

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES TAULBUT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0620

Case Type: PA

DECISION NO. 40265

Appearances:

Kostas Korias, 508 Doty St., Waupun, Wisconsin, appearing on behalf of James Taulbut.

Nicole Porter, 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 GRANTING MOTION TO DISMISS

On January 26, 2024, James Taulbut filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki. On February 2, 2024, DOC filed a motion to dismiss asserting that the appeal was not timely. Taulbut filed a response on February 16, 2024.

Having considered the matter, the Commission is satisfied that the appeal was untimely filed.

NOW, THEREFORE, it is:

ORDERED

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

Issued at Madison, Wisconsin, this 21st day of March 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

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.

James Taulbut is an employee at Dodge Correctional Institution. He was suspended in 2023. Taulbut filed a second step grievance on December 22, 2023. On January 8, 2024, Brenda Brewer emailed a second step decision, upholding Taulbut's suspension, to the personal email address listed as Taulbut's preferred email on the Step 2 Grievance form he submitted. The email included instructions on how to appeal the second step decision, including the requirement that an appeal be filed with the WERC within 14 days after receiving this decision. Taulbut's deadline for filing a decision with the WERC was January 22, 2024. On January 17, 2024, Taulbut contacted DOA from his personal email address asking for the decision to be sent to his work email address. Brewer replied on January 18 and sent the decision to both Taulbut's personal and work email addresses. Taulbut did not file an appeal with the WERC until January 26, 2024.

The appeal was 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 matter grieved. *See* Wis. Admin. Code § ER 46.06 (1). 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. 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. Admin. Code § ER 46.07 (2). The appellant bears the burden of establishing that h[is] appeal was timely filed. *See* *Kline v. UW-OSER*, Dec. No. 30818 (WERC, 3/04).

Taulbut argues that he never received the January 8 email. However, the January 8 email was sent to the email address that Taulbut provided. *See* Exhibit R-4, pg. 1. It is extraordinarily unlikely that a correctly addressed email did not reach its intended recipient, and Taulbut provides no evidence to support this contention.

Taulbut further argues that the deadline should be counted from when he received the decision on January 18. However, equity does not support waiving the 14-day deadline. Taulbut was clearly advised of the deadline. When Taulbut received the decision again on January 18, he still had four days to timely file his appeal with the WERC, and he still failed to do so.

Lastly, Taulbut argues that he was on Family and Medical Leave Act (FMLA) leave until January 26. However, the decision was sent to his personal email address, which he should have had no difficulty accessing while on leave. Further, the Commission has previously held that, when determining timeliness, it does not matter whether an employee was off work when they received a grievance decision. *See* *Maxwell v. DOC*, Dec. No. 38799 (WERC, 2/21).

Taulbut failed to carry the burden of establishing that his appeal was timely filed. Taulbut's untimely appeal deprives the WERC of competence to hear the appeal. Given the foregoing, the motion to dismiss is granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 21st day of March 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman