

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DORIEN MOORE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0074

Case Type: PA

DECISION NO. 38004-A

Appearances:

Sean P. Daley, Field Representative, AFSCME Wisconsin Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Dorien Moore.

Cara J. Larson, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER DISMISSING APPEAL

On September 9, 2019, Dorien Moore filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged on July 24, 2019, without just cause by the State of Wisconsin Department of Health Services (DHS). On September 19, 2019, DHS filed a motion to dismiss the appeal asserting Moore did not file a Step 1 grievance as required by § 230.445(3), Stats. Moore filed a statement in opposition to the motion on September 23, 2019.

On October 11, 2019, the Commission issued a Decision and Order Denying Motion to Dismiss concluding that Moore was entitled to the opportunity to prove a Step 1 grievance was timely received by DHS but inadvertently or purposefully deleted.

A hearing was held on October 25, 2019, in Madison, Wisconsin, by Commission Examiner Peter G. Davis. The parties made oral argument at the conclusion of the hearing.

Having considered the matter, the Commission is satisfied that Moore did not prove DHS inadvertently or purposefully deleted a timely Step 1 grievance.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 6th day of November, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER DISMISSING APPEAL

Section 230.445(3)(a)1, Stats., requires an employee who wants to challenge an adverse employment decision such as a discharge must file a complaint with the employing agency within 14 days. Section 230.445(3)(c)1, Stats., states the Commission “shall dismiss the appeal” if a complaint is not filed.

Moore contends DHS may have inadvertently or purposefully deleted the Step 1 complaint/grievance which he believes he timely, electronically filed with the assistance of a librarian at a public library. However, testimony provided on Moore’s behalf was less than definitive as to how a Step 1 complaint/grievance was filed. The librarian did not testify. The DHS witness credibly testified a Step 1 complaint/grievance has never been received by DHS or any other State entity. Considering the evidence and argument presented, the Commission concludes Moore has not proven that DHS inadvertently or purposefully deleted a Step 1 complaint/grievance as to Moore’s discharge. Therefore, as required by § 230.445(3)(c)1, Stats., the appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 6th day of November, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman