

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JOHN REUTER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION and  
STATE OF WISCONSIN DEPARTMENT OF MILITARY AFFAIRS, Respondents.

Case ID: 265.0009

Case Type: PA

DECISION NO. 39948-A

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Appearances:

John Reuter, 3232 Pierstorff Street, Madison, Wisconsin, appearing on his own behalf.

Meg Vergeront, Chief Legal Counsel, Department of Military Affairs. 2400 Wright Street, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Administration and the State of Wisconsin Department of Military Affairs.

**DECISION AND ORDER**

On June 20, 2023, John Reuter filed an appeal with the Wisconsin Employment Relations Commission disputing a denial of benefits and continuation of pay under Wis. Stat. § 321.68. The appeal was assigned to Commission Examiner Anfin Jaw.

On July 13, 2023, DOA/DMA filed a motion to dismiss the appeal on the grounds that (1) Reuter is not entitled to continuation of pay under § 321.68, and that (2) Reuter never applied for continuation of pay pursuant to § 321.68, or that any application was denied, and therefore there is no agency decision to appeal. Reuter filed a response opposing the motion on July 25, 2023. DOA/DMA filed a reply on August 3, 2023. Reuter submitted an additional response on August 7, 2023. DOA/DMA filed an additional reply on August 8, 2023.

On August 21, 2023, the Wisconsin Employment Relations Commission issued an Order Denying the Respondent's Motion to Dismiss pending a hearing on relevant factual matters.

A telephone hearing was held on October 16, 2023, by Examiner Jaw. The parties filed written closing arguments on November 20, 2023. The Respondents submitted a written response on December 4, 2023. Mr. Reuter filed a written response on December 5, 2023.

On February 2, 2024, Examiner Jaw issued a Proposed Decision and Order concluding that Reuter is not entitled to continuation of pay under Wis. Stat. § 321.68 and dismissing the appeal. The parties did not file objections by the deadline given of February 19, 2024.

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

### **FINDINGS OF FACT**

1. John Reuter (Reuter) was employed by the State of Wisconsin Department of Military Affairs (DMA) as a Technical Sergeant in the Wisconsin National Guard (WING) on active guard and reserve (AGR) duty.

2. Reuter served on AGR orders pursuant to 32 U.S.C. §§ 328 and 502(f).

3. AGR orders are not state active duty in the Wisconsin National Guard (WING).

4. Reuter was never called to state active duty pursuant to Wis. Stat. § 321.39.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

### **CONCLUSIONS OF LAW**

1. The Wisconsin Employment Relations Commission has jurisdiction to review this appeal pursuant to Wis. Stat. § 230.45(1)(d).

2. Reuter is not entitled to continuation of pay under Wis. Stat. § 321.68.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

John Reuter is not entitled to continuation of pay under Wis. Stat. § 321.68, and therefore the appeal is dismissed.

Issued at the City of Madison, Wisconsin this 27<sup>th</sup> day of February 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Wisconsin Stat. § 321.68, Stats., provides in pertinent part:

- (3)
- (a) If a member of the national guard or state defense force suffers injury in the performance of his or her duties while on state active duty, the member shall continue to be fully paid under s. 321.35 or 321.51 upon the same basis as paid prior to the injury.
  - (b) The fully pay under par. (a) shall continue while the member is unable to return to active duty as a result of the injury or until the termination of his or her state active duty...
- (4) The member denied benefits under this section may appeal to the employment relations commission under s. 230.45(1)(d).

John Reuter was a Technical Sergeant (TSgt) in the Wisconsin National Guard (WING), enlisting in 2006. Reuter served on Active Guard and Reserve (AGR) duty, pursuant to 32 U.S.C. §§ 328 and 502(f), which is not considered “state active duty.”

AGR duty is established federally by 32 U.S.C. § 328. The AGR program is described further in detail in federal regulations, Air National Guard Instruction 36-101. From 2010 to May 15, 2023, TSgt Reuter served on continuous AGR orders issued pursuant to 32 U.S.C. §§ 328 and 502(f). Reuter served on the AGR orders at Truax field, a federal installation, as part of the security forces squadron. His primary duties included protecting the federal installation’s equipment and people. TSgt Reuter’s AGR duty was ended on May 15, 2023, per his resignation.

It is undisputed that TSgt Reuter was never issued an order pursuant to Wis. Stat. § 321.39. State active duty is defined in Wis. Stat. § 321.39(1)(a). Specifically, the governor of the state may order WING members into state active duty in the following circumstances:

1. In case of war, insurrection, rebellion, riot, invasion, terrorism, or resistance to the execution of the laws of this state or of the United States.
2. In the event of public disaster resulting from flood, fire, tornado, or other natural disaster.
3. If the governor declares a state of emergency relating to public health under s. 323.10.
4. In order to assess damage or potential damage and to recommend responsive action as a result of an event listed in subs. 1. to 3.

5. Upon application of any marshal of the United States, the president of any village, the mayor of any city, the chairperson of any town board, or any sheriff in this state.

The benefits provided by § 321.68 apply only if a WING servicemember is injured on state active duty. Because TSgt Reuter was never called to state active duty, he is not entitled to benefits or continuation of pay under Wis. Stat. § 321.68.<sup>1</sup>

Given the foregoing, the appeal is dismissed.

Issued at Madison, Wisconsin, this 27<sup>th</sup> day of February 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup>While Reuter is not entitled to benefits from the State for the reasons outlined in the decision, the record contains specific reference to benefits that Reuter may be eligible for provided from Federal sources, leaving him with potential recourse for his issues.