

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ROY FIELDS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0399

Case Type: PA

DECISION NO. 38756

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**Appearances:**

Roy Fields, 140 East Rees Street, Fond du Lac, Wisconsin, appearing on his own behalf.

Cara Larson, Wisconsin Department of Administration, 101 E. 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 MOTION TO DISMISS**

On September 23, 2020, Roy Fields filed an appeal with the Wisconsin Employment Relations Commission seeking reimbursement from his Employer, the State of Wisconsin Department of Corrections (DOC), for two days of sick leave he was forced to use by his Employer as a result of a wellness check. On November 3, 2020, DOC filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. On November 9, 2020, Fields filed a response opposing the motion, whereupon the matter became ripe for Commission consideration.

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 the City of Madison, Wisconsin, this 25th day of November, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

On July 17, 2020, Fields was working at Fox Lake Correctional Institution (FLCI) when coworkers reported he was not acting normal. Because of those reports, management sent Fields home as part of a wellness check and told him to seek medical attention. He did and was off work for two days. After he returned to work, his two-day absence was charged to sick leave and two days of sick leave were deducted from his sick leave balance. His grievance challenges that action and states that he wants his “two days of sick leave back.”

Although the appeal does not explicitly say so, we read Fields’ appeal to ask the Commission to exercise its jurisdiction under Wis. Stat. § 230.45(1)(c) to act in this instance as the “final step arbiter” in the state employee grievance procedure. That section provides that the Commission shall “serve as final step arbiter in the state employee grievance procedure established under s. 230.04(14)”. Wisconsin Stat. § 230.04(14) provides that “the administrator [of the Division of Personnel Management] shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment.” The administrative rules promulgated by the administrator, found in Wis. Admin. Code Ch. ER 46, establish limitations on the scope of the grievance procedure.

Wisconsin Admin. Code § ER 46.03(1), provides “an employee may grieve issues which affect his or her conditions of employment . . . .” The phrase “conditions of employment” is not defined in this chapter. Wisconsin Admin. Code § ER 46.03(2) then goes on to identify 13 situations where the “employee may not use this chapter to grieve.” The last item on that list is “(k) Any matter related to wages, hours of work, and **fringe benefits**.” Emphasis added. Although the term “fringe benefits” is not defined in that section, in the labor relations field the term “fringe benefits” typically includes such things as health insurance, retirement, paid sick leave, paid vacation, paid time off, family and medical leave, etc.

In this case, Fields is clearly grieving a matter related to “fringe benefits” within the meaning of Wis. Admin. Code § ER 46.03(2)(k) – in particular, sick leave usage. That is because his grievance challenges the Employer’s decision to deduct two days of sick leave from his sick leave balance following his two-day absence related a wellness check. Since Wis. Admin. Code § ER 46.03(2)(k) precludes grievances related to “fringe benefits”, and that is what Fields is grieving here, Fields’ grievance does not involve a “condition of employment” within the meaning of Wis. Admin. Code § ER 46.03(1). That, in turn, means that the Commission does not have jurisdiction to review his grievance.

Fields’ appeal can alternatively be read to ask the Commission to assert jurisdiction over his appeal on the grounds he feels he was “punished” by the Employer’s action. His subjective view of how he felt after the Employer took this action is not controlling. While the Commission has jurisdiction to review some state disciplinary actions – such as a suspension given for disciplinary reasons – that is not what happened here. Fields was not suspended, so we lack jurisdiction on that basis as well.

Given those findings, the Commission lacks jurisdiction under Wis. Stat. § 230.44(1)(c) to hear Fields' appeal. The appeal has therefore been dismissed.

Signed at the City of Madison, Wisconsin, this 25<sup>th</sup> day of November, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman