020 filed an Offer of Proof as to the impact of transfer. The parties thereafter filed supplemental arguments and the matter became ripe for Commission consideration on March 20, 2020.

Being fully advised in the premises, the Commission makes and issues the following:

ORDER

The motion to dismiss is granted in part and denied in part.

Issued at the City of Madison, Wisconsin, this 1st day of April, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS

In *Siminow v DOC*, Dec. No. 36919 (WERC, 3/17) and Dec. No. 36919-A (WERC, 5/17), the Commission concluded that it had jurisdiction pursuant to § 230.44(1)(c), Stats., to review involuntary transfers that were disciplinary in intent and had an “onerous” impact on the employee. The Commission viewed such a transfer as “a demotion by punitive transfer.” Here, Trochinski alleges that the involuntary transfer was disciplinary and lacked just cause. For the purposes of a ruling on the motion to dismiss, the Commission assumes those allegations to be true. However, as to the matter of “onerous” impact, Trochinski’s offer of proof falls far short. The additional 23 miles each way commute caused by the transfer does not meet the “geographically distant” standard referenced by the Commission in *Wasmer v DOJ*, Dec. No. 36176 (WERC, 2/16). Therefore, the motion to dismiss the § 230.44(1)(c), Stat. allegation is granted.¹

In *Siminow*, the Commission also concluded that it had jurisdiction to review involuntary transfers under § 230.44(1)(a), Stats. Trochinski has invoked that jurisdiction by asserting the proper procedure for recommending and approving the transfer was not followed. This portion of the appeal can proceed to hearing and the motion to dismiss that allegation is therefore denied.

Issued at the City of Madison, Wisconsin, this 1st day of April, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ To the extent Trochinski contends that the additional commuting expenses constitute a “reduction in base pay,” that contention is rejected. Trochinski’s “base pay” within the meaning of § 230.44(1)(c), Stats., did not change as a result of the transfer.