

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERIN BERGLUND, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0065

Case Type: PA

DECISION NO. 37956

Appearances:

Erin Berglund, 1331 Okeeffe Avenue, Apt. 108, Sun Prairie, 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 Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On May 31, 2019, Erin Berglund filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Health Services (DHS) suspended her for one day without just cause. On June 5, 2019, DHS filed a motion to dismiss the appeal on the grounds that Berglund had not timely filed a first-step grievance prior to filing her appeal with the Commission. Berglund filed a response to the motion on June 25, 2019. The parties made additional filings and the matter became ripe for Commission consideration on July 10, 2019.

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 July, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

State employees who receive certain kinds of disciplinary actions can grieve them. When they do so, they have to complete two steps before they appeal to the Commission. First, they must file a grievance with their agency. That is known as the first-step grievance. Second, they must appeal the first-step grievance finding to the Division of Personnel Management (DPM). That is known as Step 2. After those two steps are completed, then they can appeal to the Commission.

Here, Berglund did not comply with the first step. Specifically, she did not file a grievance with her agency (in this case DHS). Berglund completely skipped that step. It is not permissible to simply skip that step.

What Berglund did instead was attempt to file directly with DPM (at Step 2). We used the word “attempt” in the previous sentence because it is disputed whether Berglund filed an appeal with DPM. She asserts she did, while DPM avers it did not receive her appeal. In this case, since Berglund impermissibly skipped Step 1, the Commission need not decide whether she appealed to DPM for Step 2.

The Commission finds that Berglund did not file a complaint/grievance with DHS as required by § 230.445(3)(a)1, Stats., prior to filing her appeal with the Commission. Section 230.445(2), Stats., provides that Berglund thereby waived her right to appeal her suspension to the Commission, and § 230.445(3)(c)1, Stats., requires the Commission to dismiss the appeal. The Commission has done so.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman