

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MITCHELL KROGMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0429

Case Type: PA

DECISION NO. 38815

Appearances:

Kenneth Fleshner, 1502 S. 1st Street, Prairie du Chien, Wisconsin, appearing on behalf of Appellant and Mitchell Krogman, 38009 Birch Court, Prairie de Chien, Wisconsin appearing on his own behalf.

Anfin Jaw, Attorney, 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 MOTION TO DISMISS

On January 14, 2021, Mitchell Krogman filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) lacked just cause to deny him discretionary merit compensation. On January 28, 2021, DOC filed a motion to dismiss asserting the Commission lacks jurisdiction to consider the merits of the appeal. On January 30, 2021, Krogman filed a response opposing the motion.

Having considered the matter, the Commission concludes that it does lack jurisdiction over the appeal.

NOW, THEREFORE, it is

ORDERED

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

Issued at Madison, Wisconsin, this 17th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Krogman's appeal contends he was improperly denied \$1500 in discretionary merit compensation. DOC correctly asserts that Wis. Stat. § 230.44(1)(e) explicitly provides that the Commission does not have jurisdiction over discretionary merit awards.

In response to COVID, the State created hazard duty merit pay awards. These discretionary pay awards were specifically authorized by DOA under the Discretionary Merit Compensation (DMC) program which is governed by the State Compensation Plan. Krogman did not receive a DMC pay award. He challenges that decision. The Commission finds that it lacks subject matter jurisdiction to review the merits of his claim.

Wisconsin Stat. § 230.44(1)(e) specifically excludes a decision regarding a discretionary performance award from the Commission's jurisdiction. That section states: "This subsection does not apply to decisions of an appointing authority relating to discretionary performance awards under s. 230.12(5) or under the discretionary merit award program established under s. 230.04(19), including the evaluation methodology and results used to determine the award or the amount awarded."

Further, Wis. Stat. § 230.12(5)(e) provides:

Appeal of discretionary performance award. An employee who is dissatisfied with the evaluation methodology and results used by an agency to determine any discretionary performance award, or the amount of such award, may grieve the decision to the appointing authority under the agency's grievance procedure. **The decision of the appointing authority is final and may not be appealed to the commission under s. 230.44 or 230.45(1)(c).** (*Emphasis added*).

Finally, Wis. Stat. § 230.45(2) provides:

Subsection (1)(c) does not apply to an employee who, using the agency grievance procedure, grieves his or her dissatisfaction with the evaluation methodology and results used to determine any discretionary performance award or the amount of such an award. **Any such employee grievance shall be settled on the basis of the appointing authority's decision.** (*Emphasis added*).

These provisions make it clear that the Commission lacks jurisdiction to review the merits of the instant appeal. Given the foregoing, we have therefore granted the motion to dismiss and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 17th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman