

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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VALENCIA GUILLONTA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0294

Case Type: PA

DECISION NO. 37939

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**Appearances:**

Valencia Guillonta, 3346 North 1st Street, Milwaukee, Wisconsin, appearing on her own behalf.

Anfin Jaw, Department of Administration, 101 East 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**

On May 9, 2019, Valencia Guillonta filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) suspended her for five days without just cause. On May 10, 2019, DOC filed a motion to dismiss the appeal on the grounds that Guillonta had not timely filed a first step grievance prior to filing her appeal with the Commission. On May 17, 2019, Guillonta filed a response to the motion.

Having considered the matter, the Commission concludes the motion should be granted.

NOW, THEREFORE, it is

**ORDERED**

The motion to dismiss is granted.

Dated at Madison, Wisconsin, this 23rd day of May, 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), Stats., states in pertinent part:

- (a)1. To commence the grievance process for an adverse employment action, an employee shall file a complaint with the employee's appointing authority challenging the adverse employment decision against the employee no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.

...

- (c)1. ... If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal (emphasis added).**

In this case, Guillonta received the suspension letter on March 25, 2019, and thus a timely first step grievance had to be filed on or before April 8, 2019. Her first step grievance was filed electronically and finally made it to the appropriate DOC email box on April 26, 2019. Thus, DOC asserts the grievance was not timely filed and the appeal should be dismissed.

The cover letter that accompanied the suspension letter provided the correct DOC email address that should be used if Guillonta wanted to file a first step grievance electronically. Nonetheless, on March 25, the same day she received the suspension, Guillonta sent the email to the DOA/DPM email address to be used if an employee wishes to appeal a first step answer to the second step. On March 26, Guillonta received a form email response from DOA advising her that if she was attempting to file a first step grievance, she had emailed her grievance to the wrong place. That response did not provide the correct DOC email address to be used. Later on March 26, Guillonta emailed her grievance directly to some DOC employees. On March 27, a DOC employee responded by email and provided her with an email address to use to file a first step grievance. Unfortunately, the email provided contained an error (wisconsin was spelled wisconsin). On March 29, Guillonta again attempted to file her first step grievance, this time incorrectly using "grievance" instead of "grievances" as part of the email address. As a consequence of this error, her email was returned as undeliverable. On April 1, she again attempted to file by email and this time correctly used "grievances" instead of "grievance" but used the incorrect spelling for "wisconsin." Again, she received an undeliverable message. Later on April 1, she forwarded the most recent "undeliverable" message to DOA and the DOC employees she had previously contacted and stated:

I tried to forward my Step 1 again this morning to the grievance mailbox as informed by all, but once again it is undeliverable. I will be gone on suspension and vacation from today and won't be back until April 26. Way past the 14 days to file a step 1.

Where, as here, a grievance was timely sent but to the wrong State employer-side email address, there are factual circumstances where the Commission would conclude a grievance was timely. As a general matter, when an employee is unrepresented, the best practice would be for DPM to forward a grievance on to DOC. At a minimum, DPM should advise the employee that the grievance had been sent to the wrong address. *Roen v DOC*, Dec. No. 37431 (WERC, 3/18). Here, DPM met that minimal obligation on March 26. While it would have been better practice to again provide the employee with the correct email address or to forward the grievance on to DOC or to respond to the April 1 email pointing out why Guillonta's emails were being returned as undeliverable, those are all obligations the Commission does not impose on the State. Where, as here, there is no assertion or evidence of an attempt to mislead Guillonta, a grant of the motion to dismiss is appropriate.

Dated at Madison, Wisconsin, this 23rd day of May, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman