

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERICH HAAK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF EMPLOYEE TRUST FUNDS, Respondent.

Case ID: 615.0000

Case Type: PA

DECISION NO. 38947

Appearances:

Erich Haak, 1003 Warrior Court, Waunakee, Wisconsin, appearing on his own behalf.

William Ramsey, 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 Employee Trust Funds.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On May 4, 2021, Erich Haak filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Employee Trust Funds (ETF) suspended him for one day without just cause. On May 11, 2021, ETF filed a motion to dismiss the appeal on the grounds that Haak's grievance challenging his suspension was untimely filed with ETF. Haak filed a response opposing the motion on May 17, 2021, 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 8th day of June, 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 must 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.

Additionally, there are time requirements for all levels of the grievance procedure. Section 230.445(3)1, Stats., states that a grievance challenging an adverse employment decision shall be filed with the employee's "appointing authority" (i.e. their 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 appeal."

While Haak's suspension notice was dated March 12, 2021, it was not given to him until March 15, 2021. On that date, management representatives met with him and discussed the contents of the suspension letter with him. In this case, the 14-day timeline for filing a grievance started to run on March 15, 2021 (the date management met with Haak) and not March 12, 2021 (the date on the suspension letter). The suspension notice provided clear instructions on how to file a timely appeal.

Counting forward from March 15, 2021, the last day for commencing a timely first step appeal with ETF within the 14-day deadline was March 29, 2021. While Haak filed a grievance at 8:54 pm on March 29, 2021, he did not file it with his agency (ETF) as he should have. Instead, he sent his grievance to DPM (which is the agency that reviews second step grievances). Thus, he sent his grievance to the incorrect state agency. In doing that, Haak did not do so mistakenly. In an email which accompanied his grievance, he wrote:

I am sending this to you as I am unsure where to send it. I do not think it would be appropriate to send it to my HR as they are the ones who made the decision.

When DPM got Haak's email, it sent him an automatic reply that put him on notice that he had not filed his appeal with the right entity. The response stated in part:

This is the DPM grievance mailbox, intended for Step 2 grievance appeals. If you intended to file a Step 1 grievance, you have done so in error. Step 1 grievances must be completed on form DOA # 15902 and submitted to your agency, using their appropriate method of filing, no later than 14 calendar days after you become aware of, or should have become aware of, the decision that is the subject of complaint.

The next day, March 30, 2021, Haak filed his appeal with ETF. In that email, he indicated he had intentionally filed his first grievance with DPM instead of ETF.

The Commission finds that Haak did not file a timely complaint/grievance with ETF as required by Wis. Stat. § 230.445(3)(a)1., prior to filing his appeal with the Commission. Wisconsin Stat. § 230.445(2), provides that Haak 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 8th day of June, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman