

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KRISTI WEHRWEIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0431

Case Type: PA

DECISION NO. 38816

Appearances:

Kristi Wehrwein, 8975 Pleasant Drive, Woodruff, Wisconsin appearing on her 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 February 2, 2021, Kristi Wehrwein filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) lacked just cause to suspend her for three days. On February 8, 2021, DOC filed a motion to dismiss asserting the Commission lacks jurisdiction to consider the merits of the appeal because it was not “filed” until February 2, 2021, one day late. On February 22, 2021, Wehrwein filed a response opposing the motion to dismiss.

Having considered the matter, the Commission concludes that it does lack jurisdiction over the appeal.

NOW, THEREFORE, it is

ORDERED

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

Issued at Madison, Wisconsin, this 16th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Wisconsin Stat. § 230.445(3)(c)1. required that Wehrwein file her appeal with the Commission within 14 days of her receipt of the adverse decision from the Department of Personnel Management (DPM) to her suspension complaint. That same statutory provision requires the Commission dismiss an appeal if it is not timely filed.

Wehrwein received the DPM decision on January 18, 2021. The DPM decision advised her that she could file an appeal with the Commission within 14 days and referred her to the Commission's website for further information. Consistent with Wis. Admin. Code § ERC 91.02(10), the Commission's website specifies that an appeal must be received by 4:30 pm to be deemed "filed" on the day it is received. Here, the 14th day for timely filing was February 1, 2021 by 4:30 pm. Wehrwein's appeal was received at 8:13 pm on February 1, 2021. Therefore, the Commission concludes that it lacks jurisdiction to consider the appeal and it has been dismissed.¹

Issued at Madison, Wisconsin, this 16th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹Wehrwein contends that because the DPM decision was issued and received on a legal holiday, the 14-day period for timely filing should not have begun until the next business day of January 19, 2021. Wisconsin Stat. § 230.445 does not provide for any exceptions as to when the 14-day period commences and thus the Commission does not find this argument to be persuasive.