

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TIFFANY EBEL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0306

Case Type: PA

DECISION NO. 37992

Appearances:

Tiffany Ebel, 202 West Nevada Avenue, Oshkosh, Wisconsin, appearing on her own behalf.

Anfin Jaw, 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

On July 11, 2019, Tiffany Ebel filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On July 24, 2019, DOC filed a motion to dismiss the appeal as untimely filed. Ebel responded to the motion and the matter became ripe for Commission consideration on August 21, 2019.

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 11th day of September, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Tiffany Ebel was verbally advised she was discharged by DOC on November 19, 2018, and shortly thereafter received a letter confirming the discharge. The discharge letter advised Ebel she needed to file a grievance within 14 days if she wanted to contest the DOC action. She filed a Step 1 grievance on April 21, 2019. Ebel asserts her untimely filing should be excused because she did not read the discharge letter closely due to illness and thus was unaware of her right to file a grievance.

After receiving DOC's April 22, 2019 denial of her Step 1 grievance, Ebel asserts she filed a Step 2 grievance with the Department of Administration, Division of Personnel Management, on April 23, 2019. DOC contends a Step 2 grievance was never received. Ebel provided the Commission with a copy of the April 23, 2019 email by which she believes she filed a Step 2 grievance. That April 23 email indicates a typographical error was part of the email address (wisconson.gov instead of wisconsin.gov) and thus the Commission concludes the Step 2 grievance was never received.

On May 30, 2019, Ebel attempted to file an appeal with the Commission. That appeal was not received because of a typographical error in the address (werc@were.state.wi.us instead of werc@werc.state.wi.us). On July 11, 2019, Ebel forwarded a copy of her appeal to the correct WERC email address.

Given all of the foregoing, the Commission concludes the motion to dismiss must be granted due to Ebel's failure to meet the statutory filing requirements contained in § 230.445(3), Stats. Her Step 1 grievance was untimely and she did not file a Step 2 grievance. Even if her effort to file a Step 2 grievance had been successful, her appeal to the Commission would have been untimely because it would not have been received within 14 days of the end of the Step 2 process. Therefore, the appeal has been dismissed.¹

Signed at the City of Madison, Wisconsin, this 11th day of September, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ In reaching this conclusion, the Commission has considered whether Ebel's assertions of illness warrant the conduct of a hearing to determine the extent and duration of said illness and its impact on her ability to timely and accurately file the necessary grievance documents and appeal. The overall content to Ebel's filings persuades the Commission she was capable of making the appropriate judgments and thus no such hearing is warranted. If such a hearing were held and the facts supported a conclusion that an illness impacted her ability to timely and accurately file grievance documents and an appeal, there would remain the question of whether the Commission has the equitable authority to excuse all three of the errors upon which dismissal of the appeal is based.