

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DOUGLAS CURTIS, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0059

Case Type: PA

DECISION NO. 35749

Appearances:

Troy Bauch, Field Representative, AFSCME Council 24, 1190 Ruffedt Road, Cornell, Wisconsin, appearing on behalf of Appellant Raymond Erickson.

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

DECISION AND ORDER DENYING MOTION TO DISMISS

On May 15, 2015, the Department of Corrections denied Appellant Douglas Curtis' grievance at the second step. Curtis was challenging the imposition of a one-day suspension and per § 230.44(1)(c), Stats., the challenge requires exhaustion of the three step employee grievance procedure. On May 26, 2015, the Wisconsin Employment Relations Commission received an appeal from Curtis' representative noting that the Steps 1 and 2 grievances had been denied and that the "Step 3 appeal to the Office of State Employment Relations was also filed." The letter from the representative was dated May 22, 2015, and attached to it was a third-step appeal dated May 21, 2015.¹

On May 27, 2015, DOC moved to dismiss the appeal for failure to exhaust the grievance procedure. The submission included an affidavit from Jim Underhill indicating that as of May 27, 2015, no third step appeal had been received.

¹ The third step appeal letter included a signature line for "Doug Curtis" because for some inexplicable reason the grievance procedure bars representatives from filing grievances on behalf of employees.

On June 23, 2015, the Commission sought further clarification. We were advised that the third step appeal was received by OSER on May 28, 2015, the day after the Underhill affidavit was executed. We were also advised that the third step appeal was processed and denied on June 22, 2015. Accordingly, it would appear that the motion to dismiss is moot and the grievance procedure has been exhausted. Accordingly, we issue the following:

ORDER

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 1st day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner