

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FRANK A. WESSELY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0015

Case Type: PA

DECISION NO. 37451

Appearances:

Rebecca Salawdeh, Attorney, Salawdeh Law Office, LLC, 7119 West North Avenue, Wauwatosa, Wisconsin, appearing on behalf of Frank A. Wessely.

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 Transportation.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On May 7, 2018, Frank A. Wessely filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Transportation (DOT). On May 17, 2018, DOT filed a motion to dismiss the appeal as untimely filed. Wessely responded to the motion on May 23, 2018.¹

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

NOW, THEREFORE, it is:

ORDERED

The appeal of Frank A. Wessely is dismissed.

¹ On May 29, 2018, the Commission was advised that Wessely had retained legal counsel.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Section 230.445, Stats., provides that state employees may appeal certain disciplinary actions to the Commission. Section 230.445(3)(a), Stats., outlines the time requirements dictating when an appeal must be filed. Subsection (c) of that provision specifies a timeline for filing an appeal with the Commission. Specifically, it is “14 days after receiving the administrator’s decision.” Subsection (c) goes on to provide that “[i]f a procedural requirement is not met by the employee ... the commission shall dismiss the appeal.”

In this case, the State’s Step 2 grievance response was sent to Wessely via email by the Department of Personnel Management (DPM) on Friday, April 20, 2018. At the bottom of the “Employer Grievance Decision,” which was attached to the April 20 email, were instructions for filing an appeal with WERC. Those instructions said that “[a] timely appeal of a Step 2 Decision must be filed with the Wisconsin Employment Relations Commission no later than 14 days after receiving DPM’s decision.” Additionally, in the body of that email, a DPM representative advised Wessely for a second time that if he disagreed with the Employer’s decision, he could file an appeal with WERC “no later than 14 days of your receipt of the DPM decision.” DPM also attached instructions for filing an appeal with WERC to the email. The attached instructions – which were entitled “How to Appeal the DPM Step 2 Response to the Wisconsin Employment Relations Commission (WERC)” – stated that the “appeal must be made in writing and filed with and received by the WERC within 14 calendar days from the receipt of the DPM’s Step 2 response.” Wessely received notice of the administrator’s decision on April 20, 2018. The last day for a timely appeal within the 14-day deadline would have been May 4, 2018. Wessely’s appeal to the Commission was not received until May 7, 2018. This is clearly outside of the 14-day mandatory requirement set forth in § 230.445(3)(c)1, Stats.

Since Wessely’s appeal was untimely, the appeal has been dismissed.²

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

² Given that conclusion, the Commission need not address DOT’s other claim that Wessely’s second step appeal was also untimely.