

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMYI WITCH, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 141
No. 71584
PA(adv)-213

DECISION NO. 33855-A

Appearances:

Jamyi Witch, 120 East Huron Street, Omro, Wisconsin, appearing on behalf of herself.

Karl R. Hanson, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

By letter dated March 6, 2013, the Department of Corrections (DOC) discharged Appellant Jamyi Witch from her position as a Chaplain at the Oshkosh Correctional Institution. Among a variety of serious rule violations, Witch was accused of providing opioids to an inmate. Witch grieved the discharge and in a rambling five-page missive she made a number of claims, most of which fall outside our jurisdiction. Witch's factual version of the drug issue was that she had been taken hostage by an inmate and raped. In her version, the narcotic drugs were provided in order to facilitate her escape.

Witch initially sought a direct appeal to the Commission, and the State averred that she had a duty to exhaust the grievance procedure prior to gaining Commission review. Witch's attorney agreed and the matter was returned to the Office of State Employment Relations (OSER). A second step answer was provided on May 18, 2012. Pursuant to the grievance procedure, Witch had ten days to appeal to the third step of the procedure.

As the matter was originally received as a direct appeal, the Commission had assigned Stuart Levitan as the examiner. Based on the State's exhaustion argument and Witch's attorney's stipulation, the Commission placed the matter in abeyance.

In October of 2014, two and one half years later, Witch contacted Examiner Levitan indicating she wished to pursue her appeal. Levitan attempted to schedule a prehearing conference in October and November of 2014 but received no response from Witch.

On January 5, 2015, the State moved to dismiss the appeal based upon Witch's failure to exhaust her administrative remedies. On February 5, 2015, Witch submitted a page and one-half document captioned as a motion to quash¹ basically averring that she had been waiting for information on how to pursue her grievance appeal and claiming that she was entitled to receive documents by mail.

DECISION

Witch has clearly failed to exhaust the remedial administrative process which her attorney agreed was her duty. We have on occasion utilized the complexity of that process and tolled the strict time limits where appropriate. The delay here however is solely the handiwork of Witch. The notion that she could sit back for close to three years without contacting OSER, DOC, the Commission, her attorney, or her union representative (who filed the original grievance) is simply preposterous. There are many State employees with various grievances concerning matters within our jurisdiction. We attempt to process those matters in an expeditious manner with particular attention to cases involving discharges. Distractions such as this matter only serve to erode the time we have available to address bona fide disputes. Witch's unwillingness to pursue her claim is an unspoken commentary on the merits. Both her failure to exhaust the grievance procedure and her lack of diligence in pursuing her claim warrant dismissal with prejudice of her appeal.

ORDERED

Appellant Department of Corrections' motion to dismiss is granted.

Dated at Madison, Wisconsin, this 30th day of March 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

¹ We are treating the document as a response to the State's motion to dismiss.