

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERIC G. ANDERSON, Appellant,

vs.

STATE OF WISCONSIN EMPLOYEE TRUST FUNDS, Respondent.

Case ID: 615.0001

Case Type: PA

DECISION NO. 39417

Appearances:

Nicholas E. Fairweather, Attorney, Hawks Quindel S.C., 409 E. Main Street, Madison, Wisconsin, appearing on behalf of Eric G. Anderson.

Nicole Rute, Attorney, Wisconsin 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 Employee Trust Funds.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On March 3, 2022, Eric G. Anderson filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Employee Trust Funds (ETF) had disciplined him without just cause. Thereafter, the case was set for hearing for May 19, 2022. On March 18, 2022, ETF filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. On March 28, 2022, Anderson filed a reply opposing the motion. On March 29, the Respondent filed a response. The matter is now ripe for Commission consideration.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

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

Issued at the City of Madison, Wisconsin, this 11th day of April, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

On November 4, 2021, Anderson received a written reprimand in lieu of a one-day suspension for alleged work rule violations which he subsequently grieved and appealed to the Commission. A review of that disciplinary notice makes it clear that Anderson did not lose one day of pay.

There is an important distinction between a suspension (of any length) and a written reprimand (of any type). Wisconsin Statute § 230.44(1)(c) gives the Commission jurisdiction to review the former (i.e., a suspension) but not the latter (i.e., a written reprimand).

Here, Anderson is appealing a written reprimand in lieu of a one-day suspension. In 2016, in *Schallock v. DOC*, Dec. No. 36326 (WERC, 04/16), the Commission held that "Prospectively, we will no longer exercise jurisdiction over 'written reprimands in lieu of suspensions.'" In *Schallock*, we also indicated that, for purposes of progressive discipline,¹ we would not consider them a step in the progressive disciplinary process. We came to that same conclusion in *Oberlin v. DHS*, Dec. No. 36921 (WERC, 03/17). As we stated in *Schallock*, a written reprimand "in lieu of suspension will be treated as a written reprimand." Accordingly, the Commission lacks jurisdiction under Wis. Stat. § 230.44(1)(c) to review the merits of Anderson's appeal.

Therefore, the motion to dismiss has been granted and the appeal is dismissed. However, if ETF were to subsequently issue Anderson a three-day suspension as part of progression from the instant written reprimand in lieu of a one-day suspension, that three-day suspension would be evaluated under a just cause standard as if ETF had skipped a step in the progressive disciplinary schedule.

Issued at the City of Madison, Wisconsin, this 11th day of April, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ The one exception was in unusual circumstances which may warrant use of an "in lieu of" penalty such as an employee with special skills who cannot be away from work without hardship to the employer.