

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SARA PHELAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF JUSTICE, Respondent.

Case ID: 10.0005

Case Type: PA

DECISION NO. 38796

Appearances:

Sara Phelan, 4519 Field Avenue, McFarland, Wisconsin, appearing on her own behalf.

Rachel L .Bachhuber, Assistant Attorney General, 17 W. Main Street, P.O. Box 7857, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Justice.

DECISION AND ORDER DENYING MOTON TO DISMISS

On November 20, 2020, Sara Phelan filed an appeal with the Wisconsin Employment Relations Commission disputing the State of Wisconsin Department of Justice's (DOJ) decision not to transfer her into a position for which she had applied and received a verbal offer. On December 10, 2020, DOJ filed a motion to dismiss the appeal for lack of subject matter jurisdiction. Phelan filed a response on December 23, 2020.

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

ORDER

The motion to dismiss is denied.

Issued at the City of Madison, Wisconsin, this 15th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
DENYING MOTION TO DISMISS

The appeal Phelan filed contests the decision of DOJ not to allow her to transfer into a position. Among other statutes that might confer jurisdiction on the Commission to review the matter, she cited Wis. Stat. § 230.44(1)(d). That statute gives the Commission jurisdiction to review the appeal of an unsuccessful applicant for a vacant position where it is alleged that the appointing authority acted illegally or abused its discretion.

DOJ's motion to dismiss asserts that Phelan's appeal does not claim illegality or abuse of discretion. In Phelan's response to the motion, she clearly makes that contention. Wisconsin Admin. Code § ERC 92.03(2) allows for amendments to an appeal and the Commission deems it appropriate to treat Phelan's response to the motion as an amendment. In light of that amendment, Phelan has appropriately invoked the Commission's Wis. Stat. § 230.44(1)(d) jurisdiction and thus the motion to dismiss is denied.

Issued at the City of Madison, Wisconsin, this 15th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman