

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KATHRYN LIGHTWINE, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0029

Case Type: PA

DECISION NO. 36362

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**Appearances:**

Kathryn Lightwine, 3603 St. Andrews Court #208, Racine, Wisconsin, appearing on her own behalf.

Amesia N. Xiong, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin, Department of Health Services.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

Appellant Kathryn Lightwine was discharged from employment at the State of Wisconsin, Department of Health Services on January 11, 2016. She had worked as a Resident Care Technician at the Southern Wisconsin Center in Union Grove. Lightwine filed a timely grievance challenging the termination decision. On April 20, 2016, the second step grievance was denied. Lightwine then filed an appeal with the Wisconsin Employment Relations Commission which was received on May 11, 2016. The DHS moved to dismiss Lightwine's appeal based upon her failure to pursue the third step in the grievance procedure.

**DECISION**

Lightwine represents that when she received the second step denial she requested confirmation about how to pursue her appeal. According to her version of events, Lightwine was directed to the internet where she found Chapter 430 which she viewed as confusing. As a consequence she skipped Step 3 and filed her appeal directly with the Commission. We understand Lightwine's confusion. Interestingly the Employee Grievance Report form used by DHS states in small print under the title "INSTRUCTIONS":

*In the event that the employee is not satisfied with the supervisor's written decision, or if the supervisor does not return an answer within the time limits identified in Wisconsin Human Resources Handbook Chapter 430.080, the grievance must be appealed to the next higher step or appealed to the Wisconsin Employment Relations Commission within the time limits set forth in Wisconsin Human Resources Handbook Chapter 430.080.*

A fair reading of the above "instruction" would suggest that the appellant has the option of appealing either to the next step or to the Commission. The instruction itself is rather cryptic. Hopefully, with the impending changes in the civil service process contained in Act 150, the agency employers will create forms which are more user friendly and provide simple instructions.

It is an open secret in state government that the grievance procedure rarely if ever leads to any meaningful relief for employees. The exhaustion of it provides nothing other than a hurdle on the road to receipt of a meaningful due process hearing to which the employee is constitutionally entitled. Nevertheless, the law requires the resort to it. Because Lightwine filed an otherwise timely appeal to us we will remand this matter to the Division of Personnel Management where they will process it or alternatively waive exhaustion.

### **ORDER**

1. The motion to dismiss is denied.
2. The appeal is remanded to the Department of Personnel Management for processing as a third step grievance.
3. Within thirty days of the date of this order, if not resolved, the appeal will be returned to the Commission for assignment for hearing.

Signed at the City of Madison, Wisconsin, this 22nd day of June 2016.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner