

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MARGARET I. SCHYVINCH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0227

Case Type: PA

DECISION NO. 37278

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**Appearances:**

Margaret I. Schyvinch, E8269 South Avenue, Reedsburg, Wisconsin, appearing on her own behalf.

Cara J. Larson, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**ORDER GRANTING MOTION TO DISMISS**

On October 12, 2017, Margaret Schyvinch filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). On October 16, 2017, DOC filed a motion to dismiss the appeal as untimely filed. Schyvinch responded to the motion on October 18, 2017.

Having considered the matter, the Commission is satisfied that the appeal was untimely filed.

NOW, THEREFORE, it is:

**ORDERED**

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 3rd day of November, 2017.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS**

Schyvinch agrees that her appeal was received by the Commission 2 days after the expiration of the 14-day filing period established by § 230.445(3)(c)1, Stats. She argues that her appeal is nonetheless timely because it was postmarked on the 14th day. The Commission rejects this argument because, as specified in Wis. Admin. Code § ERC 91.05(2), “[f]iling is complete upon receipt.”

Schyvinch next contends her untimeliness should be excused because: (1) it is confusing to have the postmark date included for timely processing grievances but not when filing an appeal; (2) her local post office has limited services on certain days, and there was no mail service the day before her appeal was due in the Commission’s offices; and (3) she was waiting to hear back from an attorney. Particularly where, as here, the State provided her with accurate information as to her filing obligations and where, as always, the Commission stands ready to answer any questions as to filing procedures,<sup>1</sup> Schyvinch’s contentions are not sufficiently persuasive to warrant equitable tolling of the 14-day time period the Legislature has established.<sup>2</sup>

Given the foregoing, her appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 3rd day of November, 2017.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup> Callers are advised that appeals can be emailed or faxed to our offices.

<sup>2</sup> In *Waterman v DOC*, Dec. No. 36361 (6/16), the Commission found equitable tolling to be appropriate.