

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JASON SPANBAUER, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0032

Case Type: PA

DECISION NO. 35681

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**Appearances:**

Jason Spanbauer, W2054 County Road T, Mt. Calvary, Wisconsin, appearing on behalf of himself.

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**

On August 14, 2014, Jason Spanbauer, an employee of the Wisconsin Department of Corrections, received a one-day disciplinary suspension for an alleged rule violation. Pursuant to § 230.44, Stats., Spanbauer filed a grievance challenging the discipline. His grievance progressed through the process and by letter dated November 18, 2014 he was advised that the final step in the process was an appeal to the Wisconsin Employment Relations Commission. On January 2, 2015, the Commission received Spanbauer's appeal. On February 9, 2015, the DOC moved to dismiss the appeal based upon an assertion that it was untimely. The parties each submitted written argument in support of their positions.

**DECISION**

Spanbauer alleges that he received the November 18, 2014 third step grievance response on November 28, 2014, and that he "signed" a certified mail receipt on that date. There is nothing to indicate the decision was sent by certified mail, and it is our understanding

that the Office of State Employment Relations (which handles the third step response) does not send those decisions out by certified mail. They do send a “how to” guide along with the decision which states *inter alia* that an appeal to the Commission must be “filed with and received by the WERC within 30 calendar days after the date of OSER’s Step 3 response.” Affidavit of Jim Underhill in Support of Motion to Dismiss, Ex.A, p.2.

Even if we accept Spanbauer’s contention that he did not receive the OSER decision until November 28, and that he did not understand the thirty days began to run on the date of the decision not the date of receipt of the decision, his appeal is still untimely. Assuming that November 28 was the starting point for counting the thirty days that would make the Commission appeal due on or before December 28. The 28th was a Sunday and that would extend the date to December 29. By his own statement, Spanbauer did not mail the appeal until December 29.

No matter how generously the time limits are calculated, Spanbauer’s appeal is untimely and we therefore enter the following:

**ORDER**

That the appeal of Jason Spanbauer’s is dismissed.

Dated at Madison, Wisconsin, this 9th day of April 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner