

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRANDI MAXWELL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0422

Case Type: PA

DECISION NO. 38799

Appearances:

Brandi Maxwell, N3447 S. End Road, Merrill, Wisconsin, appearing on her own behalf.

Anfin Jaw, 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 December 21, 2020, Brandi Maxwell filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) suspended her for one day without just cause. On January 5, 2021, DOC filed a motion to dismiss the appeal on the grounds that Maxwell had not timely filed her first-step grievance prior to filing her appeal with the Commission. On January 6, 2021, Maxwell filed a response opposing the motion to dismiss, whereupon the matter became ripe for Commission consideration.

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.

Issued at Madison, Wisconsin, this 10th day of February, 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, Maxwell complied with the second step and filed a timely appeal with DPM. However, her first step appeal to DOC was untimely. The following shows this.

Wisconsin Stat. § 230.445(3)(c)1. outlines the time requirements dictating when an appeal must be filed. It specifically states that the employee shall file a complaint with their “appointing authority” (i.e., their state agency) “no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.”

Here, Maxwell was notified of her suspension in person on November 12, 2020 by three members of management. During this meeting, her suspension letter was read to her in its entirety. Additionally, it was explained several times that there was a strict timeline to file an appeal and also reiterated that the appeal instructions were included in the letter. A paper copy of her discipline letter was also hand-delivered to her that same day. The last paragraph of that letter provided clear instructions on how to file a timely appeal. It stated in pertinent part:

The grievance must be received by DOC Employment Relations staff electronically to DOCBHRGrievances@wisconsin.gov, in person, via-interdepartmental mail or U.S.P.S. mail no later than 14 calendar days after you become aware of, or should have become aware of, the decision that is the subject of the complaint.

In this case, the last day for commencing a timely complaint or appeal within the 14-day deadline would have been November 26, 2020. However, because November 26 was Thanksgiving Day, Maxwell had until Friday, November 27, 2020.

Maxwell emailed her appeal on Wednesday, November 25, 2020, so at first glance it appears to have been timely filed. However, she sent it to the wrong email address. Specifically, she sent it to DPM rather than DOC. As noted above, DPM handles Step 2 grievances, not Step 1 grievances. On Friday, November 27, 2020, at 9:32 am, a DPM representative responded to Maxwell’s appeal indicating:

This is the DPM grievance mailbox, intended for **STEP 2** grievance appeals. If you intended to file a Step 1 grievance (which it looks so by the attached form because you checked the box for “Step 1” grievance commencement”), you have done so in error. Step 1 grievances must be completed on form DOA-#15802 and submitted to **your agency**, using their appropriate method of filing, no later than **14 calendar**

days after you became aware of, or should have become aware of, the decision that is the subject of the complaint. . . . (Emphasis in original)

Thus, what happened here is that Maxwell emailed her grievance in a timely fashion, but sent it to the wrong State employer-side email address. This same factual circumstance occurred in *Guillonta v. DOC*, Dec. No. 37939 (May, 2019) where the employee also mistakenly sent her first step grievance to DPM (rather than DOC, her employing agency). In that case, the Commission opined that “[a]t a minimum, DPM should advise the employee that the grievance had been sent to the wrong address.” Here, DPM met that minimal obligation on November 27, 2020 when a DPM representative advised Maxwell she had mistakenly filed her grievance with DPM and instead needed to file it with DOC. While that DPM representative could have forwarded Maxwell’s grievance to DOC, the Commission noted in *Guillonta* that was an obligation “the Commission does not impose on the State.”

Maxwell was off work when the DPM representative sent Maxwell the email notifying her that she had sent her grievance to the wrong state agency. Consequently, Maxwell did not see that email until the next day, November 28, 2020, at which point she emailed her grievance to DOC. However, by that date, her appeal was outside the 14-day mandatory time requirement set forth in Wis. Stat. § 230.445(3)(a)1. The Commission finds that the equities do not favor waiving the time limits because DPM informed Maxwell of her mistake in time for her to file a timely appeal. It does not matter that Maxwell was off work when she received this email from DPM. It was her responsibility to file a timely grievance/appeal with DOC and she did not do so.

Since Maxwell did not file a timely complaint/grievance with DOC as required by Wis. Stat. § 230.445(3)(a)1. prior to filing her appeal with the Commission, Wis. Stat. § 230.445(2) provides that Maxwell thereby waived her right to appeal her 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 10th day of February, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman