

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BRAD SWEITZER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0021

Case Type: PA

DECISION NO. 38431

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**Appearances:**

Brad Sweitzer, 4814 146 Street, Chippewa Falls, Wisconsin, appearing on his own behalf.

Cara Larson, 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 Transportation.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

At 7:04 p.m., on April 15, 2020, the Wisconsin Employment Relations Commission received an appeal from Brad Sweitzer asserting he had been discharged without just cause by the State of Wisconsin Department of Transportation (DOT). On April 20, 2020, DOT filed a motion to dismiss the appeal as untimely filed. Sweitzer responded to the motion on April 21, 2020.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

**ORDERED**

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

Issued at the City of Madison, Wisconsin, this 19th day of May, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Wisconsin Statute § 230.445(3)(c)1, provides in pertinent part:

An employee or an appointing authority may appeal a decision issued by the administrator under par. (b) by filing an appeal with the commission. The employee or appointing authority may not file an appeal with the commission under this paragraph later than 14 days after receiving the administrator's decision. ... **If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal. ...**

Emphasis added.

In the context of this case, it is undisputed that the 14th day for timely filing was April 15, 2020. At 7:04 p.m. on April 15, the Commission received the appeal by email.

Wisconsin Statute § 230.35(4)(f), provides:

Monday to Friday the offices of the agencies of state government shall open at 7:45 a.m. and close at 4:30 p.m., with intermissions from 11:45 a.m. to 12:30 p.m. Agencies may, with the permission of the governor, adjust opening and closing hours and intermission periods to relieve traffic congestion or as the needs of the service otherwise require.

Consistent with § 230.35(4)(f), Stats., the Commission's office is closed after 4:30 p.m.

Wisconsin Admin. Code § ERC 91.02(10) states:

“Filing” means the physical receipt of a document at the commission's office.

Consistent with § 230.35(4)(f), Stats., and Wis. Admin. Code § ERC 91.02(10), the Commission's website, referenced in the materials sent to Sweitzer by the State via email on Wednesday, April 1, 2020 when his appeal was denied, states:

An appeal is filed when it is received in the WERC office by 4:30 p.m. on the last day it can be timely filed.

Appeals will be accepted ...

by Email: [werc@werc.state.wi.us](mailto:werc@werc.state.wi.us)

Given all the foregoing, it is concluded that because the appeal was received after the Commission's office was closed on April 15, 2020, it was not filed until the Commission's offices opened at 7:45 a.m. on April 16, 2020. Therefore, the appeal was not timely filed and is dismissed pursuant to the requirement of § 230.445(c)1. Stats.

Issued at the City of Madison, Wisconsin, this 19th day of May, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman