

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TAMEKIA JOHNSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0140

Case Type: PA

DECISION NO. 40236

Appearances:

Tamekia Johnson, 1208 W. Bent Ave., Oshkosh, Wisconsin, appearing on her own behalf.

David Makovec, Attorney, 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 Health Services.

DECISION AND ORDER DISMISSING APPEAL

On December 15, 2023, Tamekia Johnson filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Health Services (DHS). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki. On December 21, 2023, DHS filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Johnson filed a response on January 2, 2024.

Having considered the matter, the Commission is satisfied that it does not have 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 20th day of February 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION
AND ORDER DISMISSING APPEAL

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Employees who are on probation do not have permanent status in class. *Board of Regents v. Personnel Commission*, 103 Wis. 2d 545 (Ct. App. 1981).

Tamekia Johnson was a patient care technician at Winnebago Mental Health Institute. She was discharged from that position in 2019. It is uncontested that Johnson was a probationary employee at the time of her discharge. Therefore, Johnson did not have permanent status in class and the Commission lacks subject matter jurisdiction over this appeal. *See Wis. Stat. § 230.445(1)(b)*.

The appeal was also untimely filed. An employee must first file a grievance with their appointing authority no later than 14 days after the employee becomes aware of – or should have become aware of – the decision on the matter grieved. *See Wis. Stat. § 230.445(3)(a)(1.)* and *Wis. Admin. Code § ER 46.06 (2) (a)*. The employee may then file a second step with the Administrator of the Division of Personnel Management no later than 14 days after the date of the appointing authority’s decision. *See Wis. Stat. § 230.445(3)(b)(1.)* and *Wis. Admin. Code § ER 46.06 (2)(b)(1.)*. If this too proves unsuccessful, the employee may file with the Commission within 14 days after receipt of the second step decision. *See Wis. Stat. § 230.445(3)(c)(1.)* and *Wis. Admin. Code § ER 46.07 (2)*. The appellant bears the burden of establishing that her appeal was timely filed. *See Kline v. UW-OSER*, Dec. No. 30818 (WERC, 3/04).

Johnson was notified of her discharge in 2019. She submitted a Step 2 grievance on January 16, 2020, which was denied on January 22, 2020. Johnson resubmitted a Step 1 grievance on August 30, 2022. She did not file an appeal of her discharge with the Commission until December 15, 2023 – over a year later. Therefore, the appellant has failed to timely file this appeal.

Given the foregoing, the motion to dismiss is granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 20th day of February 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman