

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MATTHEW THURBER ESPINOSA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0155

Case Type: PA

DECISION NO. 40420

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Appearances:

Matthew Thurber Espinosa, appearing on his own behalf.

Nicole Porter, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER DISMISSING APPEAL**

On July 5, 2024, Matthew Thurber Espinosa filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Health Services (DHS) had violated his rights under a DHS transfer policy. On July 31, 2024, DHS filed a motion to dismiss alleging that the Commission lacks the statutory jurisdiction over the appeal. Thurber Espinosa filed a response to the motion on August 12, 2024.

Having considered the matter, the Commission concludes that it has not been given jurisdiction to review Thurber Espinosa's appeal and is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

**ORDERED**

The appeal is dismissed.

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

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Commissioner

**MEMORANDUM ACCOMPANYING DECISION AND ORDER DISMISSING APPEAL**

An appellant carries the burden of establishing that the Commission has subject matter jurisdiction over the appeal and thus must show that his appeal falls within the scope of the Commission's jurisdiction. *See Garcia v. DOC*, Dec. No. 32890 (WERC, 10/2009).

Section 230.45 (1)(c), Wis. Stats. gives the Commission jurisdiction to resolve the merits of certain "condition of employment" grievances filed by State employees. However, the State employee grievance procedure in Chapter 430 of the Wisconsin Human Resources Handbook does not allow the Commission to resolve the merits of "condition of employment" issues identified in Wis. Admin. Code Ch. ER 46 by the Administrator of the Division of Personnel Management pursuant to the Administrator's statutory authority in s. 230.04(14), Wis. Stats.

Wis. Admin. Code § ER 46.03 (2) provides in pertinent part:

(2) An employee may not use this chapter to grieve:

(j) A condition of employment which is a right of the employer as defined in s. ER 46.04;

The following portions of Wis. Admin. Code § ER 46.04(2) specify which "condition of employment" actions are off limits for the Commission to review:

(2) For the purpose of this chapter, the management rights of the employer include, but are not limited to, the following:

(a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.

...

(c) Managing and directing the employees of the agency.

(d) Hiring, promoting, transferring, assigning or retaining employees.

Thurber Espinosa contends that DHS violated its own transfer policy when he was not allowed to keep a position that he successfully bid for due to his seniority and disciplinary record. He asserts that cronyism has now become the method used by management to assign employees as opposed to the needs of patients and established DHS transfer policy. DHS points to the ER 46 administrative code provisions quoted above and argues that whatever the merits of Thurber Espinosa's contentions might be, the Commission does not have the right to review them.

The Commission agrees with DHS. Whether viewed as "utilizing personnel" or "managing and directing the employees" or "transferring, assigning . . . employees", actions taken by DHS as to Thurber Espinosa have by law been placed off limits for the Commission to review. Therefore, the Commission is obligated to dismiss the appeal.

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

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Commissioner