

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MICHELLE MALLMANN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0290

Case Type: PA

DECISION NO. 37932

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**Appearances:**

Jamey Pilon, 6130 Hawthorn Road, Sheboygan, Wisconsin, appearing on behalf of Michelle Mallmann

Anfin Jaw, 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 Corrections.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

At 4:32 p.m., on Friday, April 12, 2019, the Wisconsin Employment Relations Commission received an appeal by email asserting that Michelle Mallmann had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On April 15, 2019, DOC filed a motion to dismiss the appeal as untimely filed. Mallmann responded to the motion on April 16, 2019.

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

NOW, THEREFORE, it is:

**ORDERED**

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 24th day of April, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Section 230.445(3)(c)1, Stats., provides in pertinent part:

An employee or an appointing authority may appeal a decision issued by the administrator under par. (b) by filing an appeal with the commission. The employee or appointing authority may not file an appeal with the commission under this paragraph later than 14 days after receiving the administrator's decision. ... **If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal. ...**

Emphasis added.

In the context of this case, it is undisputed that the fourteenth day for timely filing was Friday, April 12, 2019. At 4:32 pm on April 12, 2019, the Commission received the appeal by email.

Section 230.35(4)(f), Stats., provides:

Monday to Friday the offices of the agencies of state government shall open at 7:45 a.m. and close at 4:30 p.m., with intermissions from 11:45 a.m. to 12:30 p.m. Agencies may, with the permission of the governor, adjust opening and closing hours and intermission periods to relieve traffic congestion or as the needs of the service otherwise require.

Consistent with § 230.35(4)(f), Stats., the Commission's office is closed after 4:30 p.m.<sup>1</sup>

Wisconsin Admin. Code. § ERC 91.02(10) states:

“Filing” means the physical receipt of a document at the commission's office.

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<sup>1</sup>It seems clear Mallmann was aware of the 4:30 p.m. closing time given her April 12, 2019, email to the Commission's email address received at 4:24 p.m. which stated:

I just wanted to let you know that I'm trying to submit my appeal by 4:30 but my computer is being super slow. It's all dome I just need to attach it to the email.

To the extent Mallmann argues that the 4:24 p.m. email provided the Commission with timely implied notice of the appeal, a much closer question would be presented if that email had identified what State action was being appealed. Had that action been identified, a strong case could be made that the minimal requirements for filing an appeal had been met because necessary information had been provided. *See generally Varney v. DOA*, Case No. 94-0283-PC (12/94).

Consistent with § 230.35(4)(f), Stats., and Wis. Admin. Code § ERC 91.02(10), the Commission's website (referenced in the materials sent to Mallmann by the State when her appeal was denied) states:

An appeal is filed when it is received in the WERC office by 4:30 p.m. on the last day it can timely be filed.

Appeals will be accepted ...

...

by Email: [werc@werc.state.wi.us](mailto:werc@werc.state.wi.us)

Given all of the foregoing, it is concluded that because the appeal was received after the Commission's office was closed on Friday, April 12, 2019, it was not filed until the Commission's office opened at 7:45 a.m. on Monday, April 15, 2019. Therefore, the appeal was not timely filed and is dismissed pursuant to the requirement of § 230.445(c)1., Stats.

Signed at the City of Madison, Wisconsin, this 24th day of April, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman