

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BRADLEY HOUNSELL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0233

Case Type: PA

DECISION NO. 37427

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**Appearances:**

Andrew J. Phillips, Kindt Phillips S.C. 141 North Sawyer Street, Oshkosh, Wisconsin, appearing on behalf of Bradley Hounsell.

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 Corrections.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

On February 2, 2018, Bradley Hounsell filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections discharged him without just cause. On February 14, 2018, the State filed a motion to dismiss the appeal on the grounds that Hounsell had not timely filed a Step 1 grievance. Counsel filed a response to the motion and the matter became ripe for Commission action on February 20, 2018.

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

NOW, THEREFORE, it is

**ORDERED**

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 1st day of March, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND  
ORDER DENYING 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), Stats., states in pertinent part:

- (2) An employee may file a complaint under this section concerning  
... an adverse employment decision against the employee.

Section 230.445(3)(a)1., Stats., provides in pertinent part:

- (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 (emphasis added).

In this case, the State asserts Hounsell's November 27, 2017, grievance was untimely because the 14-day filing period began on November 10 when Hounsell was read the discharge letter and thus became "aware" of the State's discharge decision. However, a portion of the discharge letter read to him stated:

The grievance must be received ... no later than 14 calendar days from the date you received this letter.

Hounsell received the same discharge letter on November 13, 2017 and filed a grievance on November 27, 2017.

The Commission is satisfied that the 14-day statutory deadline is in the nature of a statute of limitations and thus is subject to waiver, estoppel, and other equitable relief. *Stern v. WERC*, 296 Wis. 2d 306 (2006); *Robertson v. DHS*, Dec. No. 35500 (WERC, 3/15). Relief from the deadlines is available when an employee is misled. *Hayes v. DOC*, Dec. No. 35738 (WERC, 6/15). But for the content of the discharge letter regarding when to file a timely grievance, the State would be correct that Hounsell's November 10 knowledge of the discharge triggered the 14-day time period. However, given the content in the letter, the Commission concludes that Hounsell was misled as to the timeframe within which he could timely file a Step 1 appeal. Because he was timely within the timeframe identified in the discharge letter, the motion to dismiss has been denied.

Signed at the City of Madison, Wisconsin, this 1st day of March, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman