

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SARAH FELTES, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION, DIVISION OF
PERSONNEL MANAGEMENT, Respondent.

Case ID: 315.0022

DECISION NO. 39949

Appearances:

Sarah Feltes, 130 Overlook Drive, Apt. 11107, Fond du Lac, Wisconsin, appearing on her own behalf.

Peter Flood, Executive Human Specialist - Advanced, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of the Division of Personnel Management of the State of Wisconsin Department of Administration.

ORDER GRANTING MOTION TO DISMISS

s

On June 23, 2023, Sarah Feltes filed an appeal with the Wisconsin Employment Relations Commission pursuant to sec. 230.44(1)(d), Wis. Stats. disputing the denial of her request to be reallocated to the position of Corrections Program Supervisor. On July 18, 2023, the State of Wisconsin Department of Administration filed a motion to dismiss the appeal as untimely filed. Feltes filed a response to the motion on August 2, 2023.

Having considered the matter, the Commission has concluded that the motion to dismiss should be granted because Feltes did not file her appeal within 30 days of the date she was advised her reallocation request had been denied.

NOW, THEREFORE, it is

ORDERED

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

Issued at the City of Madison, Wisconsin, this 22nd day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION TO DISMISS

On May 19, 2023, the Division of Personnel Management, Bureau of Classification and Compensation, notified the Department of Corrections Human Resources Office that the request to reallocate Feltes from Corrections Administrative Confidential (Pay Range 81-04) to Corrections Program Supervisor (Pay Range 81-03) was denied. On May 22, 2023, Feltes was notified of the decision to deny the reallocation request. On June 23, 2023, Feltes filed her appeal of the reallocation denial with the Commission – 32 days after she was notified of the denial.

Section 230.44(1)(b), Wis. Stats. gives the Commission jurisdiction to review the denial of a reallocation request. However, sec. 230.44(3), Wis. Stats. provides that a s. 230.44(1)(b) appeal “may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later.”

Here, Feltes notification of the denial on May 22, 2023, is a “later” date and her June 23, 2023 appeal was not filed within 30 days. While compliance with the 30-day requirement is an affirmative defense which can be waived¹, the filing of the motion to dismiss makes it clear that the State has not done so here. Therefore, consistent with the “may not be heard” language in sec. 230.44(3), Wis. Stats., the Commission hereby grants the motion to dismiss and dismisses the appeal.

Issued at the City of Madison, Wisconsin, this 22nd day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ The time limit in sub. (3) may be waived. See *Stern v. WERC*, 2006 WI App 193, 296 Wis. 2d 306, 722 N.W. 2d 594.