

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAJI VILLOTH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, Respondent.

Case ID: 306.0005

Case Type: PA

DECISION NO. 37434

Appearances:

Martin C. Kuhn, Attorney, Hynes & Kuhn, S.C., 850 Elm Grove Road, Suite 25, Elm Grove, Wisconsin, appearing on behalf of Saji Villoth.

Anfin Jaw, 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 Natural Resources.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On March 12, 2018, Saji Villoth filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Natural Resources (DNR). On March 15, 2018, DNR filed a motion to dismiss the appeal as untimely filed. Villoth responded to the motion on March 20, 2018.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 30th day of March, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

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

(b)1. If an appointing authority does not find in favor of the employee ..., the employee may appeal the appointing authority's decision by filing a complaint with the administrator. The employee may not file a complaint under this subdivision later than 14 days after the date of the appointing authority's decision.

...

(c)1. ... **If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal. ...**

Emphasis added.

The date the Commission receives an appeal is the filing date. *See* Wis. Admin Code § ERC 91.05(2) (“[f]iling is complete upon receipt.”). In the context of this case, the 14th day for timely filing was Friday, March 9, 2018. WERC did not receive the appeal until Monday, March 12. While there are very limited circumstances where equitable tolling of the time period for filing an appeal is appropriate (*see Hounsell v. DOC*, Dec. No. 37427 (WERC, 3/18), those circumstances are not present here.

When the Division of Personnel Management (DPM) denied Villoth's grievance at the second step of the grievance procedure, it attached a document entitled, “How to Appeal the DPM Step 2 Response to the Wisconsin Employment Relations Commission (WERC).” The first paragraph of that document provides thus:

An employee's appeal to the Wisconsin Employment Relations Commission (WERC) must be made in writing and filed with and received by the WERC within 14 calendar days from receipt of the DPM's Step 2 response. The WERC's address is 4868 High Crossing Blvd., Madison, WI 53704-7403. Additional information regarding the WERC's hearing process is posted on their website at <http://werc.wi.gov>.

Villoth contends that this attachment neglected to inform him of all the filing methods available to him to file his appeal with WERC, such as email or facsimile. We do not find the quoted wording in the attachment misleading. The last sentence in that paragraph says that “additional information” is posted on the WERC website. If one looks at the WERC website referenced above for “additional information,” there is a section there entitled, “How to Send an Appeal to the Wisconsin Employment Relations Commission.” There, it says in plain terms that appeals can be made by mail, hand delivery, facsimile, or email. That being so, DNR does not bear

responsibility here for the appeal method which Villoth used. Specifically, DNR did not tell him that he had to file his appeal by mail. Additionally, the Commission finds no attempt by DNR to mislead Villoth about the appeal process to WERC.

Here, Villoth erroneously believed that his appeal had to be physically mailed to WERC. Based on that belief, he chose to send the appeal to WERC via the U.S. Mail and delivered his letter to the Milwaukee post office on Wednesday, March 7. When he did so, he asserts he asked whether the letter would arrive at WERC by Friday, March 9, and was told that it would. However, it did not happen. According to the postal service's tracking data, the letter arrived at the Madison post office on the morning of Thursday, March 8. For unknown reasons, it was not delivered to WERC until Monday, March 12.

While the result here can be viewed as harsh, limitations on when appeals can be filed provide important finality as reaffirmed by the statutory language in § 230.445(3)(c)1, Stats. Because the record here does not warrant equitable tolling of the 14-day time period the Legislature has established, the Commission has granted the motion to dismiss the appeal.

Signed at the City of Madison, Wisconsin, this 30th day of March, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman