

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILLIAM GILLESPIE, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0054

Case Type: PA

DECISION NO. 35739

Appearances:

William Gillespie, 854 West Green Tree Road, River Hills, Wisconsin, appearing on behalf of himself.

Jonathan M. Nitti, Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

Appellant William Gillespie had worked for Respondent Department of Corrections for several years when he applied for a promotional opportunity in the fall of 2014. Gillespie was interviewed on November 14, 2014, for a Program Support Supervisor position. Gillespie was not selected and was so notified on December 15, 2014. On May 8, 2015, he appealed his non-selection to the Wisconsin Employment Relations Commission. The DOC has moved to dismiss based upon the fact that Gillespie's appeal was not filed within the requisite thirty day limitation period contained in § 230.44(3), Stats. The DOC submitted a supporting brief. Gillespie has not responded.

DECISION

The thirty day filing requirement under § 230.44(3), Stats. is not jurisdictional and is comparable to a statute of limitations. *Stern v. WERC*, 2006 WI App 193 ¶26, 296 Wis.2d 306, 326, 722 N.W.2d 594. As such the time limit is subject to equitable modification. Gillespie asserts in his initial filing with us that he submitted a letter questioning the hiring process (and his non-selection) to Division Administrator Denise Symdon. According to

Gillespie, Symdon never responded to his letter. On April 24, 2015, Gillespie submitted an “employee grievance” on the Office of State Employment Relations form challenging the hiring process. Decisions relating to the hiring process in the classified service, if allegedly illegal or an abuse of discretion, are subject to direct appeal to the Commission.

On May 1, 2015, Gillespie received a letter from Kelli R. Brown advising him that his “grievance” could be directly appealed to the Commission. The untimely “grievance” does not resuscitate a time-barred appeal. Likewise, the fact that Brown advised Gillespie to appeal to the Commission does not make his appeal timely. It is our job, not the employer’s, to determine what is a timely appeal and this is not. Accordingly, we enter the following

ORDER

The motion to dismiss the appeal is granted.

Signed at the City of Madison, Wisconsin, this 17th day of June 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner