

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA PARKER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0012

Case Type: PA

DECISION NO. 37312

Appearances:

Lisa Parker, 14572 - 46th Avenue, Chippewa Fall, Wisconsin, appearing on her own behalf.

Cara Larson, Attorney, Department of Administration, 201 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Transportation.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On January 22, 2018, Lisa Parker filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Transportation (DOT) discharged her without just cause. On January 30, 2018, DOT filed a motion to dismiss the appeal on the grounds that Parker had not exhausted the State employee grievance procedure prior to filing her appeal with the Commission. Parker did not file a response to the motion and the matter became ripe for action on February 13, 2018.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal of Lisa Parker is dismissed.

Signed at the City of Madison, Wisconsin, this 14th day of February, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

This appeal of a discharge is governed by the provisions of § 230.445, Stats., that apply to discipline imposed on or after July 1, 2016. *See* 2015 Wisconsin Act 150, §§ 95(6) and 96(1). Section 230.445(2) states in pertinent part:

(2) An employee may file a complaint under this section concerning ... an adverse employment decision against the employee. **If an employee does not file a complaint or an appeal by the applicable deadline under sub. (3), the employee waives his or her right to appeal the adverse employment decision under this subchapter.**

Emphasis added. Section 230.445(3) provides in pertinent part:

(3)(a)1. To commence the grievance process for an adverse employment action, an employee shall file a complaint with the employee's appointing authority challenging the adverse employment decision against the employee no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.

...

(c)1. An employee ... may appeal a decision by ... filing an appeal with the commission. ... **If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal.**

Emphasis added.

In this case, it is undisputed that Parker did not file a complaint/grievance with DOT (as required by § 230.445(3)(a)1, Stats.) prior to filing her appeal with the Commission. Section 230.445(2), Stats., provides that she thereby waived her right to appeal her discharge to the Commission, and § 230.445(3)(c)1, Stats., requires that the Commission dismiss the appeal. The Commission has done so.

Signed at the City of Madison, Wisconsin, this 14th day of February, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman