

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JUSTIN LAFRANIA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0407

Case Type: PA

DECISION NO. 38759

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**Appearances:**

Justin LaFrancia, 1404 Lincolnwood Drive, Union Grove, Wisconsin, appearing on his own behalf.

Cara Larson, Attorney, Department of Administration, 101 East 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 28, 2020, Justin LaFrancia 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 Corrections (DOC). On November 3, 2020, DOC filed a motion to dismiss the appeal as untimely filed. On November 4, 2020, LaFrancia filed a response opposing the motion whereupon the matter became ripe for Commission consideration.

Having considered the matter, the Commission concludes 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 25<sup>th</sup> day of November, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Wisconsin Stat. §230.445 provides that state employees may appeal certain disciplinary actions to the Commission. Wisconsin Stat. § 230.445(3)(a) outlines the time requirements dictating when an appeal must be filed. Subsection (c) of that provision specifies a timeline for filing an appeal with the Commission. Specifically, it is “14 days after receiving the administrator’s decision.” Subsection (c) goes on to provide that “[i]f a procedural requirement is not met by the employee ... the commission shall dismiss the appeal.”

In this case, the State’s Step 2 grievance response was sent to LaFrancia via email by the Department of Personnel Management (DPM) on October 13, 2020. At the bottom of the “Employer Grievance Decision,” which was attached to the October 13 email, were instructions for filing an appeal with WERC. Those instructions said that “[a] timely appeal of a Step 2 Decision must be filed with the Wisconsin Employment Relations Commission no later than 14 days after receiving DPM’s decision.” Additionally, in the body of that email, a DPM representative advised LaFrancia that if he disagreed with the Employer’s decision, he could appeal “this decision to the WERC if you so choose.” DPM also attached instructions for filing an appeal with the WERC to the email. The attached instructions – which were entitled “How to Appeal the DPM Step 2 Response to the Wisconsin Employment Relations Commission (WERC)” – stated that the appeal “must be made in writing and filed with and received by the WERC within 14 calendar days from receipt of the DPM’s Step 2 response.” As previously noted, LaFrancia received notice of the administrator’s decision on October 13, 2020. The last day for a timely appeal to the Commission within the 14-day deadline would have been October 27, 2020. LaFrancia’s appeal to the Commission was not received until October 28, 2020. That is outside of the 14-day mandatory requirement set forth in Wis. Stat. § 230.445(3)(c)1.

Notwithstanding the foregoing, LaFrancia asks the Commission to find his appeal timely on the grounds that he “mailed out” his appeal “in time [but] for some reason it was not sent to the WERC.” For the sake of discussion, it is assumed that LaFrancia initially mailed his appeal to the Commission via the US Mail “in time”. That is not controlling though because it is not the date that an appeal is mailed to the WERC that counts; it is when the appeal is received by the WERC and thus filed.<sup>1</sup> LaFrancia later decided to email his appeal to the WERC, and he did so on Wednesday, October 28, 2020. However, as noted above, that was one day late.

Since LaFrancia’s appeal to the WERC was untimely, his appeal has been dismissed.

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<sup>1</sup>Wisconsin Admin. Code § ERC 91.02(10) provides that “Filing” means “physical receipt of a document at the commission’s offices” [emphasis added].

Issued at the City of Madison, Wisconsin, this 25<sup>th</sup> day of November, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman