

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CANDICE MARSHALL-WATSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0483

Case Type: PA

DECISION NO. 38997

Appearances:

Candice Marshall-Watson, 514 S. Madison Street, Waupun, Wisconsin, appearing on her own behalf.

Nicole Rute, 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 Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

At 11:46 p.m., on August 16, 2021, the Wisconsin Employment Relations Commission received an appeal from Candice Marshall-Watson asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). On August 18, 2021, DOC filed a motion to dismiss the appeal as untimely filed. Marshall-Watson responded to the motion on August 20, 2021.

Having considered the matter, the Commission is satisfied that 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 1st day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Wisconsin Stat. § 230.445(3)(c)1. provides in pertinent part:

An employee or an appointing authority may appeal a decision issued by the administrator under par. (b) by filing an appeal with the commission. The employee or appointing authority may not file an appeal with the commission under this paragraph later than 14 days after receiving the administrator's decision. . . . **If a procedural requirement was not met by the employee . . . the commission shall dismiss the appeal** [emphasis added].

In the context of this case, it is undisputed that the 14th day for timely filing was August 16, 2021. At 11:46 p.m. on August 16, the Commission received the appeal by email.

Wisconsin Statute § 230.35(4)(f), provides:

Monday to Friday the offices of the agencies of state government shall open at 7:45 a.m. and close at 4:30 p.m., with intermissions from 11:45 a.m. to 12:30 p.m. Agencies may, with the permission of the governor, adjust opening and closing hours and intermission periods to relieve traffic congestion or as the needs of the service otherwise require.

Consistent with Wis. Stat. § 230.35(4)(f), the Commission's office is closed after 4:30 p.m.

Wisconsin Admin. Code § ERC 91.02(10) states:

“Filing” means the physical receipt of a document at the commission's office.

Consistent with Wis. Stat. § 230.35(4)(f) and Wis. Admin. Code § ERC 91.02(10), the Commission's website, referenced in the materials sent to Marshall-Watson by the State via email on August 2, 2021 when her appeal was denied, states:

An appeal is filed when it is received in the WERC office by 4:30 p.m. on the last day it can be timely filed.

Appeals will be accepted . . .

by Email: werc@werc.state.wi.us

Given all the foregoing, it is concluded that because the appeal was received after the Commission's office was closed on August 16, 2021, it was not filed until the Commission's

offices opened at 7:45 a.m. on August 17, 2021. Therefore, the appeal was not timely filed and is dismissed pursuant to the requirement of Wis. Stat. § 230.445(c)1.

Marshall-Watson argues that because the materials received from the State do not mention the 4:30 pm deadline, her appeal was timely. While it would be preferred if the State materials explicitly referenced the 4:30 pm deadline (as opposed to including a link to Commission information that does specify the deadline), the absence of that explicit reference does not provide a persuasive basis for finding this appeal to be timely.

Issued at the City of Madison, Wisconsin, this 1st day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman