

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RONALD CLAYTON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0276

Case Type: PA

DECISION NO. 37792

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**Appearances:**

Sean Daley, Field Staff, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Ronald Clayton.

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 Corrections.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On November 12, 2018, Ronald Clayton filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On November 21, 2018, DOC filed a motion to dismiss asserting Clayton did not timely file a grievance and also voluntarily resigned his position. Clayton responded and the matter became ripe for Commission action on December 10, 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 Ronald Clayton is dismissed.

Signed at the City of Madison, Wisconsin, this 12th day of December, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Ronald Clayton was a DOC employee with permanent status in class. On September 17, 2018, he was advised he was discharged effective immediately. On September 19, 2018, DOC accepted a letter of resignation effective September 19, 2018. On October 8, 2018, Clayton filed a first step grievance with DOC asserting he had been discharged without just cause.

DOC asserts Clayton'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."

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

An employee ... may appeal a decision issued 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 Clayton 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.

Clayton contends the period for filing an appeal should be equitably tolled because the procedure for filing is confusing. However, the State provided him with clear and timely advice as to how and where to file his grievance so there is no support for an equitable tolling of the 14-day filing period.

Therefore, the appeal has been dismissed.<sup>1</sup>

Signed at the City of Madison, Wisconsin, this 12th day of December, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup> Review of the text of Clayton's resignation letter makes it highly unlikely it could ever be concluded that he was coerced into resigning. Rather, the letter seems to make it clear on its face that Clayton was given the option of resigning following his discharge and voluntarily chose to do so.