

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MELISSA HEINZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0089

Case Type: PA

DECISION NO. 38476

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**Appearances:**

Melissa Heinz, 114 Talmadge Street, Madison, Wisconsin, appearing on her 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 Health Services.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

On July 9, 2020, Melissa Heinz 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 Health Services (DHS). On July 17, 2020, DHS filed a motion to dismiss the appeal asserting Heinz had not timely filed a Step 2 grievance. Heinz filed a reply to the motion on July 31, 2020.

Having considered the matter, the Commission makes and issues the following:

NOW, THEREFORE, it is:

**ORDERED**

The motion to dismiss is denied

Issued at the City of Madison, Wisconsin, this 1<sup>st</sup> day of September, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

It is undisputed that on or before June 25, 2020, Wis. Stat. §230.445(3)(b)1., obligated Heinz to file a Step 2 grievance with the Department of Administration, Division of Personnel Management (DPM) either by email or delivery to DPM's office address. It is also undisputed that Heinz did file a Step 2 grievance electronically on June 25, 2020, albeit after 4:30 pm. The State argues that because the grievance was received by DPM after the 4:30 pm office closure established by Wis. Stat. §230.35(4)(f), the grievance was untimely.

The Commission acknowledges that it has strictly enforced a 4:30 pm deadline for filing an appeal with WERC. *See Sweitzer v. DOT*, Dec. No. 38431 (WERC, 5/20). However, it has done so in the context of a Commission administrative rule and Commission website materials that fairly put an employee on notice as to the existence of a 4:30 pm deadline for receipt of an appeal. In this instance, the State has not cited any administrative rule or website or other information that would alert an employee to a 4:30 pm deadline. Rather, Heinz was simply notified of the need to file on or before a date certain. Because Heinz had no reasonable basis to believe that it mattered if she filed electronically before or after 4:30 pm on June 25, 2020, the Commission is satisfied that her grievance was timely filed.<sup>1</sup> Therefore, the motion to dismiss has been denied.

Issued at the City of Madison, Wisconsin, this 1<sup>st</sup> day of September, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup>The Commission acknowledges that had Heinz chosen to deliver the appeal to DPM's physical address, the 4:30 pm deadline would be applicable. The Commission further acknowledges that the applicability of the 4:30 pm deadline in that circumstance creates an inference that a 4:30 pm deadline exists for electronic filing as well. However, that inference alone is not sufficient to put an employee on notice of any 4:30 pm deadline for electronic filings.