

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSHUA BODEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0114

Case Type: PA

DECISION NO. 39445

Appearances:

Michael Hauge, 301 Troy Drive, Madison, Wisconsin, appearing on behalf of Joshua Bodey.

Nicole Rute, 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.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On May 19, 2022, Joshua Bodey filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Health Services (DHS) had disciplined him with a written reprimand in lieu of a one-day suspension without just cause. On June 6, 2022, DHS filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. Bodey was asked to file a response to the motion on or before June 16, 2022 but did not do so.

Having reviewed the matter, the Commission concludes that it does not have jurisdiction over the appeal.

NOW, THEREFORE, it is:

ORDERED

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

Issued at the City of Madison, Wisconsin, this 15th day of July, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Bodey 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 he 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, Bodey is appealing a written reprimand in lieu of a one-day suspension. In 2016, in *Schallock v. DOC*, Dec. No. 36326 (WERC, 4/16), the Commission held that "Prospectively, we will no longer exercise jurisdiction over 'written reprimands in lieu of suspensions.'" In *Schallock*, the Commission also indicated that, for purposes of progressive discipline,¹ it would not consider them a step in the progressive disciplinary process. The Commission came to that same conclusion in *Oberlin v. DHS*, Dec. No. 36921 (WERC, 3/17). As stated in *Schallock*, a written reprimand "in lieu of suspension will be treated as a written reprimand." The Commission recently reached the same conclusion in *Anderson v. ETF*, Dec. No. 39417 (WERC, 4/22). Accordingly, the Commission lacks jurisdiction under Wis. Stat. § 230.44(1)(c) to review the merits of Bodey's appeal.

Therefore, the motion to dismiss has been granted and the appeal is dismissed. However, if DHS were to subsequently issue Bodey 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 DHS had skipped a step in the progressive disciplinary schedule.

Issued at the City of Madison, Wisconsin, this 15th day of July, 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.