

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**EILEEN H. KARRE**, Appellant,

vs.

**UNIVERSITY OF WISCONSIN SYSTEM**, Respondent.

Case 38  
No. 68194  
PA(adv)-146

**Decision No. 32655**

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**Appearances:**

**Eileen H. Karre**, appearing on her own behalf.

**John C. Dowling**, Senior University Legal Counsel, Office of Administrative Legal Services, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 53706-1380, appearing on behalf of the University of Wisconsin.<sup>1</sup>

**ORDER GRANTING MOTION TO DISMISS**

This matter, which arises from Respondent's action of discharging the Appellant from her employment, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The final submission relating to the motion was received on January 11, 2009.

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<sup>1</sup> The Appellant has written that she does not "think Mr. Dowling should be involved in my situation" because "I don't think he can be objective." While Attorney Dowling may have provided legal advice to the Respondent during events that culminated in Appellant's discharge, the Commission is unaware of any rationale that would bar Respondent from selecting Attorney Dowling as its representative for this appeal.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. Appellant Eileen Karre formerly worked as a Food Service Supervisor in the Department of Food Science at the University of Wisconsin-Madison. Immediately prior to her discharge, she was on administrative leave with pay.

2. Karre's letter of discharge was dated Tuesday, July 1, 2008 and it listed an effective date of July 1, 2008.

3. Karre received the discharge letter late in the afternoon on Wednesday, July 2. The last day she was in pay status with Respondent was July 1.

4. Karre mailed an appeal of her discharge to the Commission. The envelope bears a postmark of Friday, August 1, 2008.

5. The Commission received Karre's appeal on Monday, August 4, 2008.

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

### **CONCLUSIONS OF LAW**

1. The Appellant has the burden of establishing that her appeal was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.

2. The Appellant has failed to sustain that burden.

3. The matter is untimely.

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

**ORDER**<sup>2</sup>

Respondent's motion is granted and the appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 26<sup>th</sup> of January, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>2</sup> Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

University of Wisconsin System (Karre)

**MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS**

The issue in this matter is whether the Appellant complied with the time limit for filing a State classified service personnel appeal with the Commission pursuant to Sec. 230.45(1), Wis. Stats.<sup>3</sup> Where there is no collective bargaining agreement in effect, the Commission has the statutory authority to review an appeal of a discharge decision pursuant to Sec. 230.44(1)(c), Stats.:

If an employee has permanent status in class . . . the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

The relevant time limit is established in Sec. 230.44(3), Stats., which reads, in part:

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of this action, or within 30 days after the appellant is notified of the action, whichever is later.

The Appellant has the burden of establishing that the appeal was timely filed. UW & OSER (KLINE), DEC. NO. 30818 (WERC, 3/04). We conclude that the Appellant has not met that burden.

Appellant notes that after learning of her discharge, she sought certain information from a retirement specialist. She suggests that until she received the retirement information later in July, she did not know what her posture should be in terms of settling her dispute with her former employer, thereby delaying her formal initiation of an appeal: “Unclear data and not getting understandable data makes it difficult to file grievances that ask what you are willing to accept as a settlement.” The 30-day filing period is not triggered by when an appellant has obtained sufficient information to conclude that the underlying transaction was improper<sup>4</sup> or by when an appellant has marshaled sufficient evidence to successfully contest the action. The filing period is tied only to the effective date of the discharge and notice of the discharge.

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<sup>3</sup> The initial page of the appeal documents received by the Commission on August 4, 2008, is a “Nonrepresented Employee Grievance Report” form. Pursuant to Sec. 230.45(1)(c), Stats., the Commission shall “[s]erve as final step arbiter in the state employee grievance procedure” that has been established by Wisconsin’s Office of State Employment Relations in Ch. ER 46, Wis. Adm. Code. There is a \$50 filing fee that applies to a grievance filed with the Commission and there are various limitations on the scope of the grievance procedure imposed by Ch. ER 46, Wis. Adm. Code. The Appellant subsequently clarified that she was only seeking to directly appeal her discharge to the Commission pursuant to Sec. 230.44(1)(c), Stats., and was not pursuing the matter as a grievance under Sec. 230.45(1)(c), Stats.

<sup>4</sup> OESTREICH V. DHSS & DMRS, CASE NO. 89-0011-PC (PERS. COMM. 9/8/1989)

As used in Sec. 230.44(3), Stats., the term “filed” means actual receipt of the appeal by the Commission. The date of mailing does not suffice. *RICHTER v. DP*, CASE NO. 78-261-PC (PERS. COMM. 1/30/1979); *UW (ELMER)*, DEC. NO. 30910 (WERC, 5/04). Delivery of the appeal to the post office is not receipt by the Commission. *VAN ROOY v. DMRS & DILHR*, CASE NO. 84-0062-PC (PERS. COMM. 7/19/1984) (A letter of appeal was not timely where the appellant received her civil service exam results on March 24, she mailed a certified letter to the Commission at its correct address on April 19, the postal service erroneously delivered the appeal to the Department of Revenue on April 23 but it was not received by the Commission until April 25.) Therefore, the fact that Ms. Karre’s appeal may have been in a holding bin for the WERC at the post office as early as August 1 has no effect on the filing date of August 4, which was the date of delivery to the Commission.

August 4 was a Monday. If the 30<sup>th</sup> day of the filing period is either a Saturday or a Sunday, the period is extended until “the next succeeding day that is not a Sunday or a legal holiday.” Sec. 990.001(4)(c), Stats. In other words, if the 30<sup>th</sup> day of the filing period had been either Saturday, August 2, or Sunday, August 3, an appeal received on August 4 would still be considered timely filed. In addition, the time period is “computed by excluding the first day and including the last.” Sec. 990.001(4)(a), Stats. This means that if the effective date of the discharge or the date she was notified of the discharge was as early as July 3, 2008, Karre’s appeal, received on Monday, August 4, would still be considered timely filed. But if the later of the effective date and the notification date was July 2 or earlier, the appeal is late.

#### Date of notification

The letter of discipline that is the subject of this appeal was dated July 1, 2008. In her appeal materials, Karre referred to her “Dismissal Dated July 1<sup>st</sup> [that was] Received by me July 2<sup>nd</sup>.” She confirmed this statement in her submission to the Commission dated January 10, 2009: “As I said I received that letter on July 2, 2008 after office hours. . . .” Karre’s response to Respondent’s motion also included the following statement:

I received the [discharge] letter through the mail on July 2, 2008, although my daughters say it was July 3<sup>rd</sup>, 2008. . . . Since I hadn’t received notice until July 2<sup>nd</sup> I was still an employee of the University on July 2, 2008.

Whether or not Ms. Karre’s daughters might say the discharge letter did not arrive until July 3, Appellant has repeatedly indicated that she received the letter on July 2. The Appellant has the burden of proof to establish that her appeal was timely filed and she has failed to sustain that burden in terms of showing that she received the discharge letter on or after July 3.

Effective date

The discharge letter indicated it was effective July 1, 2008 and there is uncontroverted documentation in the record showing that the Appellant's last day in pay status was July 1. The Appellant has failed to show that the effective date was July 3 or later, so her August 4 appeal was filed outside of the 30-day time limit established for a direct appeal of a discharge decision pursuant to Sec. 230.44(1)(c), Stats.

Conclusion

The Commission must dismiss the appeal as untimely filed. Based on the effective date and the date of notification, the Commission had to receive the appeal by Friday, August 1. It did not arrive at the Commission until Monday, August 4.<sup>5</sup>

Dated at Madison, Wisconsin, this 26<sup>th</sup> day of January, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>5</sup> In her written arguments, the Appellant suggests the discharge decision was discriminatory. The Commission's ruling relates solely to Appellant's appeal under Sec. 230.44, Stats., and has no effect on any claim the Appellant may have filed elsewhere pursuant to the Wisconsin Fair Employment Act or other provisions that prohibit employment discrimination based on age and race.