

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

O'KEITH PAYNE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0278

Case Type: PA

DECISION NO. 37799

Appearances:

Patrick O'Connor, Attorney, O'Conner Law Firm, P.O. Box 7757, Madison, Wisconsin, appearing on behalf of O'Keith Payne.

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 Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

At 4:32 p.m., on December 4, 2018, the Wisconsin Employment Relations Commission received an email asserting that O'Keith Payne had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On December 7, 2018, DOC filed a motion to dismiss the appeal as untimely filed. Payne responded to the motion on December 17, 2018, and DOC replied to Payne's response on December 21, 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 17th day of January, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

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

An employee or an appointing authority may appeal a decision issued by the administrator under par. (b) by filing an appeal with the commission. The employee or appointing authority may not file an appeal with the commission under this paragraph later than 14 days after receiving the administrator's decision. ... **If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal. ...**

Emphasis added.

In the context of this case, it is undisputed that the 14th day for timely filing was December 4, 2018. At 4:32 p.m. on December 4, the Commission received the appeal by email.

Section 230.35(4)(f), Stats. provides:

Monday to Friday the offices of the agencies of state government shall open at 7:45 a.m. and close at 4:30 p.m., with intermissions from 11:45 a.m. to 12:30 p.m. Agencies may, with the permission of the governor, adjust opening and closing hours and intermission periods to relieve traffic congestion or as the needs of the service otherwise require.

Consistent with § 230.35(4)(f), Stats., the Commission's office is closed after 4:30 p.m.

Wisconsin Admin. Code § ERC 91.02(10) states:

“Filing” means the physical receipt of a document at the commission's office.

Consistent with § 230.35(4)(f), Stats., and Wis. Admin. Code § ERC 91.02(10), the Commission's website (referenced in the materials sent to Payne by the State when his appeal was denied) states:

An appeal is filed when it is received in the WERC office by 4:30 p.m. on the last day it can be timely filed.

Appeals will be accepted ...

by Email:

werc@werc.state.wi.us

Given all the foregoing, it is concluded that because the appeal was received after the Commission's office was closed on December 4, 2018, it was not filed until the Commission's offices opened at 7:45 a.m. on December 5, 2018. Therefore, the appeal was not timely filed and is dismissed pursuant to the requirement of § 230.445(c)1. Stats.

Signed at the City of Madison, Wisconsin, this 17th day of January, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman