

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVEN KLUGE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0076

Case Type: PA

DECISION NO. 38300

Appearances:

Steven Kluge, 1106 Mallard Avenue, Oshkosh, Wisconsin, appearing on his own behalf.

Cara J. Larson, 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 Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On January 6, 2020, Steven Kluge filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Health Services (DHS). On January 15, 2020, DHS filed a motion to dismiss the appeal asserting that Kluge had not filed a timely grievance following his suspension. Kluge did not file a response to the motion, and the matter became ripe for consideration on January 23, 2020.

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

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is granted, and the appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 6th day of February, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Section 230.445(3)(a)1, Stats. provides:

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.

Section 230.445(2), Stats., specifies in pertinent part:

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

On October 25, 2019, Kluge's supervisor hand-delivered a letter to Kluge which suspended him for one day. The supervisor then read the letter to Kluge in its entirety. That letter stated that any grievance over the suspension:

... must be submitted to the DHS email mailbox at DHSEmployeeRealtions@wisconsin.gov, 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.

The initial grievance filed with the individual's employing agency (in this instance DHS) is known as a Step 1 grievance. To be timely in this instance, a Step 1 grievance needed to be filed with DHS by November 8, 2019.

Kluge filed a grievance challenging his suspension on November 18, 2019. That was outside the 14-day timeline set forth in § 230.445 (3)(a)1, Stats.

Additionally, the grievance which Kluge filed was not sent to the DHS email mailbox referenced above. Instead, Kluge sent it to the Department of Administration, Division of Personnel Management. That agency reviews grievances from state employees at Step 2 of the state grievance procedure, not Step 1. Thus, the untimely grievance which Kluge filed was not submitted to the correct agency in accordance with the instructions outlined in the suspension letter.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Kluge's failure to meet the statutory filing requirements contained in § 230.445 (3), Stats.

His step 1 grievance was untimely and was sent to the wrong state agency. Therefore, the appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 6th day of February, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman