

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH FISCHER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0375

Case Type: PA

DECISION NO. 38451

Appearances:

Joseph Fischer, 436 Harrison Street, Apt. 9, North Fond du Lac, Wisconsin, appearing on his own behalf.

Cara Larson, 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 June 22, 2020, Joseph Fischer filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) suspended him for one day without just cause. On June 25, 2020, DOC filed a motion to dismiss the appeal on the grounds that Fischer failed to exhaust the State grievance procedure prior to filing his appeal with the Commission. Specifically, DOC alleged Fischer did not file a second step grievance with the Division of Personnel Management prior to filing his appeal with the Commission. On June 30, 2020 Fischer filed a response to the motion wherein he indicated he wanted "to move forward with the hearing." The matter is now ripe for Commission consideration.

Having considered the matter, the Commission concludes the motion should be granted.

NOW, THEREFORE, it is

ORDERED

The motion to dismiss is granted, and the appeal is dismissed.

Issued at Madison, Wisconsin, this 10th day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

State employees who receive certain kinds of disciplinary actions can grieve them. When they do so, they have to complete two steps before they appeal to the Commission. First, they must file a grievance with their agency. That is known as the first-step grievance. Second, they must appeal the first-step grievance finding to the Division of Personnel Management (DPM). That is known as Step 2. After those two steps are completed, then they can appeal to the Commission.

Here, Fischer complied with the first step and filed a grievance with his agency (in this case, DOC). After Fischer received a response from DOC, he was supposed to file his next appeal with DPM. However, Fischer did not do that and instead completely skipped that step and filed an appeal directly with the Commission. It was not permissible to simply skip Step 2 of the grievance process and appeal directly to the Commission after Step 1.

The Commission finds that since Fischer did not file a Step 2 grievance appeal with DPM as required by Wis. Stat. § 230.445(3)(b)1 prior to filing his appeal with the Commission, Fischer has waived his right to appeal his suspension to the Commission. Under the circumstances, Wis. Stat. § 230.445(3)(c)1 requires the Commission to dismiss the appeal. The Commission has done so.

Issued at Madison, Wisconsin, this 10th day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman