

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JAMES WENZLER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS and  
DEPARTMENT OF ADMINISTRATION, DIVISION OF PERSONNEL MANAGEMENT,  
Respondents.

Case ID: 1.0434

Case Type: PA

DECISION NO. 38955

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Appearances:

James Wenzler, 7503 Loy Road, Arena, 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 and Department of Administration, Division of Personnel Management.

**ORDER DISMISSING APPEAL**

On February 9, 2021, James Wenzler filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) wrongly failed to pay him while he was on administrative leave being investigated for potential misconduct. Wenzler subsequently advised the Commission that his appeal sought to invoke the Commission's jurisdiction under Wis. Stat. § 234.44(1)(b).

On March 5, 2021, DOC filed a motion to dismiss asserting the Commission lacks jurisdiction over the appeal. Wenzler filed a response to the motion on March 8, 2021.

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

NOW, THEREFORE, it is

**ORDERED**

The appeal is dismissed.

Issued at Madison, Wisconsin this 7<sup>th</sup> day of June, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER DISMISSING APPEAL**

By emails dated February 8, 2021, Wenzler advised the Commission that his appeal was filed pursuant Wis. Stat. § 230.44(1)(b), and stated in relevant part:

I am appealing the decision of the Administrator to create a Rule that is repugnant to Wis. Stat. 230.33 and 230.35(2), and Executive Directive #2, Section VI., along with the Wisconsin Wage and Hour Law, and Federal Wage and Hour Law.

Wisconsin Stat. 230.44(1)(b) provides the Commission with jurisdiction over:

(b) *Decision made or delegated by administrator.* Appeal of a personnel decision under s. 230.09(2)(a) or (d) or 230.13(1) made by the administrator or an appointing authority under authority delegated to the administrator under s. 230.04(1m).

Wisconsin Stat. § 230.09(2)(a) states:

After consultation with the appointing authorities, the administrator shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The administrator may reclassify or reallocate positions on the same basis.

Wisconsin Stat. § 230.09(2)(d) states:

If after review of a filled position the administrator reclassifies or reallocates the position, the administrator shall determine whether the incumbent shall be regraded or whether the position shall be opened to other applicants.

Wisconsin Stat. § 230.13(1) states:

Except as provided in sub. (3) and ss. 19.36 (10) and (11) and 103.13, the director and the administrator may keep records of the following personnel matters closed to the public:

- (a) Evaluations of applicants, including any examination scores and rankings.
- (c) Dismissals, demotions and other disciplinary actions.
- (d) Pay survey data obtained from identifiable nonpublic employers.
- (e) Names of nonpublic employers contributing pay survey data.

As is apparent from the statutes quoted above, none of the personnel decisions over which the Commission has jurisdiction pursuant to Wis. Stat. § 230.44(1)(d) relate to any decision or role the Administrator might have had as to any policy, provision or rule authorizing DOC to place a probationary employee such as Wenzler on unpaid leave. Therefore, the Commission lacks jurisdiction over the appeal, and it is dismissed.

Issued at Madison, Wisconsin this 7<sup>th</sup> day of June, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman