

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERICA EIRSCHLE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF MILITARY AFFAIRS, Respondent.

Case ID: 265.0007

Case Type: PA

DECISION NO. 38315

Appearances:

Erica Eirschele, 715 West Benton Street, Tomah, Wisconsin, appearing on her 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 Military Affairs.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On February 18, 2020, Erica Eirschele filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Military Affairs (DMA). On February 20, 2020, DMA filed a motion to dismiss the appeal asserting that the appeal was not timely filed at Step 1 or Step 2 of the applicable statutory grievance procedure. Eirschele filed a statement in opposition to the motion on February 28, 2020.

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

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 5th day of March, 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. requires that an employee who wants to file a grievance with the appointing authority as to an adverse employment action (Step 1) such as a suspension must do so “no later than 14 days after the employee becomes aware of . . . the decision that is the subject of the complaint.” Section 230.445 (3)(b)1, Stats., requires that an employee who wants to appeal the grievance decision of the appointing authority (Step 2) must do so “not . . . later than 14 days” after the appointing authority’s decision. Section 230.445(3)(c) 1, Stats., states that the Commission “shall dismiss the appeal” if an applicable time deadline is not met.

DMA contends that both Eirschele’s Step 1 and Step 2 filings were untimely.

Here, it is undisputed that on December 16, 2019 Eirschele received notice of the suspension and that the notice advised her that a grievance must be filed “no later than 14 days” thereafter. She filed her Step 1 grievance on January 9, 2020. On January 15, 2020, Eirschele was advised that her grievance was denied at Step 1 as untimely because it was not filed “within 14 calendar days.” The Step 1 Grievance Decision advised her that an appeal to Step 2 must be filed “within 14 days”. On January 30, 2020, Eirschele filed her appeal of the Step 1 Grievance Decision with an email that stated in pertinent part “It is also a day late. I lost track of the days.”

Eirschele asserts that the applicable statutory provisions referring to “14 days” should be interpreted as “14 business days” and thus her Step 1 grievance was timely filed. The only support she provides for this proposition is the reference to “14 calendar days” in the DMA Step 1 answer advising her that her grievance was untimely. Contrary to Eirschele’s assertion, the reference to “calendar days” only reaffirmed the correct interpretation of “14 days” and the Commission hereby rejects Eirschele’s proposed “business days” interpretation. Indeed, Eirschele’s above-quoted admission that she had missed the deadline at Step 2 seems to confirm that she correctly understood “14 days” to be “14 calendar days” all along.

Given the foregoing, the Commission concludes that Eirschele was untimely at both Step 1 and Step 2 and thus that the motion to dismiss is granted.

Issued at the City of Madison, Wisconsin, this 5th day of March, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman