

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BARRY CASETTA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0391

Case Type: PA

DECISION NO. 38933

Appearances:

Barry Casetta, 405 N. Park Avenue, Fond du Lac, Wisconsin appearing on his own behalf.

Anfin Jaw, Attorney, 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.

ORDER DENYING MOTION TO DISMISS

On September 9, 2020, Barry Casetta filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) had improperly ended his benefits under Wis. Stat. § 230.36. The appeal was assigned to Examiner Peter Davis.

DOC filed a motion to dismiss for lack of jurisdiction and Casetta filed a statement in opposition to the motion. Following some communication with the Examiner, the motion became ripe for action on February 24, 2021.

Having considered the matter, the Commission concludes that it does have jurisdiction to consider the merits of this appeal.

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

ORDER

The motion to dismiss is denied.

Issued at Madison, Wisconsin this 23rd day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

While working for DOC, Casetta was injured on the job. He applied for and received hazardous duty benefits under Wis. Stat. § 230.36. He also filed a workers compensation claim. At some point, DOC received an independent medical exam related to the workers compensation claim¹ which DOC interpreted as ending his entitlement to benefits.

Section 230.45(1)(d), Stats. creates the Commission's jurisdiction to:

(1)(d) Hear appeals under ss. 230.36 (4)

Section 230.36(4), Stats. provides:

(4) An employee denied benefits under this section may appeal to the commission under s. 230.45(1)(d).

DOC contends that the Commission lacks jurisdiction over the matter because of its view that Casetta's entitlement has ended. However, the Commission views the statutory phrase "denied benefits" to include both an initial denial of benefits as well as a decision to end benefits. Thus, although DOC may ultimately be found to have correctly ended Casetta's benefits, he is entitled to the opportunity to prove otherwise. Therefore, the motion to dismiss has been denied.

Issued at Madison, Wisconsin this 23rd day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ It appears that claim was denied and Casetta has an appeal pending. There has been some confusion in the processing of this appeal as to which matter Casetta was seeking to address before the Commission.