

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREA LOEFFELHOLZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0060

Case Type: PA

DECISION NO. 37931

Appearances:

Andrea Loeffelholz, 480 County Road D, Brooklyn, Wisconsin, appearing on her own behalf.

Lara M. Herman, Department of Health Services, 1 West Wilson Street, P.O. Box 7850, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER DISMISSING GRIEVANCE

On March 7, 2019, Andrea Loeffelholz filed a grievance with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Health Services (DHS) had improperly used nepotism to fill a position. On March 12, 2019, DHS filed a motion to dismiss asserting Loeffelholz did not timely file with the Commission. Loeffelholz responded and the parties thereafter provided the Commission with additional information through April 9, 2019.

Having considered the matter, the Commission is satisfied the grievance should be dismissed.

NOW, THEREFORE, it is

ORDERED

The appeal of Andrea Loeffelholz is dismissed.

Signed at the City of Madison, Wisconsin, this 11th day of April, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER DISMISSING GRIEVANCE**

On or about July 13, 2018, Loeffelholz applied for and was subsequently interviewed for a DHS position. On or about August 17, 2018, she was advised she was not selected. She thereafter complained to DHS that the hiring process was flawed due to nepotism. On or about February 7, 2019, DHS advised her that her allegations of nepotism “could not be substantiated.” On March 7, 2019, Loeffelholz filed an “appeal to my grievance that was denied, on February 7, 2019”

DHS asserts this matter must be dismissed as untimely because Loeffelholz did not file an appeal over her non-selection within 30 days of August 17, 2019, as required by § 230.44(3), Stats. Loeffelholz responds she is not contesting her non-selection but rather pursuing a more general grievance about DHS’s alleged failure to follow a merit-based hiring process.¹

The Commission does have jurisdiction pursuant to § 230.45(1)(c), Stats., to serve as “final step arbiter in the state employee grievance procedure” However, Wis. Admin. Code § ER 46.03(2)(d) provides that the grievance procedure does not apply to:

- (d) A personnel action after certification which is related to the hiring process that is appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.

Because the Commission would have had § 230.44, Stats. jurisdiction over Loeffelholz’s hiring process concerns, Wis. Admin. Code § ER 46.03(2)(d) specifies the grievance procedure cannot be used to raise those same concerns. It follows that the Commission does not have jurisdiction under § 230.45(1)(c), Stats. to serve as a “final step arbiter” over those concerns. Therefore, the grievance has been dismissed.

Signed at the City of Madison, Wisconsin, this 11th day of April, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ Loeffelholz expressly and repeatedly has asserted to the Commission she is not filing an appeal over her non-selection. If she were to have appealed her non-selection, there would be an issue as to whether her March 7, 2019 appeal should be viewed as timely inasmuch as she did have communication with a State official on September 17, 2018 about her options, the last day on which she could have timely appealed the August 17, 2018 notice she had not been selected.