

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAWN V. TOMAN, Appellant,

v.

**Secretary, WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES**, Respondent.

Case 16
No. 65533
PA(adv)-94

Decision No. 31676

Appearances:

Dawn V. Toman, Human Resource Services Bureau, Department of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946, appearing on her own behalf.

Paul Harris, Attorney, DHFS, P. O. Box 7850, Madison, WI 53707-7850, appearing on behalf of the Department of Health and Family Services.

ORDER GRANTING MOTION TO DISMISS

This matter, which arises from the imposition of discipline and relates to the contents of a personnel file, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The final date for submitting written arguments was April 21, 2006.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. As of June of 2003, Dawn Toman was employed as a Program Assistant 1 in Respondent's Disability Determination Bureau. Susan Hoyer served as her immediate supervisor.

2. Respondent issued a letter dated June 3, 2003 that suspended Ms. Toman's employment for one day.

3. Ms. Hoyer subsequently suggested to Ms. Toman that she resign her position. Toman agreed to do so and Hoyer offered to prepare the resignation letter, but it was never completed and filed with the Respondent.

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4. By letter dated June 20, 2003, Respondent terminated Ms. Toman's employment, effective immediately, for various work rule violations.

5. Ms. Toman e-mailed a letter of appeal to the Commission on January 24, 2006, and delivered a copy to the Commission on January 26. The letter stated, in part:

I would like to appeal the decision to have my personnel file describe the end of my State service in June 2003 as a termination instead of a resignation.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Appellant has the burden of establishing that her appeal was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.

2. She has failed to sustain that burden.

3. The appeal is untimely.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER¹

Respondent's motion is granted and this matter is dismissed as untimely filed.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of May, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

¹ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

DHFS (Toman)

**MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS**

The issue in this matter is whether Ms. Toman complied with the time limit for filing a State classified service personnel appeal. That time limit is found in Sec. 230.44(3), Stats., which reads, in part:

Any appeal filed under this section 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.

The Appellant has the burden of establishing that her appeal was timely filed. UW & OSER (KLINE), DEC. NO. 30818 (WERC, 3/04).

Ms. Toman seeks to have the Commission review the Respondent's action of maintaining the June 20, 2003 termination letter as part of her personnel record, rather than retaining alternative documentation that would indicate she had resigned from her employment in June of 2003.²

The effective date of the Respondent's action appears to have been some time in June 2003 because there is nothing in the record to suggest that Respondent has changed the contents of Appellant's personnel record since 2003 when her employment with DHFS was concluded. In addition, Ms. Toman has failed to provide any indication of the specific date she became aware of the contents of her personnel file. She comments that she "was told late in 2005 that DHFS attempted to have me sign the resignation letter" that had apparently been prepared by her supervisor, Ms. Hoepfer, sometime before the date of the termination letter. However, the Appellant has failed to claim that she first learned on or after December 24, 2005 that her personnel record included a termination letter.³

² In the brief supporting the motion to dismiss, DHFS allowed that the Appellant could prepare a letter explaining her understanding of the circumstances that caused the end of her employment with the agency and DHFS would "consider placing her letter in her state Personnel File".

³ If January 24, 2006 is considered to be the final day within the 30-day filing period, Ms. Toman would need to have learned about the contents of the file no later than December 24, 2005. Even if Appellant could show that she filed her appeal within 30 days of the date she first became aware her personnel file contained a termination letter rather than a letter of resignation, there would appear to be no jurisdictional basis on which the Commission would have the authority to review the subject of the appeal.

Given the absence of any information to the contrary, the Commission must conclude both that Ms. Toman learned about the contents of her personnel file more than 30 days before she filed her appeal with the Commission, and that the decision about what to include in her file was also outside of the same 30-day period. Therefore, the appeal must be dismissed.

Dated at Madison, Wisconsin, this 3rd day of May, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

