

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID WOODLAND, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0051

Case Type: PA

DECISION NO. 37437

Appearances:

David Woodland, 2211 Golden Avenue, Oshkosh, Wisconsin 54904, appearing on his own behalf.

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

DECISION AND ORDER GRANTING MOTION TO DISMISS

On March 28, 2018, David Woodland filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Health Services (DHS). On April 10, 2018, DHS filed a motion to dismiss alleging that the Commission lacks subject matter jurisdiction because Woodland voluntarily resigned his position and did not timely file a grievance. Woodland responded to the motion on April 16, 2018.

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

NOW, THEREFORE, it is

ORDERED

The appeal of David Woodland is dismissed.

Signed at the City of Madison, Wisconsin, this 18th day of April, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

David Woodland was a DHS employee with permanent status in class. His employment ended effective January 26, 2018.

On February 28, 2018, Woodland filed a grievance with DHS which challenged his “being forced to resign in lieu of termination”. In response to the DHS motion to dismiss asserting the Commission lacks jurisdiction because Woodland was not discharged, Woodland contends that the resignation was a constructive discharge. When making a determination on the merits of a motion to dismiss, an appeal must be construed in the light most favorable to the appellant. *Weber v DWD*, Dec. No. 34657 (WERC, 11/13). Viewed in the light most favorable to Woodland, a hearing would be needed to determine if Woodland was constructively discharged. Therefore, this portion of the motion to dismiss is rejected.

DHS also asserts Woodland’s first step grievance was untimely and thus that his appeal should be dismissed on that basis. Section 230.445(3)(a)1, Stats., provides that the employee must file a complaint with the appointing authority “no later than 14 days after the employee becomes aware of, or should have been aware of the decision that is the subject of the complaint”. Woodland’s employment ended January 26, 2018. On February 28, 2018, Woodland submitted his first step grievance to DHS Employee Relations via email.

Section 230.445(3)(c)1., Stats., states in pertinent part:

- (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).

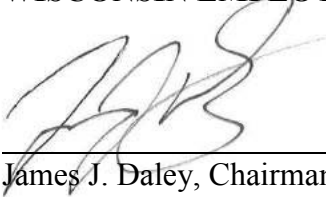
Since Woodland did not file a grievance within 14 days of the end of his employment, § 230.445 (3)(c)1, Stats., requires the Commission to dismiss the appeal.

In reaching this conclusion, consideration has been given to Woodland’s contention that a failure of DHS to provide requested documentation creates a waiver of the timeline requirements for him to file his grievance. The statutory deadlines applicable to civil service appeals are in the nature of statutes of limitations and thus are 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); *Hounsell v. DOC*, Dec. No. 37427 (WERC, 3/18). However, even considering Woodland’s contention in the best light, the alleged failure to provide requested information does not establish a basis for waiver or estoppel nor warrant equitable relief from the 14-day deadline. The same conclusion is reached as to Woodland’s assertion that the issue of timeliness was not raised during the first or second steps of the grievance procedure.

Given the foregoing, Woodland’s appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 18th day of April, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'J. Daley', is written over a horizontal line.

James J. Daley, Chairman