

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WILLIAM J. THOME, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0180

Case Type: PA

DECISION NO. 36782

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WILLIAM J. THOME, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0184

Case Type: PA

DECISION NO. 36783

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**Appearances:**

William J. Thome, 619 S. Watertown Street, Waupun, Wisconsin, appearing on his own behalf.

Andrea L. Olmanson, Department of Corrections, 3099 E. Washington Avenue, Post Office Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER DENYING MOTION TO SANCTIONS**

In a separate decision we dismissed, as untimely, two appeals filed by William J. Thome. Thome was seeking to challenge his non-selection for the position of Building and Grounds Superintendent and a subsequent failure to pass the exam for a different Building and Grounds Superintendent position. After filing the appeals, the Wisconsin Department of

Corrections moved to dismiss the two appeals as untimely as they were not filed within the 30-day limitation period contained in § 230.44(3), Stats. While the motions to dismiss were pending, DOC filed a motion for sanctions under § 227.483, Stats., asserting that Thome's pursuit of the appeals was frivolous. Such a conclusion could result in an award of attorney fees and costs. At all times, Thome was a pro se participant in these proceedings.

### DECISION

DOC relies on § 227.483(3)(b), Stats., which permits a hearing examiner to award attorney fees and costs if “the party or the party's attorney knew, or should have known, that the petition, claim, or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.” DOC argues that Thome should have known that the 30-day statutory limitation period for appeals to the Commission was applicable. Thome believed that the 300-day limitation period referenced in DOC Executive Directive 5 applied to his appeal.

Our Supreme Court has stated that caution must be exercised in determining that a particular action is frivolous. *Juneau County v. Courthouse Employee's Local 1312*, 221 Wis.2d 630, 650, 585 N.W.2d 587 (1998). It further instructs that all doubts be resolved in favor of the party against whom the allegation is made. *Id.*

Here, it is perfectly understandable how a non-lawyer might be misled by Executive Directive 5. It is a 12-page hodgepodge purporting to define and describe the procedure for addressing harassment and discrimination claims. It is at best a confusing array of statements and definitions, some of which incorrectly describe the state of the law. On that basis alone, Thome's misreading of the law is excusable.

The other appeal that was untimely involved a matter for which Thome had pursued an internal appeal. Again, it is easy to conclude that Thome might well be confused in believing that his internal appeal tolled the running of the appeal time. It is understandable a non-lawyer might believe that an internal appeal might delay the strict time limit for appeal to the Commission. It will take far more egregious conduct than is present here to convince us that a layman's civil service appeal is “frivolous.”

Finally, we do not address the question of whether a state agency employing in-house counsel has a standing to pursue a claim for attorney fees under § 227.483, Stats. This decision should not be construed as resolving that issue.

**ORDER**

That motion for sanctions is denied.

Signed at the City of Madison, Wisconsin, this 21st day of February 2017.

**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