

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SEE THAO, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES, Respondent.

Case ID: 4.0006

Case Type: PA

DECISION NO. 37452

Appearances:

See Thao, 1521 Roosevelt Drive N, West Bend, 53090, appearing on her own behalf.

Anfin Jaw, 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 Children and Families.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On May 15, 2018, See Thao filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Children and Families (DCF). On May 17, 2018, DCF filed a motion to dismiss the appeal as untimely filed. Thao responded to the motion on May 29, 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 See Thao is dismissed.

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 Thao via email by the Department of Personnel Management (DPM) on April 27, 2018, at 2:11 p.m. A read receipt shows that Thao read her Step 2 grievance response on April 27, 2018, at 2:15 p.m. At the bottom of the “Employer Grievance Decision,” which was attached to the April 27 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 Thao for a second time that if she disagreed with the Employer’s decision, she 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.” Thao received notice of the administrator’s decision on April 27, 2018. The last day for a timely appeal within the 14-day deadline would have been May 11, 2018. Thao’s appeal to the Commission was not received until May 15, 2018. This is clearly outside of the 14-day mandatory requirement set forth in § 230.445(3)(c)1, Stats.

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

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman