

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DOUGLAS J. SMITH, Appellant,

vs.

UNIVERSITY OF WISCONSIN-MADISON, Respondent.

Case ID: 460.0011

Case Type: PA

DECISION NO. 38939-A

Appearances:

Douglas J. Smith, 1833 Baker Avenue, Madison, Wisconsin, appearing on his own behalf.

Craig B. Fischer, Associate University Legal Counsel, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin, appearing on behalf of the University of Wisconsin-Madison.

ORDER DENYING MOTION FOR REHEARING AND MOTION TO AMEND APPEAL

On October 26, 2021, the Wisconsin Employment Relations Commission issued a Decision and Order Dismissing Appeal concluding that it lacked jurisdiction over an appeal filed by Douglas Smith regarding his furlough by the University of Wisconsin-Madison (UW). On November 12, 2021, Smith filed a “motion” for rehearing and a motion to amend his appeal. On November 26, 2021, UW filed a statement in opposition to Smith’s motions.

Having considered the matter, the Commission concludes the motions should be denied.

NOW, THEREFORE, it is

ORDERED

The motion for rehearing and the motion to amend appeal are denied.

Issued at the City of Madison, Wisconsin, this 9th day of December, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION FOR REHEARING
AND MOTION TO AMEND APPEAL**

By his motions, Smith seeks to amend his appeal to assert that the furlough was actually a disciplinary “constructive suspension”-a claim as to which the WERC concluded it had jurisdiction in a recent decision involving another UW employee.

Wisconsin Admin. Code § ERC 92.03 provides:

(2) AMENDMENT. An appeal may be amended, subject to approval by the commission, to clarify or amplify allegations or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date of the appeal.

Where, as here, the Commission has issued a final order dismissing an appeal, the Commission concludes it is not appropriate to approve a requested amendment. Smith had ample opportunity to formulate the basis for his appeal and the interest in finality warrants denying him the opportunity to revive the dismissed appeal by now amending same. Therefore, the motion to amend is denied as is the related motion for rehearing.

Issued at the City of Madison, Wisconsin, this 9th day of December, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman