

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DORIEN MOORE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0074

Case Type: PA

DECISION NO. 38004

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**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 DENYING MOTION TO DISMISS**

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 that 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.

Having considered the matter, the Commission concludes that Moore is entitled to the opportunity to prove that a Step 1 grievance was received by DHS.

NOW, THEREFORE, it is:

**ORDERED**

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 11th day of October, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Section 230.445(3)(a)1, Stats., requires that 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 that the Commission “shall dismiss the appeal” if a complaint is not filed.

Here, DHS asserts by affidavit that a complaint (generally referred to as a Step I grievance) was not filed. Moore contends among other matters that DHS may have inadvertently or purposefully deleted the complaint which he believes he electronically timely filed with the assistance of a librarian at a public library. When ruling on a motion to dismiss, the Commission is obligated to accept the assertions of the employee at face value. Thus, if Moore wishes to pursue the contention that DHS did in fact receive a timely Step 1 grievance, he is entitled to do so.<sup>1</sup>

Signed at the City of Madison, Wisconsin, this 11th day of October, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup> As to Moore’s alternate contention that his Step 1 grievance was not received by DHS due to an error by the librarian or some inexplicable technological glitch, no hearing is needed. Even if Moore did not personally have the internet access necessary to file a Step 1 grievance, it was nonetheless his responsibility to take steps to successfully, timely file and, if needed, to verify DHS receipt. Instructions as to how and when to file were contained in his discharge letter. Thus, any confusion on his part as to whether he (as opposed to his representative) was obligated to file the Step 1 grievance is not a basis for excusing the failure to file. Thus, unless Moore can prove that DHS inadvertently or purposefully deleted a Step 1 grievance, the appeal will be dismissed.