

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**MICHAEL CLEARY**, Appellant,

v.

**STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS**, Respondent.

Case ID: 1.0378

Case Type: PA

**Decision No. 38468**

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**Appearances:**

Sean Daley, Field Representative, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Michael Cleary.

Cara Larson, Attorney, Department of Administration, 101 East Wilson Street, 10<sup>th</sup> Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On July 1, 2020, Michael Cleary filed an appeal with the Wisconsin Employment Relations Commission (the Commission) asserting that the Department of Corrections (DOC) suspended him for one day without just cause. On August 4, 2020, DOC moved to dismiss the appeal on the grounds that it had withdrawn Cleary's suspension, amended it to a non-disciplinary letter of expectation, and made Cleary whole for the one day he was suspended. On August 5, 2020, Cleary filed a response opposing DOC's motion to dismiss. The matter is now ripe for Commission consideration. The matter is set for hearing on August 13, 2020.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is:

**ORDERED**

The motion to dismiss is granted, and the appeal is dismissed.

Issued at Madison, Wisconsin, this 12<sup>th</sup> day of August 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James Daley, Chairman

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

Cleary received a one-day suspension for off duty conduct which he grieved and appealed to the Commission. Hearing on that matter is set for August 13, 2020.

On August 4, 2020, DOC notified the Commission that it had decided to withdraw Cleary's suspension, amend it to a non-disciplinary letter of expectation and make him whole for the one-day suspension.

That action by DOC effectively ended this matter because the Commission does not have jurisdiction to review letters of expectation given to State employees.

In so finding, we are cognizant of the fact that a letter of expectation can stay in an employee's personnel file indefinitely and thus is a permanent blemish on their record. Nonetheless, the Commission simply does not have jurisdiction to review the merits of a letter of expectation issued to a State employee.

As for Cleary's claim that the issuance of the letter of expectation violates the Wisconsin Fair Employment Act, the Commission also lacks jurisdiction to review that claim.

Cleary's appeal has therefore been dismissed. The hearing now set for August 13, 2020 is cancelled.

Issued at Madison, Wisconsin, this 12<sup>th</sup> day of August, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James Daley, Chairman