

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JACOB SALMON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0452

Case Type: PA

DECISION NO. 38937

Appearances:

Elizabeth Schneider, 143 Evergreen Street, Gays Mills, Wisconsin, appearing on behalf of Jacob Salmon.

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 April 28, 2021, Jacob Salmon 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 April 29, 2021, DOC filed a motion to dismiss the appeal as untimely filed. On May 3, 2021, Salmon 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 13th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Section 230.445, Stats., provides that state employees may appeal certain disciplinary actions to the Commission. Section 230.445(3)(a), Stats., 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 Salmon via email by the Department of Personnel Management (DPM) on April 7, 2021. At the bottom of the “Employer Grievance Decision” which was attached to the April 7 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 Salmon that if he disagreed with the Employer’s decision, he had the right to appeal it to the WERC. 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, Salmon received notice of the administrator’s decision on April 7, 2021. The last day for a timely appeal to the Commission within the 14-day deadline would have been April 21, 2021. Salmon’s appeal to the Commission was not received until April 28, 2021. That is outside of the 14-day mandatory requirement set forth in Wis. Stat. § 230.445(3)(c)1.

Notwithstanding the foregoing, Salmon asks the Commission to deny DOC’s motion to dismiss on the grounds that he was on vacation and out of state for 6 days during the 14-day time window, and when he returned, he “worked 3 doubles within that week.” According to Salmon, those facts “made it nearly impossible to be able to properly file his appeal.” While the Commission acknowledges that the facts just noted made it difficult for Salmon to file a timely appeal with the Commission, that still does not excuse his noncompliance with the filing deadline. Here, his late filing was attributable to his own lack of diligence, so the Commission finds that the equities do not favor waiving the time limits.

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

Issued at the City of Madison, Wisconsin, this 13th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman