

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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THEODORE ANDERSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0401

Case Type: PA

DECISION NO. 38766

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**Appearances:**

Theodore Anderson, N9162 Bertin Terrace, Westfield, Wisconsin, appearing on his 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 Corrections.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On September 30, 2020, Theodore Anderson filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). On October 5, 2020, DOC filed a motion to dismiss the appeal arguing that Anderson did not timely file a complaint with DOC challenging the suspension. On October 19, 2020, Anderson filed a response opposing the motion whereupon the matter became ripe for Commission consideration.

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

NOW, THEREFORE, it is:

**ORDERED**

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

Issued at the City of Madison, Wisconsin, this 25<sup>th</sup> day of November, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Wisconsin Stat. § 230.445(3)(a)1. provides:

To commence the grievance process for an adverse employment action, an employee shall file a complaint with the employee's appointing authority challenging the adverse employment decision against the employee no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.

On July 27, 2020 Anderson received a letter which suspended him for three days. That letter stated that any complaint over the suspension:

[m]ust be received by DOC Employment Relations staff electronically to DOCBHRGrievances@wisconsin.gov, in person, via inter-departmental mail or U.S.P.S. mail no later than 14 calendar days after you became aware of, or should have become aware of, the decision that is the subject of the complaint.

On Sunday, August 9, 2020, Anderson emailed a blank complaint form to the Department of Administration Division of Personnel Management (DOA DPM) instead of DOC. On the morning of August 10, 2020, the last day for a timely submission, DPM emailed Anderson advising him that the form was blank and "Please resubmit." Anderson subsequently emailed a completed form to DOC on August 20, 2020.

Had Anderson emailed a completed form back to DOA DPM on August 10, a strong argument could be made for equitable tolling because DOA DPM did not advise Anderson on August 10 that he should file with DOC not DPM. However, Anderson's next step was to file a complaint with DOC on August 20.

Anderson asserts that his untimely filing should be excused because he was not receiving cooperation from DOC Human Resources as to the investigative file upon which his suspension was based. However, any such difficulties do not relate to the clear directions contained in the suspension letter as to where and how to file a complaint.

Given the foregoing, Anderson did not file a timely complaint with DOC. As required by Wis. Stat. §230.445(2), and as quoted in the footnote below, his appeal has been dismissed.<sup>1</sup>

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<sup>1</sup>An employee may file a complaint under this section concerning the application of a law, rule, or policy to an adverse employment decision against the employee. If an employee does not file a complaint or an appeal by an applicable deadline under sub. (3), the employee waives his or her right to appeal the adverse employment decision under this subchapter.

Issued at the City of Madison, Wisconsin, this 25<sup>th</sup> day of November, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman