

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STUART STERREMBERG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0421

Case Type: PA

DECISION NO. 38788

Appearances:

Stuart Sterrenberg, 15 North Hancock Street, Apt. 101, Madison, Wisconsin, appearing on his own behalf.

Anfin Jaw, 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 December 16, 2020, Stuart Sterrenberg filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) suspended him for five days without just cause. On December 18, 2020, DOC filed a motion to dismiss the appeal on the grounds that Sterrenberg had not timely filed his second-step grievance prior to filing his appeal with the Commission. The matter became ripe for Commission consideration on December 29, 2020 when Sterrenberg did not file a response to the motion.

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.

Dated at Madison, Wisconsin, this 19th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

State employees who receive certain kinds of disciplinary actions can grieve them. When they do so, they have to complete two steps before they appeal to the Commission. First, they must file a grievance with their agency. That is known as the first-step grievance. Second, they must appeal the first-step grievance finding to the Division of Personnel Management (DPM). That is known as Step 2. After those two steps are completed, then they can appeal to the Commission.

In this case, Sterrenberg complied with the first step and filed a timely grievance with DOC. However, his appeal to the second step was untimely. The following shows this.

Sterrenberg's step one grievance was returned to him via email on October 23, 2020. That email said in pertinent part: "In accordance with the Wisconsin Human Resources Handbook Chapter 430, you have 14 days to file an appeal (if applicable) to step 2 to the Division of Personnel Management at DOADPMGrievance@wisconsin.gov or 101 E Wilson St. 4th Floor, PO Box 7855, Madison, WI 53707-7855." Additionally, attached to the email, at the bottom of the employer Step 1 Grievance Decision, instructions for an appeal were outlined. Therein, Sterrenberg was advised for a second time that a timely appeal of a Step 1 decision must be submitted to DPM at DOADPMGrievance@wisconsin.gov or 101 East Wilson Street, 4th Floor, PO Box 7855, Madison, WI 53707-7855 within 14 days of the date provided in the "Date Returned" box on the Step 1 decision.

Here, Sterrenberg received notice of the appointing authority's decision on October 23, 2020. The last day for a timely appeal within the 14 day deadline would have been November 6, 2020. Sterrenberg did not submit his second step grievance to DPM until November 11, 2020. That is outside of the 14-day mandatory requirement set forth in Wis. Stat. § 230.445(3)(b)1.

Since Sterrenberg did not timely file his second step grievance appeal with DPM as required by Wis. Stat. § 230.445(3)(b)1. prior to filing his appeal with the Commission, Wis. Stat. § 230.445(2) provides that Sterrenberg thereby waived his right to appeal his suspension to the Commission, and Wis. Stat. § 230.445(3)(c)1 requires the Commission to dismiss the appeal. The Commission has done so.

Issued at Madison, Wisconsin, this 19th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman