

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LAUREL MUNGER, Appellant,

vs.

WISCONSIN STATE PUBLIC DEFENDERS OFFICE, Respondent.

Case ID: 501.0007

Case Type: PA

DECISION NO. 37993

Appearances:

Daniel Kaminsky, Attorney, Daniel Kaminsky Attorney-at-Law, 531 Fond du Lac Avenue, Fond du Lac, Wisconsin, appearing on behalf of Laurel Munger.

Cara Larson, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the Wisconsin State Public Defenders Office.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On August 21, 2019, Laurel Munger filed an appeal with the Wisconsin Employment Relations Commission asserting the Wisconsin State Public Defenders Office (SPD) suspended her for one day without just cause. During an August 28, 2019 prehearing telephone conference, SPD advised it would be filing a motion to dismiss the appeal. On August 29, 2019, SPD filed a motion to dismiss asserting that Munger had failed to file a complaint with SPD and thus failed to satisfy conditions precedent to filing her appeal with the Commission. Munger filed a response to the motion on September 3, 2019, contending she had no obligation to file a complaint with SPD.

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 13th day of September, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Within 30 days of her receipt of a one-day suspension, Munger filed the instant appeal directly with the Wisconsin Employment Relations Commission. She did not first file a complaint with SPD under the grievance process established by § 230.445, Stats. The Wisconsin State Public Defenders Office (SPD) contends her failure to do so requires that the appeal be dismissed. Munger contends she was not obligated to file a complaint because she is proceeding under § 230.44(3), Stats., which generally provides that an appeal can be filed within 30 days of the action being appealed.

Unfortunately for Munger, the specific statutory provision which gives the Commission potential jurisdiction to review an appeal of a suspension is not § 230.44(3), Stats., but rather § 230.44(1)(c), Stats., which specifies in pertinent part that a suspension may be appealed to the Commission “**as the final step in the state employee grievance process established under s. 230.445 ...**” (Emphasis added). This statutory language makes it clear the state employee grievance process is applicable here. The 30-day appeal period cited by Munger applies to other types of appeals under § 230.44(1), Stats., which are not subject to the state employee grievance process.

The state employee grievance process established in § 230.445, Stats., provides 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).

Section 230.445(2), Stats., further states:

If an employee does not file a complaint ... by an applicable deadline under sub. (3), the employee waives his or her right to appeal the adverse employment decision ... (Emphasis added).

Munger did not file a complaint with SPD and thus did not meet a procedural requirement that is a predicate for the Commission having jurisdiction to review the suspension

under § 230.44(1)(c), Stats. Therefore, as required by §§ 230.445(2) and 230.445(3)(c)1, Stats., the appeal has been dismissed.

Dated at Madison, Wisconsin, this 13th day of September, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman