

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERIC DAHLSTROM, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0308

Case Type: PA

DECISION NO. 37994

Appearances:

Paul Mertz, Representative, P.O. Box 181, Redgranite, Wisconsin, appearing on behalf of Eric Dahlstrom.

Anfin Jaw, Attorney, Wisconsin 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 DENYING MOTION TO DISMISS

On August 19, 2019, Eric Dahlstrom filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). On September 3, 2019, DOC filed a motion to dismiss the appeal asserting Dahlstrom had not timely filed a grievance with DOC following his suspension. Dahlstrom filed argument in opposition to the motion on September 6, 2019.

Having considered the matter, the Commission is satisfied that the motion should be denied.

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 13th day of September, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

It is undisputed that, on July 2, 2019, Dahlstrom was **verbally** notified by the State of Wisconsin Department of Corrections (DOC) that he was being suspended for one day. It is also undisputed Dahlstrom filed a grievance on July 17, 2019. DOC asserts in its motion this appeal must be dismissed because Dahlstrom's grievance was not filed within the 14-day period established by § 230.445(3)(a)1, Stats.

However, as Dahlstrom points out and the content of the suspension letter confirms, by virtue of the below quoted portion of Section 430.070 of the Wisconsin Human Resource Handbook, the State has obligated itself (through content in the **written** disciplinary notice) to advise employees as to how disciplinary actions can be appealed.

Sec. 430.070 Notice of Grievance Rights

Employees must be provided proper notice of grievance rights following any action which is grievable under section 430.040 of this chapter. To ensure uniform practice across all agencies when providing an employee notice of an adverse employment decisions, the following communication is required to be included in letters issuing employee discipline:

“If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Wis. Stat. s. 230.445 and the Wisconsin Human Resources Handbook Chapter 430 Employee Grievance Procedure, [if applicable, insert agency grievance policy information]. Grievances must be submitted using the DPM Adverse Employment Action Grievance form (DOA-15802) available on the Division of Personnel Management website at https://dpm.wi.gov/Pages/How_Do_I/FileAGrievance.aspx [if applicable, insert agency link]. The grievance must be received by [insert agency protocol (i.e. where to file)] no later than 14 calendar days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.”

Because DOC also emailed Dahlstrom a copy of the suspension letter on July 2, 2019, it is possible he did or reasonably should have received written notice of his appeal rights on that day and thus the appeal must be dismissed pursuant to § 230.445(3)(c)1, Stats. However, Dahlstrom contends he could not open the email in question. Thus, there is a factual dispute that

requires a hearing and thus the denial of the motion to dismiss. Hearing on this factual dispute and the merits of the suspension will be held on the same day.

Signed at the City of Madison, Wisconsin, this 13th day of September, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman