

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RENATE FREEMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case ID: 39.0011

Case Type: PA

DECISION NO. 37915

Appearances:

Renate Freeman, 2835 Raymond Avenue, Franksville, Wisconsin, appearing on her own behalf.

Anfin Jaw, 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 Veterans Affairs.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On February 4, 2019, Renate Freeman filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Veterans Affairs (DVA). On February 8, 2019, DVA filed a motion to dismiss asserting Freeman did not timely file her appeal with the Commission. Freeman responded and the matter became ripe for Commission action on February 13, 2019.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal of Renate Freeman is dismissed.

Signed at the City of Madison, Wisconsin, this 26th day of February, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Renate Freeman is a DVA employee with permanent status in class. She received a five-day suspension and filed a Step 1 grievance with DVA asserting that DVA lacked just cause for the suspension. DVA denied the grievance and she filed a Step 2 grievance with the Department of Personnel Management (DPM). DPM denied the Step 2 grievance on January 3, 2019, by email which stated:

Attached is a step 2 response. Appeal instructions are located on the second page of the attachment.

The attached instructions as to how to appeal the DPM Step 2 denial to the Wisconsin Employment Relations Commission stated that an appeal must be “received by the WERC within 14 calendar days from receipt of the DPM Step 2 response.”

Freeman nonetheless filed an appeal with DPM, and on January 5, 2019, she emailed DPM asking how long it would take to receive a response. On January 15, 2019, DPM responded by email stating in part:

You received the attached response already. Including instructions on how to appeal to the WERC if you chose. Do not delay or you may be untimely.

The Commission received Freeman’s appeal on February 4, 2019. DVA asserts the appeal was not filed within the 14 days of Freeman’s receipt of the Step 2 denial and thus should be dismissed as untimely.

Section 230.445(3)(c)1, Stats., provides that the employee must file an appeal with the Commission within 14 days of receiving the Step 2 decision. Section 230.445(3)(c)1., Stats., also states in pertinent part:

If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal (emphasis added).

Since Freeman did not file her appeal within 14 days of her January 3, 2019 receipt of the DPM Step 2 response, § 230.445 (3)(c)1, Stats., requires the Commission to dismiss the appeal.

Freeman contends the period for filing an appeal should be equitably tolled because the procedure for filing is confusing. However, the State provided her with clear instructions as to how and where to file her appeal, so there is no support for an equitable tolling of the 14-day filing period. Therefore, the appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 26th day of February, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman