

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JORDAN MINARDI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0101

Case Type: PA

DECISION NO. 38983

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**Appearances:**

Jordan Minardi, 5830 US Highway 12, #2, Waunakee, Wisconsin, appearing on his own behalf.

Anfin Jaw, Wisconsin Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On July 9, 2021, Jordan Minardi filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Health Services (DHS). On July 19, 2021, DHS filed a motion to dismiss the appeal asserting that Minardi had not filed a timely grievance following his suspension. Minardi filed a response to the motion on July 27, 2021, whereupon the matter became ripe for 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 9<sup>th</sup> day of August, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Section 230.445 (3)(a)1, Stats. provides:

To commence the grievance process for an adverse employment action, an employee shall file a complaint with the employee's appointing authority challenging the adverse employment decision against the employee 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.

Section 230.445(2), Stats., specifies in pertinent part:

If an employee does not file a complaint or an appeal by an applicable deadline under sub. (3), the employee waives his or her right to appeal the adverse employment decision under this subchapter.

On May 18, 2021, Minardi was notified by telephone of his five-day suspension, by Julie Hall, Assistant Director of Nursing at Mendota Mental Health Institute, and Lisa Von Haden, Director of Nursing. During that phone call, Minardi's suspension letter was read to him in its entirety by Hall with Von Haden as a witness on the phone call. A copy of the discipline letter was then emailed to Minardi at his work email address and his personal email address on May 19, 2021, by DHS Human Resources. The last two paragraphs of the suspension letter provided clear instructions on how to file a timely appeal via a grievance. It stated:

If you believe this action is not based on just cause, you may appeal it through the grievance procedure set forth in Wis. Stats. s. 230.445 and the Wisconsin Human Resources Handbook Chapter 430 Employee Grievance Procedure. Grievances must be submitted using the Division of Personnel Management (DPM) Adverse Employment Action Grievance form (DOA-15802) available on the DPM website at [https://dpm.wi.gov/Pages/How\\_Do\\_I/FileAGrievance.aspx](https://dpm.wi.gov/Pages/How_Do_I/FileAGrievance.aspx).

Grievances must be submitted to the to the DHS email mailbox at [DHSEmployeeRelations@wisconsin.gov](mailto:DHSEmployeeRelations@wisconsin.gov), no later than 14 calendar days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.

The initial grievance filed with the individual's employing agency (in this instance DHS) is known as a Step 1 grievance. To be timely in this instance, a Step 1 grievance needed to be filed with DHS by June 1, 2021.

Minardi filed a grievance with DHS challenging his suspension on June 7, 2021. That was outside the 14-day timeline set forth in Wis. Stat. § 230.445 (3)(a)1. After DHS received Minardi's grievance on June 7, 2021, it returned it to him denied for untimeliness.

Minardi acknowledges that his appeal was six days past the time deadline, but in his view, his untimeliness was reasonable under the circumstances.

The circumstances he references are these. He contends that he returned to work following his suspension on May 30, 2021, and when he did, he did not have access to his work computer until June 1, 2021. He further avers that after working one day, he then went on a pre-scheduled vacation until June 6, 2021, when he returned to work and filed his grievance. As he sees it, the equities favor waiving the 14-day time limit in this case.

The Commission finds otherwise. Even if all the foregoing is true, the equities do not favor waiving the statutory time limit because Minardi still had time to file a timely appeal. In so finding it is expressly noted that he was told of the 14-day time limit for filing a grievance and provided with instructions on how to file a timely appeal. It was his responsibility to file a timely grievance/appeal with DHS and he did not do so. In our view, his late filing was attributable to his lack of diligence.

Since Minardi did not file a timely grievance/appeal with DHS as required by Wis. Stat. § 230.445(3)(a)1. prior to filing his appeal with the Commission, Wis. Stat. § 230.445(2) provides that Minardi 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 the City of Madison, Wisconsin, this 9<sup>th</sup> day of August, 2021.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman