

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBIN LINDMEIER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0319

Case Type: PA

DECISION NO. 38279

Appearances:

Robin Lindmeier, 212 W. Hudson, Mazomanie, Wisconsin, appearing on her own behalf.

Anfin Jaw, 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 GRANTING MOTION TO DISMISS

On October 14, 2019, Robin Lindmeier filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On October 24, 2019, DOC filed a motion to dismiss the appeal asserting Lindmeier's appeal was not timely filed with the Commission. Lindmeier filed a statement in opposition to the motion on October 31, 2019.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 22nd day of November, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Section 230.445(3)(c)1, Stats., requires an employee who wants to file an appeal with the Wisconsin Employment Relations Commission as to an adverse employment action such as a discharge must do so within 14 days “after receiving” the Step 2 decision. That same statutory provision states the Commission “shall dismiss the appeal” if the time deadline for filing an appeal is not met.

Here, it is undisputed that Lindmeier’s October 14, 2019 appeal was not filed with the Commission within 14 days of the August 23, 2019 Step 2 decision. Although it is also undisputed the Step 2 decision was successfully emailed to Lindmeier’s personal email address on August 23, 2019, Lindmeier contends she did not receive the Step 2 decision until October 3, 2019. She argues that, in the absence of personal service, acceptance of certified mail, or an affirmative acknowledgement of email receipt of the August 23, 2019 Step 2 decision, October 3, 2019 is the date that should be utilized when determining the timeliness of her appeal.

In *Moore v. DHS*, Dec. No. 38004 (WERC, 10/19), the Commission concluded the possibility of “an inexplicable technological glitch” did not provide a persuasive basis for concluding that a personal appeal sent but never received should nonetheless be held to have been received. Here, the Step 2 decision was successfully emailed to Lindmeier’s personal email address on August 23, 2019. Lindmeier does not assert otherwise but nonetheless contends she did not receive that email. Under those circumstances, the Commission is left with “an inexplicable technological glitch” as the only plausible basis for Lindmeier not to have received the Step 2 email on August 23, 2019. Consistent with the holding in *Moore*, the Commission concludes the Step 2 decision was “received” on August 23, 2019, and thus her October 14, 2019 appeal is untimely and must be dismissed.

Signed at the City of Madison, Wisconsin, this 22nd day of November, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman