

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MALANG NJIE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0198

Case Type: PA

DECISION NO. 41420

Appearances:

Shunette Campbell Hunter, Attorney, PO Box 14687, Madison, Wisconsin, appearing on behalf of Malang Njie.

Nicole Porter, Attorney, Department of Administration, 3099 E. Washington Ave., P.O. Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On January 26, 2026, Malang Njie filed an appeal to the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Health Services (DHS).

On March 11, 2026, DOC filed a motion to dismiss the appeal, arguing that the issue was moot because the Department rescinded the discipline by removing the one-day suspension from Njie's personnel file and restoring all pay and benefits withheld for the December 9, 2025, suspension.

On March 13, 2026, Njie responded and argued that the matter is not moot because he seeks findings regarding alleged intimidation, harassment, and other misconduct during the disciplinary process and seeks relief for humiliation, intimidation, emotional distress, and reputational harm he suffered. The Appellant also requests reimbursement for attorney fees incurred in pursuing this appeal.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted and that the request for attorney fees should be denied.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed and the request for attorney fees is denied.

Issued at Madison, Wisconsin, this 10th day of April 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

There are two issues in this matter. The first is whether the appeal has become moot and should be dismissed, and the second is whether the Appellant should be awarded reimbursement for attorney fees incurred in pursuing this appeal.

Mootness

The first issue to be addressed is whether the appeal has become moot. Under Wis. Stat. § 230.44(1)(c), the Commission can hear appeals challenging disciplinary actions to determine whether they were imposed for just cause. An issue is moot when a decision would have no practical effect because the circumstances have already changed. *See deMoya v. DVA*, Dec. No. 32028 (WERC, 2/07), citing *State ex rel. Olson v. Litscher*, 2000 WI App 61. The Commission has held that when a disciplinary action is rescinded and the employee is returned to the status they held before the discipline, the appeal is moot because the only remedy the Commission could provide, rejection or modification of the discipline, has already been accomplished. *Friedrichs v. DOC*, Case No. 96-0023-PC (Pers. Comm. 11/22/1996).

The Appellant contends that the disciplinary process caused humiliation, intimidation, and emotional distress, and that rescinding the suspension does not erase the harm. He also asserts that reputational harm and other negative consequences resulted, and that a Commission review is necessary to ensure workplace rules are applied fairly and to protect employees from retaliation, intimidation, harassment, and false accusations.

While the Commission recognizes these concerns, its authority under Wis. Stat. § 230.44(1)(c) is limited to reviewing disciplinary actions for just cause and determining if the discipline should be affirmed, modified or reversed. The Commission does not have authority under that statutory provision to award remedies for alleged procedural errors, employer misconduct during an investigation, emotional distress, or reputational harm. Similarly, Commission precedent confirms that its hearings are not intended to serve as appellate-style reviews of investigative procedures. *See Reimer v. DOC*, 92-0781-PC-A (Pers. Comm. 02/07/1994).

In this case, the only disciplinary action imposed has been undone. DHS has removed the one-day suspension from Njie's personnel file and restored all pay and benefits withheld for the December 9, 2025, suspension. As a result, the appeal is moot, and the Commission does not have authority to address claims of emotional distress, humiliation, reputational harm, or other alleged misconduct, as these are outside the scope of Wis. Stat. § 230.44(1)(c).

The motion to dismiss is therefore granted.

Attorney Fees

The next issue to be addressed is the Appellant's request for reimbursement of attorney fees incurred in pursuing this appeal. Wisconsin Stat. § 227.485(3) authorizes the Commission to award costs and attorney fees in certain contested cases, but only where a party is deemed a "prevailing party" and then only if it is determined that the State's position was not "substantially justified."

In this case, the Appellant's status as a "prevailing party" is not established, because the Department rescinded the suspension and restored pay and benefits on its own initiative, without any action or decision by the Commission. For this reason, the request for attorney fees is denied.

Issued at Madison, Wisconsin, this 10th day of April 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman