

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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AUSTIN WEIDNER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0300

Case Type: PA

DECISION NO. 37953

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**Appearances:**

Austin Weidner, 726 Winton Street, Wausau, Wisconsin, appearing on his own behalf.

Cara Larson, 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**

On May 31, 2019, Austin Weidner filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). Later that same day, DOC filed a motion to dismiss the appeal as untimely filed. Weidner responded to the motion on June 6, 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 20th day of June, 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.

Wisconsin Administration Code § ERC 91.02(10) states:

(10) "Filing" means the physical receipt of a document at the commission's office.

The fourteenth day for the timely filing of Weidner's appeal with the Commission was Wednesday, May 29, 2019.<sup>1</sup> Weidner filed his appeal on May 31, 2019.

Weidner argues his untimely filing should be excused due to mail delays related to the Memorial Day weekend (which ended Monday, May 27, 2019). Even assuming such delays existed, it was Weidner's responsibility to consider any such delays when deciding how and when to send the appeal to the Commission. Because the appeal was not timely received, it is dismissed as required by § 230.445(3)(c)1, Stats.

Signed at the City of Madison, Wisconsin, this 20th day of June, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup>The envelope in which Weidner's appeal was delivered contains a May 29, 2019 postmark.