

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALVIN WALTER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0157

Case Type: PA

DECISION NO. 40423

Appearances:

Alvin Walter, W7228 Suldal Rd, Mauston, Wisconsin, 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 Health Services.

DECISION AND ORDER DISMISSING APPEAL

On July 22, 2024, Alvin Walter filed an appeal with the Wisconsin Employment Relations Commission regarding the decision by the State of Wisconsin Department of Health Services (DHS) to reassign him. The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

On August 9, 2024, the DHS made a motion to dismiss the appeal. Walter replied on August 22, 2024.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Issued at Madison, Wisconsin, this 27th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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.

Walter contends that DHS is acting improperly by changing his assignments. DHS argues that whatever the merits of Walter'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 Walter 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 27th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman